



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9th Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF	)	ORDER
WINDSTREAM HOLDINGS, INC.; WINDSTREAM	)	
SERVICES, LLC; A.R.C. NETWORKS, INC., ATX	)	
LICENSING, INC.; BRIDGECOM INTERNATIONAL,	)	
INC.; BROADVIEW NETWORKS, INC.; BROADVIEW	)	
NP ACQUISITION CORP.; BUSINESS TELECOM, LLC;	)	
CAVALIER TELEPHONE MID-ATLANTIC, LLC;	)	
CONVERSENT COMMUNICATIONS OF NEW	)	
JERSEY, LLC; CTC COMMUNICATIONS CORP.;	)	
DELTACOM, LLC; EARTHLINK BUSINESS, LLC;	)	
INTELLIFIBER NETWORKS, LLC; LDMI	)	
TELECOMMUNICATIONS, LLC; LIGHTSHIP	)	
TELECOM, LLC; PAETEC COMMUNICATIONS, LLC;	)	
TALK AMERICA, LLC; TRUCOM CORPORATION; US	)	
LEC OF PENNSYLVANIA, LLC; WINDSTREAM	)	
COMMUNICATIONS, LLC; WINDSTREAM NTI, LLC;	)	
AND WINDSTREAM NUVOX, LLC FOR APPROVAL OF	)	
TRANSFER OF CONTROL OF WINDSTREAM	)	
HOLDINGS, INC.	)	DOCKET NO. TM20060388

**Parties of Record:**

**Sidney A. Sayovitz, Esq., Schenk, Price, Smith & King**, on behalf of Petitioners  
**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

BY THE BOARD:

On June 3, 2020, Windstream Holdings, Inc. ("Windstream Holdings"), a Delaware corporation, and Windstream Services, LLC ("Windstream Services"), a Delaware limited liability company (collectively "Windstream"), on behalf of their subsidiaries active in New Jersey (the "Windstream Licensees") (together with Windstream, "Petitioners"), submitted a Verified Petition ("Petition") with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C.14:1-5.14 requesting that the Board grant authority, to the extent it may be required, to complete the intra-company and reorganization transactions necessary for Windstream to emerge from a bankruptcy proceeding commenced in February 2019 (the "Reorganization").

Following consummation of the Reorganization, the Petitioners represent that Windstream Licensees will continue to offer the same services in New Jersey at the same rates, terms, and conditions. The Petitioners contend that the Reorganization does not implicate the Board's approval authority under N.J.S.A. 48:2-51.1(a), as no entity is expected to "acquire control" of the Windstream Licensees. However, the Petitioners state that to the extent that the Reorganization requires Board approval pursuant to N.J.S.A. 48:2-51.1, the Petitioners respectfully request that the Board grant the Petition. On July 1, 2020, Petitioners submitted a petition for a waiver of certain notice requirements to municipalities and utilities under N.J.A.C. 14:1-5.14 (b) (12). The Board granted a limited waiver pursuant to an Order entered on July 15, 2020 under the above-referenced docket number.

## **BACKGROUND**

Windstream Holdings, the ultimate parent company of Windstream Services and the Windstream Licensees, is a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas. Windstream, through its operating subsidiaries, is a provider of network communications and technology solutions for enterprise organizations and carrier partners across the United States. The company also provides data, cloud solutions, unified communications and managed services to business and enterprise clients. Windstream's subsidiaries provide voice and data services to enterprise businesses across the United States.

In addition, Windstream's operating subsidiaries supply services on a nationwide, local and long-haul fiber network currently spanning approximately 150,000 route miles. Windstream's enterprise business segment offers services such as software-defined wide area networking ("SD-WAN") and unified communications as a service ("UcaaS") to businesses across the United States, and a variety of other data services, such as cloud computing.

In New Jersey there are 16 subsidiaries of Windstream that have Board authorization to operate as a Competitive Local Exchange Carrier (CLEC) in New Jersey: Paetec Communications, Inc., Talk America, Inc. (f/k/a The Phone Company), Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc., US LEC of Pennsylvania, Inc., EarthLink Business, LLC, Business Telecom, LLC, (f/k/a Business Telecom, Inc.), CTC Communications Corp., Conversent Communications of New Jersey, LLC, Lightship Telecom, LLC, Broadview Networks, Inc., Broadview NP Acquisition Corp., BridgeCom International, Inc., ATX Licensing, Inc., A.R.C. Networks, Inc., and TruCom Corporation. In New Jersey, these Windstream subsidiaries are authorized to provide local and/or interexchange telecommunications services pursuant to authority granted by the Board.<sup>1</sup>

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<sup>1</sup> See I/M/O the Petition For an Order Authorizing PAETEC Communications, Inc. to Provide Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE02060319, Order dated February 5, 2003; In the Matter of the Petition for an Order Authorizing Talk.com Holding Corp., d/b/a The Phone Company to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00100767, Order dated January 10, 2002; I/M/O the Petition for An Order Authorizing Cavalier Telephone Mid-Atlantic, LLC to Provide Local Exchange Telecommunications Services throughout New Jersey, Docket No. TE01060370, Order dated September 27, 2001; as to Intellifiber Networks, Inc. (f/k/a Elantic), which operates in New Jersey pursuant to Board authority originally granted to Dominion Telecom, Inc. on October 6, 2002, see I/M/O the Petition for an Order Authorizing Dominion Telecom, Inc. to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE01090594, Order dated October 31, 2002, which was later transferred to Elantic on May 12, 2004, see I/M/O the Joint Petition of Dominion Telecom, Inc., Dominion Fiber Ventures, LLC and Elantic Networks, Inc. for Approval of a Change of Control, Docket No. TM0403019, Order dated May 12, 2004; I/M/O the Petition of US LEC Pennsylvania Inc. for Authorization to Provide Resold and Facilities Based, Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE99030180, Order dated August 18, 1999; as to EarthLink Business, LLC (f/k/a New Edge Network, Inc.), which obtained authorization to provide facilities based, local exchange and interexchange telecommunications services when it assumed the operating authority of New Edge Network, Inc., see I/M/O the Petition for an Order Authorizing New Edge Network, Inc. D/B/A New Edge

Collectively, these 16 Windstream subsidiaries (the "New Jersey CLECs") currently have 101 employees in New Jersey.

In February of 2019, Petitioners commenced voluntary cases in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under Chapter 11 of Title 11 of the United States Code. According to the Petition, Windstream subsequently secured debtor-in-possession financing and negotiated with various creditor constituencies. The negotiations and related bankruptcy proceedings led to a Plan of Reorganization (the "Plan") that will enable Windstream to achieve a deleveraged capital structure and sufficient liquidity to fund its post-emergence business plan. The interests held by the stockholders of Windstream Licensees' ultimate parent company, Windstream Holdings, will be canceled and the company will be reorganized. The creditors who hold the first lien debt of Windstream Services, the immediate subsidiary of Windstream Holdings, will, when the reorganization is complete, hold 100 percent of the equity interests in the ultimate parent entity of the Windstream Licensees, New Windstream. According to the Plan, a substantial majority of the post-emergence equity in New Windstream will be held by subsidiaries or affiliated entities of six investment companies that are first lien debtholders of Windstream Services' debt today (collectively with their subsidiaries and affiliated entities, the "First Lien Investors"): (1) Elliott Management Corporation, (2) Pacific Investment Management Company LLC, (3) Oaktree Capital Group, (4) HBK Capital Management, (5) Franklin Resources Inc. operating as Franklin Templeton, and (6) Brigade Capital Management, L.P.

The Petition explains that the Plan involves a two-step transaction process because some of the First Lien Investors' affiliates or subsidiaries that will be acquiring equity interests in New Windstream are registered in other countries and/or have foreign investors. Federal law requires

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Networks to Provide Switched and Dedicated Resold and Facilities-Based, interexchange and Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE99100774, Order dated March 9, 2000; as to Business Telecom, LLC (f/k/a Business Telecom, Inc.), which is authorized to provide facilities-based local exchange and interexchange telecommunications services, see I/M/O the Petition for an Order Authorizing Business Telecom, Inc. d/b/a BTI to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE01070416, Order dated December 19, 2012; CTC is authorized to provide facilities based intrastate telecommunications, see I/M/O the Petition For an Order Authorizing CTC Communications Corp. d/b/a CT Communications Corp. to Provide Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE99199808, Order dated May 10, 2000; Conversent Communications of New Jersey, LLC is authorized to provide facilities-based local and interexchange telecommunications service, see I/M/O the Petition For an Order Authorizing Conversent Communications of New Jersey, LLC to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Throughout New Jersey, Docket No. TE00020073, Order dated September 12, 2000; Lightship Telecom, LLC is authorized to provide facilities based local and interexchange telecommunications service, see I/M/O the Petition For an Order Authorizing Lightship Telecom, LLC to Provide Local Exchange and Interexchange Telecommunications Throughout New Jersey, Docket No. TE00010014, Order dated August 17, 2000; I/M/O the Petition for an Order Authorizing Broadview Networks, Inc. to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE99120912, Order dated August 12, 2000; I/M/O the Petition for an Order Authorizing Broadview NP Acquisition Corp. d/b/a Broadview Net Plus to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE02040253, Order dated August 8, 2002; I/M/O the Petition for an Order Authorizing BridgeCom International, Inc. to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE01010040, Order dated February 6, 2001; In the Matter of the Application of ATX Telecommunications Services LTD. For Authority to Provide Local Exchange and Interexchange Telecommunications Services in New Jersey, Docket No. TE99070467, Order dated March 29, 2000; I/M/O the Petition for an Order Authorizing A.R.C. Networks Inc. d/b/a INFOHIGHWAY to provide Local Exchange and Intrastate Toll Telecommunications Services, Docket No. TM00030170, Order Dated July 28, 2000; Eureka Telecom, Inc., (previously known as Gillette Global Network, Inc.), I/M/O the Petition for an Order Authorizing Gillette Global Network, Inc. to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE0010817, Order dated June 28, 2001; and I/M/O the Petition for an Order Authorizing TruCom Corporation to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00090630 Order dated March 15, 2001.

additional review of foreign ownership above defined thresholds in entities that hold certain FCC-issued licenses and federal authorizations held by Windstream affiliates. Petitioners state that approvals of such transactions can take much longer to complete than approvals that do not involve foreign investors. However, as described in the Petition, where this type of federal review is required for companies emerging from bankruptcy, the FCC has permitted them to structure their transition to new ownership in two steps.

First, a company emerges from bankruptcy with its equity acquired by investors whose individual and combined foreign ownership are below the thresholds for FCC review of foreign investments. At this step, the post-emergence owners with direct or indirect foreign ownership receive, in lieu of equity (in whole or in part), warrants to purchase equity in the future. After the company has emerged from bankruptcy, and the entities assigned warrants in the first stage seek FCC approval to exercise those warrants, the FCC reviews the foreign ownership, with the warrants exercised only after FCC approval. This process allows the company to emerge from bankruptcy quicker. As a result, the exact ownership percentages of the new owners of post emergence New Windstream will not be finalized until the company emerges from bankruptcy and the first step of the two-step process described in this section is completed.

It is anticipated that Elliott Management Corporation and its subsidiaries or affiliated entities (“Elliott entities”) will temporarily hold 49.9% of the voting equity in New Windstream upon initial emergence from bankruptcy, and that Elliott entities will ultimately hold an estimated aggregate of 40.3% of the voting equity in New Windstream. The remaining First Lien investors controlled by the five other investment companies are expected to hold approximately 40.9% of the voting equity in New Windstream post-consummation, and as subject to the Backstop Commitment Agreement<sup>2</sup> described in the Plan. The Petition states that Windstream Licensees will provide the Board with an informational notice of consummation at the completion of each step of the process, along with ownership details available at that time.

Petitioners have provided to the Board the United States Bankruptcy Court for the Southern District of New York, Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (RDD) dated June 26, 2020.

Petitioners assert that the Plan will not have any impact on the organization or operations of Windstream Licensees, which includes the New Jersey CLECs, or affect the Windstream Licensees’ policies with respect to financing, operations, accounting, operating schedules, maintenance or management. Petitioners state that the Plan will have no impact on the Windstream Licensees’ customers or on the services Windstream Licensees currently provide which will continue to be provided to current customers under the same rates, terms and conditions of service. Likewise, the Plan will not impact New Jersey employee headcount, which collectively among Windstream Licensees currently totals 101 employees. Due to the absence of changes to customer-facing operations, the Petitioners claim the Plan will be imperceptible to customers. Petitioners further assert that approval of the Plan is consistent with the requirements under N.J.S.A. 48:2-51.1 and benefits the public because the Plan guarantees there will be no reduction in market competitors/service providers in New Jersey and the emerging company will be on a more sound financial footing post-bankruptcy, strengthening its ability to provide continuous uninterrupted service to customers.

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<sup>2</sup> A “backstop” is a financial arrangement that creates a secondary source of funds in case the primary source is not enough to meet current needs.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments to the Board on July 8, 2020, stating that it did not object to approval of the proposed reorganization Plan. However, Rate Counsel did raise a concern regarding the potential for diminished service and service quality based on post-transaction employment attrition, which would not be in the public interest. Rate Counsel, therefore, recommends that any approval be conditioned upon a notification requirement to the Board and Rate Counsel if there is any net loss of jobs in New Jersey greater than fifteen percent (15%) for a three-year period post-issuance of a Board order resolving this matter. In addition, Rate Counsel recommends that the Board direct that Petitioners certify that the reorganization Plan will not adversely affect or reduce New Jersey employees' existing rights in any retirement benefit plan currently offered by Petitioners and/or Windstream Licensees post-consummation of the reorganization transaction.

By letter dated July 23, 2020, Petitioners responded to the Rate Counsel letter noting that Rate Counsel "does not oppose Board approval of the reorganization Plan." In response to Rate Counsel's recommendations, Petitioners agree to Rate Counsel's first recommendation as to notification in the event of a fifteen percent (15%) reduction in New Jersey jobs over a three (3) year period after the issuance of the Board's order resolving the Petition in this matter. With respect to the second recommendation, Petitioners note that they are bound by the terms of Windstream's Plan of Reorganization as approved by the Bankruptcy Court on June 26, 2020. As set forth in said Plan of Reorganization, Petitioners agree to assume all existing retirement benefit plans for current employees except for the employee equity or equity-based incentive plans. Petitioners state that this exception is necessitated by the change in the Windstream ownership structure that will occur post-emergence and has been elucidated in the Petition. Existing retirement benefit plans will remain in place for current employees as of the effective date of emergence, and Windstream and/or New Windstream will continue to honor such agreements post-emergence. As confirmed in the Plan of Reorganization, there are no plans contemplated that would reduce or adversely affect retirement benefit plans for current New Jersey employees at the time of emergence.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In considering a transfer of control request, the Board shall evaluate the impact of acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. N.J.S.A. 48:2-51.1(a). The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly-owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

After a careful review of this matter and all related documentation, the Board is satisfied that positive benefits will flow to customers based upon the record as the transaction detailed above and in the Plan, which was approved by the United States Bankruptcy Court for the Southern District of New York on June 26, 2020, will allow Windstream to restructure its debt and emerge from Chapter 11, and most importantly, continue to provide services to customers on an uninterrupted basis. The Board, therefore, **FINDS** that the proposed transaction will have no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions as they did prior to the transaction.

The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. The Petitioners have indicated that the Windstream Licensees have, collectively, a total of 101 employees located in New Jersey. Board precedent requires companies to report headcount reductions in New Jersey greater than 15% for a 3-year period after the date of closing. See I/M/O the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM10404333 (order dated June 30, 2017). There is no reason to disturb Board precedent based on these facts. The Board, therefore, **FINDS** that Petitioners must notify the Board, and provide a written explanation, following a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of their total New Jersey employee headcount during the 3-year period from the effective date of this Order. As Petitioners have assured that existing employee retirement plans will be retained, the Board is persuaded, consistent with N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, that Petitioners are able to fulfill pension obligations.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with applicable law and is in the public interest. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

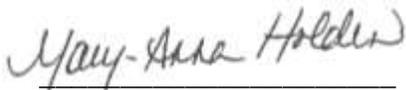
This Order shall be effective August 22, 2020.

DATED: August 12, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

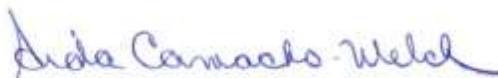


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

**IN THE MATTER OF THE VERIFIED PETITION OF WINDSTREAM HOLDINGS, INC.; WINDSTREAM SERVICES, LLC; A.R.C. NETWORKS, INC., ATX LICENSING, INC.; BRIDGECOM INTERNATIONAL, INC.; BROADVIEW NETWORKS, INC.; BROADVIEW NP ACQUISITION CORP.; BUSINESS TELECOM, LLC; CAVALIER TELEPHONE MID-ATLANTIC, LLC; CONVERSENT COMMUNICATIONS OF NEW JERSEY, LLC; CTC COMMUNICATIONS CORP.; DELTACOM, LLC; EARTHLINK BUSINESS, LLC; INTELLIFIBER NETWORKS, LLC; LDMI TELECOMMUNICATIONS, LLC; LIGHTSHIP TELECOM, LLC; PAETEC COMMUNICATIONS, LLC; TALK AMERICA, LLC; TRUCOM CORPORATION; US LEC OF PENNSYLVANIA, LLC; WINDSTREAM COMMUNICATIONS, LLC; WINDSTREAM NTI, LLC; AND WINDSTREAM NUVOX, LLC FOR APPROVAL OF TRANSFER OF CONTROL OF WINDSTREAM HOLDINGS, INC.  
DOCKET NO. TM20060388**

**SERVICE LIST**

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