



Agenda Date: 9/25/24

Agenda Item: IVB

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CABLE TELEVISION  
AND TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF ) ORDER  
WINDSTREAM HOLDINGS II, LLC AND NEW )  
WINDSTREAM, LLC FOR APPROVAL OF THE )  
INDIRECT TRANSFER OF CONTROL OF )  
AUTHORIZED TELECOMMUNICATIONS PROVIDERS ) DOCKET NO. TM24060410

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**James Laskey, of Norris McLaughlin, P.A.**, on behalf of Joint Petitioners

**BY THE BOARD:**

On June 14, 2024, Windstream Holdings II, LLC ("Windstream" or "Windstream Holdings"), on behalf of its subsidiaries holding New Jersey authorizations (collectively, "Windstream Licensees"), and New Windstream, LLC ("New Windstream") (together with Windstream Holdings, "Joint Petitioners"), filed a petition with the New Jersey Board of Public Utilities ("Board") requesting a grant of authority to complete a *pro forma* corporate reorganization ("Reorganization"), pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14 ("Petition"). The Reorganization, which is taking place at the parent holding company level, will result in New Windstream becoming the ultimate parent company of the Windstream Licensees and certain intermediate holding company changes. The Board considers the Petition herein.

**BACKGROUND**

Windstream Holdings is a Delaware limited liability company which, through operating subsidiaries, provides fiber-based broadband to residential and small business customers in eighteen (18) states, managed cloud communications, networking and security services for mid-to-large enterprises and government entities across the United States, and customized wavelength and dark fiber solutions for carriers, content providers and hyperscalers in the United States. Windstream Holdings' incumbent local exchange carrier ("ILEC") operating subsidiaries offer services to residential, small business, and government customers in Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas.

Windstream Holdings' competitive local exchange carrier ("CLEC") operating subsidiaries in all fifty (50) states and the District of Columbia offer services primarily to enterprise business and government customers. In New Jersey, Windstream's CLEC subsidiaries offer business and enterprise services throughout the State. There are currently eleven (11) authorized Windstream Licensees that offer business and enterprise services in New Jersey: Broadview Networks, Inc.,<sup>1</sup> Business Telecom, LLC,<sup>2</sup> Cavalier Telephone Mid-Atlantic, LLC,<sup>3</sup> Conversent Communications of New Jersey, LLC,<sup>4</sup> CTC Communications Corp.,<sup>5</sup> Intellifiber Networks, LLC,<sup>6</sup> Lightship Telecom, LLC,<sup>7</sup> PAETEC Communications, LLC,<sup>8</sup> Talk America, LLC,<sup>9</sup> US LEC of Pennsylvania, LLC,<sup>10</sup> and Windstream New Edge, LLC.<sup>11</sup>

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<sup>1</sup> In re the Petition for an Order Authorizing Broadview Networks, Inc. to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, BPU Docket No. TE99120912, Order dated August 22, 2000.

<sup>2</sup> In re the Petition for an Order Authorizing Business Telecom, Inc. d/b/a BTI to Provide Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE01070416, Order dated February 6, 2002.

<sup>3</sup> In re the Petition for an Order Authorizing Cavalier Telephone Mid-Atlantic, LLC to Provide Local Exchange and Interexchange and Exchange Access Telecommunications Services throughout New Jersey, BPU Docket No. TE01060370, Order dated September 27, 2001.

<sup>4</sup> In re the Petition for an Order Authorizing Conversent Communications of New Jersey, LLC to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services, BPU Docket No. TE00020073, Order dated September 12, 2000.

<sup>5</sup> In re 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, BPU Docket No. TE99199808, Order dated May 10, 2000.

<sup>6</sup> Intellifiber Networks, Inc. (f/k/a Elantic) operates in New Jersey pursuant to Board authority originally granted to Dominion Telecom, Inc. In re the Petition for an Order Authorizing Dominion Telecom, Inc. to Provide Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE01090594, Order dated October 31, 2002. This authority was later transferred to Elantic on May 12, 2004. In re the Joint Petition of Dominion Telecom, Inc., Dominion Fiber Ventures, LLC and Elantic Networks, Inc. for Approval of a Change of Control, BPU Docket No. TM0403019, Order dated May 12, 2004.

<sup>7</sup> In re the Petition for an Order Authorizing Lightship Telecom, LLC to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE00010014, Order dated August 17, 2000.

<sup>8</sup> In re the Petition for an Order Authorizing PAETEC Communications, Inc. to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, BPU Docket No. TE02060319, Order dated February 5, 2003.

<sup>9</sup> In re 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, BPU Docket No. TE00100767, Order dated January 10, 2002.

<sup>10</sup> In re the Petition of US LEC Pennsylvania Inc. for Authorization to Provide Resold and Facilities-Based, Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE99030180, Order dated August 18, 1999.

<sup>11</sup> Windstream New Edge, LLC (f/k/a New Edge Network, Inc.) obtained authorization to provide facilities based, local exchange and interexchange telecommunications services when it assumed the operating authority of New Edge Network, Inc. In re the Petition for an Order Authorizing New Edge Network, Inc. d/b/a New Edge Networks to Provide Switched and Dedicated Resold and Facilities-Based, Interexchange and Local Exchange Telecommunications Services throughout New Jersey, BPU Docket No. TE99100774, Order dated March 27, 2000.

New Windstream is a Delaware limited liability company and wholly owned subsidiary of Windstream Holdings. As a result of the Reorganization, it will become the ultimate indirect parent of the Windstream Licensees, with the same management and officers, same limited liability company agreement, and same pre-closing ownership.

Elliott Investment Management L.P. and its advisory affiliates (collectively, “Elliott”), manage hedge funds and other investment vehicles (“Elliott Funds”), with over \$65 billion in assets under management.<sup>12</sup> Elliott provides investment advice and other services to private investment funds and co-investment commitments. The Elliott Funds currently hold slightly less than fifty percent (50%) of the equity in Windstream Holdings. The Petition states that The Elliott Funds ownership in New Windstream will not appreciably change as a result of the Reorganization and will remain slightly below fifty percent (50%).

Pacific Investment Management Company LLC (“PIMCO”) is a Delaware limited liability company and an SEC-registered investment adviser, which manages certain funds (“PIMCO Funds”) holding approximately twenty-one percent (21%) voting interest in Windstream. The Petition stated that the PIMCO Funds will not acquire additional equity in New Windstream through the Reorganization. However, their aggregate percentage of the overall ownership in the company will increase to slightly below fifty percent (50%) as a result of the reduction in outstanding common units as New Windstream repurchases equity from other minority investors. The Petition stated that due to Windstream’s governance structure and limitations on the powers of members in its limited liability company agreement, this increase in PIMCO Funds’ relative ownership of Windstream common units will not have the effect of conferring any actual control upon the PIMCO Funds or PIMCO over the governance or management of the company.

The Petition stated that upon receipt of the requisite regulatory approvals, Windstream Holdings, the current ultimate parent of the Windstream Licensees, will conduct a *pro forma* reorganization. Windstream Holdings is currently the immediate parent of New Windstream. It will form several new subsidiaries under New Windstream, including New Windstream Holdings II, LLC, which will be an indirect subsidiary (via additional newly-formed intermediate holding companies) of New Windstream. Windstream Holdings will then merge into New Windstream Holdings II, LLC, with New Windstream Holdings II, LLC surviving. As New Windstream is the ultimate parent of New Windstream Holdings II, LLC, New Windstream will become the ultimate parent of the Windstream Licensees.

According to the Petition, New Windstream will operate pursuant to the same limited liability company agreement as Windstream Holdings does today, and will have the identical ownership as Windstream Holdings immediately prior to the reorganization, with owners of equity and warrants in Windstream Holdings at closing receiving equivalent equity and warrants in New Windstream.

Joint Petitioners stated that prior to this *pro forma* restructuring, Windstream Holdings will undergo non-substantial changes in the relative ownership shares held by its existing equity holders that will not result in a change of majority ownership or majority control of Windstream Holdings or the Windstream Licensees. Specifically, Windstream Holdings will offer existing Windstream Holdings members the right to purchase warrants exchangeable for common units in the company. Windstream Holdings will then use the proceeds from this offering to repurchase units from certain members who wish to sell their units. Windstream’s three (3) largest current equity

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<sup>12</sup> Petition at 6.

holders are the Elliott Funds, the PIMCO Funds, and Oaktree.<sup>13</sup> Elliott and Oaktree have agreed to make certain commitments to ensure that no investor will acquire majority ownership or control of Windstream Holdings as a result of the rights offering and accompanying repurchase of common units. Windstream Holdings will repurchase most of Oaktree's common units in the offering, but Oaktree has committed to retain sufficient equity in Windstream Holdings to ensure that no remaining investor obtains a majority of the equity in Windstream Holdings. Elliott has agreed to backstop any shortfall in buying demand needed to satisfy selling demand. Elliott has also agreed to ensure that funds managed by Elliott will collectively hold less than fifty percent (50%) of the outstanding units after the rights offering concludes by committing to exchange any common units in the company for warrants as needed to keep each of (1) the Elliott Funds' ownership; and (2) the PIMCO Funds' ownership below fifty percent (50%) after reduction in the number of outstanding units. Common units and warrants in Windstream Holdings will then be converted into common units and warrants in New Windstream at closing.

According to the Petition, under the Limited Liability Agreement that governs Windstream Holdings today and which will govern New Windstream after the Reorganization, neither Elliott, the Elliott Funds, PIMCO, or the PIMCO Funds have or will have the ability to appoint a majority of the Board or manage day-to-day operations of the company.<sup>14</sup> Therefore, although the PIMCO Funds' ownership of Windstream's equity will increase from approximately twenty-one percent (21%) to approximately forty-nine percent (49%) as a result of Windstream repurchasing other minority investors' equity, the increase in its relative equity share will not grant PIMCO or the PIMCO Funds any practical ability to exercise control over the company.

The Joint Petitioners asserted that the Reorganization is consistent with the public policy criteria delineated in N.J.S.A. 48:2-51.1, to the extent the statute is applicable. Further, the Petition stated that the Reorganization will increase tax efficiencies for Windstream, allowing the Windstream Licensees to better compete in the telecommunications marketplace. Because the Reorganization is structured as a *pro forma* change of ownership at the holding company level, it will not affect any of the operations of Windstream Licensees. Customers will continue to have the same service providers and will continue to receive the same services and the same rates, terms, and conditions of service. Joint Petitioners state that the Reorganization will be imperceptible to Windstream's New Jersey employees as it will cause no operational changes. Following the Reorganization, New Windstream will continue to be technically, managerially, and financially qualified to be the ultimate owner of the Windstream Licensees and the Windstream Licensees will continue to have the managerial, technical, financial, and customer care qualifications to provide telecommunications services to consumers in New Jersey.

On August 13, 2024, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments on the Petition. Rate Counsel stated that Joint Petitioners provide ample evidence and certification of compliance with the requisite State law. Accordingly, Rate Counsel is not opposed to Board approval of the Petition.

## **DISCUSSION AND FINDINGS**

Pursuant to N.J.S.A. 48:2-51.1(a), the Board shall evaluate the impact of an acquisition of control of a public utility on competition, on the rates of ratepayers affected by the acquisition of control,

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<sup>13</sup> "Oaktree" refers to Oaktree AIF Investments, L.P., Oaktree Capital Management, L.P., Oaktree Fund GP II, L.P., Oaktree Strategic Income SPV, LLC, and their respective managed funds and accounts.

<sup>14</sup> Petition at 8.

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. 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, as set forth above. 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 benefits obligations to any of its employees.

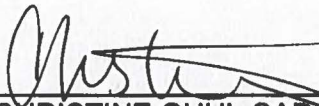
After investigation, and having considered the record in this proceeding, the Board **FINDS** that the Reorganization is consistent with applicable law and is not contrary to the public interest. The Board also **FINDS** that the Reorganization will have no material adverse impact on the provision of safe, adequate and proper service at just and reasonable rates, and is likely to provide positive benefits to customers. The Board also **FINDS** that the Reorganization will have no material impact on the Joint Petitioners' employees, or their pensions. The Board further **FINDS** that the Reorganization will have no material adverse impact on competition or rates. Therefore, the Board **HEREBY AUTHORIZES** Joint Petitioners to complete the Reorganization.

The Board also **FINDS** that, in accordance with N.J.S.A. 48:2-59 and 48:2-60, following consummation of the Reorganization, each Licensee is responsible for the filing of its annual report with the Board and for the payment of any outstanding assessment liabilities to the Board and to Rate Counsel.

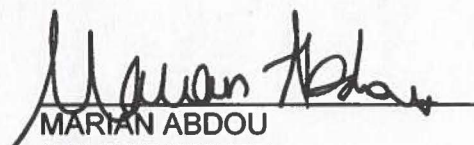
This Order shall be effective on October 2, 2024.

DATED: September 25, 2024

BOARD OF PUBLIC UTILITIES  
BY:

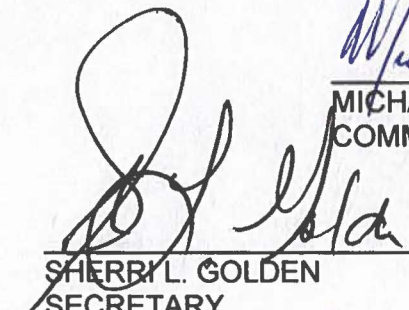
  
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COMMISSIONER

  
MARIAN ABDOU  
COMMISSIONER

  
MICHAEL BANGE  
COMMISSIONER

ATTEST:

  
SHERRY L. GOLDEN  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities.



IN THE MATTER OF THE VERIFIED PETITION OF WINDSTREAM HOLDINGS II, LLC AND  
NEW WINDSTREAM, LLC FOR APPROVAL OF THE INDIRECT TRANSFER OF CONTROL  
OF AUTHORIZED TELECOMMUNICATIONS PROVIDERS

DOCKET NO. TM24060410

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