

**NEW YORK STATE
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of)
)
Windstream Holdings, Inc.; Windstream)
Services, LLC; and)
)
American Telephone Company LLC;)
A.R.C. Networks, Inc.; ATX Licensing,)
Inc.; BridgeCom International, Inc.;) **Case No. _____**
Broadview Networks, Inc.; Broadview NP)
Acquisition Corp.; Business Telecom, LLC;)
Choice One Communications of New York,)
Inc.; Conversent Communications of New)
York, LLC; CTC Communications Corp.;)
DeltaCom, LLC; EarthLink Business, LLC;)
EarthLink Carrier, LLC; Eureka Telecom,)
Inc.; Intellifiber Networks, LLC; LDMI)
Telecommunications, LLC; Lightship)
Telecom, LLC; Masscomm, LLC;)
McLeodUSA Telecommunications Services,)
LLC; PAETEC Communications, LLC;)
Talk America, LLC; TruCom Corporation;)
US LEC Communications, LLC;)
Windstream Communications, LLC;)
Windstream New York, Inc.; Windstream)
Norlight, LLC; Windstream NTI, LLC)
)
for Approval to Transfer Indirect Control of)
the Windstream Licensees)
)
)

JOINT APPLICATION FOR APPROVAL TO TRANSFER CONTROL

Windstream Holdings, Inc., a Delaware corporation, and Windstream Services, LLC, a Delaware limited liability company (collectively, “Windstream”) with their New York subsidiaries, American Telephone Company LLC; A.R.C. Networks, Inc.; ATX Licensing, Inc.; BridgeCom International, Inc.; Broadview Networks, Inc.; Broadview NP Acquisition Corp.; Business Telecom, LLC; Choice One Communications of New York, Inc.; Conversent

Communications of New York, LLC; CTC Communications Corp.; DeltaCom, LLC; EarthLink Business, LLC; EarthLink Carrier, LLC; Eureka Telecom, Inc.; Intellifiber Networks, LLC; LDMI Telecommunications, LLC; Lightship Telecom, LLC; Masscomm, LLC; McLeodUSA Telecommunications Services, LLC; PAETEC Communications, LLC; Talk America, LLC; TruCom Corporation; US LEC Communications, LLC; Windstream Communications, LLC; Windstream New York, Inc.; Windstream Norlight, LLC; and Windstream NTI, LLC (collectively, the “Windstream Licensees,” and, together with Windstream, the “Applicants”), by their counsel and pursuant to Sections 99(2) and 100 of the New York Public Service Law, hereby respectfully request authority from the New York Public Service Commission (the “Commission”) to consummate the two-step transaction described below (the “Transaction”).¹ The Transaction meets these requirements for Commission approval because the Transaction will enhance consumer welfare and competition and deliver substantial net public interest benefits. As described below, approval of this Joint Application will permit Applicants to emerge from bankruptcy and continue to provide high-quality public utility telecommunications services to New York customers without interruption, without a transfer of customers, and without any resulting changes in rates, terms, or conditions of service.

Emergence of Windstream from Chapter 11 as soon as practicable is critical for the success of the reorganization and the continued competitive viability of Windstream, including its New York operations. Consequently, Applicants propose to complete the Transaction on August 28, 2020. Applicants respectfully request that the Commission grant this Joint

¹ Section 99(2) of the New York Public Service Law requires Commission approval for the assignment, transfer, lease, contract or agreement of a right to own or operate a telegraph or telephone line. Section 100 requires Commission consent for the acquisition of more than ten percent of the capital stock of any telephone corporation, which requires a showing that the acquisition is in the public interest.

Application expedited review and approval so that the Transaction may close as soon as possible, but no later than August 28, 2020.

In support of this Joint Application, Applicants provide the following information:

I. INTRODUCTION

On February 25, 2019, Windstream filed voluntary petitions for relief for itself, and its various subsidiaries, including the Windstream Licensees, under Chapter 11 of the Bankruptcy Code in the United States District Court for the Southern District of New York.² Following the filing of these petitions and the securing of \$1 billion in debtor-in-possession financing, Windstream's operating subsidiaries, including the Windstream Licensees, continued to provide uninterrupted service to its customers as it negotiated a comprehensive restructuring plan with its creditors. On April 1, 2020, Windstream filed a plan of reorganization proposing a restructuring that would allow it and its subsidiaries to emerge from bankruptcy with a deleveraged capital structure and sufficient liquidity to fund the company's post-emergence business plan.³ The plan of reorganization was amended on May 6, 2020.⁴ No competing reorganization plans have been

² Windstream notified the Commission of the bankruptcy filings by letter dated February 25, 2019.

³ See Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (Bankr. S.D.N.Y. entered Apr. 1, 2020); Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (Bankr. S.D.N.Y. entered Apr. 1, 2020). Copies of the Plan and associated disclosure statement are provided as exhibits to the related application pending before the FCC, which is available at: [https://ecfsapi.fcc.gov/file/1052134857662/Consolidated%20Section%20214%20Application%20Narrative%20-%20Domestic%20\(5-21-2020\).pdf](https://ecfsapi.fcc.gov/file/1052134857662/Consolidated%20Section%20214%20Application%20Narrative%20-%20Domestic%20(5-21-2020).pdf). Providing these voluminous materials via this link constitutes compliance with 16 NYCRR 31.1(e) (calling for copies of relevant documents).

⁴ Notice of Filing 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 (Bankr. S.D.N.Y. entered May 6, 2020).

filed or are expected to be filed, and the bankruptcy court has scheduled a hearing to consider confirmation of the plan of reorganization, presently set for June 24, 2020.⁵

As contemplated by the plan of reorganization, the interests held by the existing stockholders of Windstream will be canceled and 100% of the new common stock in New Windstream⁶ will be issued to the company's first lien debtholders on the terms set forth in the plan of reorganization. Following consummation of the Transaction, Windstream—one of the largest telecommunications and information service providers in the United States, with 11,600 employees—will move forward with a stable capital structure, uninterrupted service, and an increased capability to compete to bring advanced telecommunications services to current and new customers.

No assignment of licenses or customers by the Windstream Licensees will occur as a consequence of the Transaction. Nor will the Transaction result in changes to the Windstream Licensees' customer-facing systems or operations or in any disruption to service. Indeed,

⁵ Moreover, as part of the bankruptcy proceeding, on March 6, 2020, Windstream filed a motion with the Bankruptcy Court seeking approval of a renegotiated agreement between Windstream and Uniti Group Inc. ("Uniti") for Windstream's use of Uniti's network assets to support its provision of service to its customers. Notice of Debtors' Motion for Entry of an Order Approving the Settlement Between the Debtors and Uniti Group Inc., Including (I) the Sale of Certain of the Debtors' Assets Pursuant to Section 363(B) and (II) the Assumption of the Leases Pursuant to Section 365(A), Case No. 19-22312 (Bank. S.D.N.Y. entered Mar. 6, 2020). This agreement settles certain claims and causes of action asserted by Windstream during the bankruptcy process against Uniti, permits Uniti to purchase certain assets from Windstream's subsidiaries and improves via amendment the terms and conditions of the existing Uniti agreement. The Bankruptcy Court approved the agreement on May 8. *See* Order Approving the Settlement Between the Debtors and Uniti, Case No. 19-22312 (Bankr. S.D.N.Y. May 12, 2020). Windstream and Uniti filed a request for the Commission to approve this asset transfer on May 22, 2020. This transfer is not dependent on Windstream's emergence from bankruptcy and raises no discernable regulatory issues or concerns.

⁶ Given the cancellation of the interests held by existing stockholders and the issuance of new equity to new stockholders, the Application will refer to post-emergence Windstream Holdings, Inc. as "New Windstream." In addition, the reorganization may ultimately call for *pro forma* restructuring, which may include an additional holding entity, or internal transfers upon emergence, in which case the Applicants will provide an update to the Commission.

emergence from bankruptcy will be transparent to customers, just as the operations of the Windstream Licensees have been while under the bankruptcy process. Immediately following the consummation of the Transaction, the Windstream Licensees will continue to provide service to their existing customers pursuant to the same rates, terms, and conditions in effect at the time of this filing. Accordingly, this Transaction will be, for all practical purposes, imperceptible to the customers of the Windstream Licensees. The Transaction will not adversely affect competition in the State of New York because it does not contemplate any horizontal or vertical concentration in any market, including the State, and customers will continue to have access to the same competitive alternatives they have today.

II. DESCRIPTION OF THE PARTIES AND RELATED ENTITIES

A. The Windstream Companies

1. Windstream

Windstream Holdings, Inc. is a Delaware corporation headquartered at 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, with stock traded in the “Over the Counter” (“OTC”) market under the symbol “WINMQ.”⁷ Windstream Holdings, Inc. is the direct parent of Windstream Services, LLC, a Delaware limited liability company, is also headquartered at 4001 North Rodney Parham Road, Little Rock, Arkansas 72212. Windstream, through its subsidiaries, is a leading provider of advanced network communications and technology solutions for consumers, businesses, enterprise organizations, and wholesale customers across the United States.

⁷ Pursuant to 16 N.Y.C.R.R. § 17.2, the Certificates of Formation for the Windstream Licensees were previously filed with the Commission in the dockets listed in the following section. In the event that *pro forma* changes to the Windstream holding company structure result in the formation of a new parent entity, Applicants will provide a certificate of formation for such entity once available.

Windstream's subsidiaries provide voice and data services that enhance the communication capabilities of consumers and businesses in New York. In addition, Windstream's operating subsidiaries supply core transport solutions on a nationwide local and long-haul fiber network currently spanning approximately 150,000 route miles. Windstream's consumer and small business segment includes approximately 1.4 million residential and small business customers that receive voice, broadband, entertainment, and security solutions. 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 U.S., as well as solutions to enable businesses to compete more effectively in the digital economy, and a variety of other data services, such as cloud computing, as well. Windstream's wholesale customer segment leverages its nationwide network to provide 100 Gbps bandwidth and transport services to wholesale customers, including telecommunications companies, content providers, and cable and other network operators.

2. Windstream Licensees

Windstream's operating subsidiaries offer services in all fifty states and the District of Columbia. In the State of New York, the Windstream Licensees hold the following authorizations:

- American Telephone Company LLC is authorized to provide resold services pursuant to Commission authority in Case No. 06-C-1070.
- A.R.C. Networks, Inc. is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case No. 96-C-0149.
- ATX Licensing, Inc. is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case No. 92-C-0796.
- BridgeCom International, Inc. is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case No. 97-C-1312.

- Broadview Networks, Inc. is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case No. 96-C-0302.
- Broadview NP Acquisition Corp. is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case No. 02-C-0450.
- Business Telecom, LLC is authorized to provide facilities-based and resold local exchange services pursuant to Commission authority in Case Nos. 92-C-0415 and 97-C-0624, as amended to reflect a corporate conversion and name change in Matter No. 15-01254.
- Choice One Communications of New York, Inc. is authorized to provide local exchange service pursuant to Commission authority in Case No. 98-C-1444.
- Conversent Communications of New York, LLC to provide facilities-based and resold local exchange services pursuant to Commission authority in Case No. 98-C-1199.
- CTC Communications Corp. to provide facilities-based and resold local exchange services pursuant to Commission authority in Case No. 94-C-0970.
- DeltaCom, LLC is authorized to provide resold interexchange pursuant to Commission authority in Case No. 94-C-0473, as amended to reflect a corporate conversion and name change in Matter No. 12-02593.
- EarthLink Business, LLC is authorized to provide facilities-based and resold local exchange services pursuant to Commission authority in Case No. 99-C-1268, as amended to reflect a corporate conversion and name change in Matter No. 12-02253.
- EarthLink Carrier, LLC is authorized to provide resold interexchange service and operator service provider pursuant to Commission authority in Case Nos. 07-C-1104 and 07-C-1103, as amended to reflect a corporate conversion and name change in Matter No. 12-02347.
- Eureka Telecom, Inc. is authorized to provide local exchange services pursuant to Commission authority granted in Case No. 95-C-1100.
- Intellifiber Networks, LLC is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case 01-C-0721 (and transfer of control Case 04-C-0360).
- LDMI Telecommunications, LLC is authorized to provide interexchange services pursuant to Commission authority in Case 97-C-0018.
- Lightship Telecom, LLC is authorized to provide local exchange pursuant to Commission authority 00-C-0450.

- Masscomm, LLC is authorized to provide resold services pursuant to Commission authority in Case No. 08-C-0120.
- McLeodUSA Telecommunications Services, LLC is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case 97-C-0158.
- PAETEC Communications, LLC is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case 98-C-1136.
- Talk America, LLC is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case 92-C-0222.
- TruCom Corporation is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case No. 97-C-2028, as amended in Case No. 00-C-1583.
- US LEC Communications, LLC is authorized to provide local exchange and interexchange services pursuant to Commission authority in Case 99-C-1442.
- Windstream Communications, LLC is authorized to provide interexchange services pursuant to Commission authority in Case 05-C-1631.
- Windstream New York, Inc. is an incumbent local exchange provider authorized to provide local exchange services within the state of New York (see Case No. 05-C-1631 transferring control of Alltel New York, Inc. and changing its name to Windstream New York, Inc.).
- Windstream Norlight, LLC is authorized to provide interexchange services pursuant to Commission authority in Case 08-C-0805.
- Windstream NTI, LLC is authorized to provide local exchange and interexchange services pursuant to Commission authority in 96-C-0051.

B. Investor Entities

As noted above, as a result of the Transaction, a substantial majority of New Windstream’s equity will be held by subsidiaries or affiliates of six investment companies (the “First Lien Investors”). These investment companies are identified below.

1. *Elliott Investment Management, L.P.*

Elliott Management Corporation and its advisory affiliates, including Elliott Investment Management, L.P. (collectively, “Elliott”), headquartered at 40 W. 57th Street, New York, New

York 10019, manage multi-strategy hedge funds and other investment vehicles with over \$40 billion in assets under management. Elliott is one of the oldest firms of its kind under continuous management. Elliott provides discretionary investment advice and other services to private investment funds and co-investment commitments, trades in securities across the capital structure, and often will take a leading role in event-driven situations to create value or manage risk.

Under the Transaction, Elliott's equity interest in New Windstream would be held through its two principal investment funds: Elliott Associates, L.P., a Delaware limited partnership, and Elliott International, L.P. a Cayman Islands limited partnership. Elliott and its affiliates are anticipated to ultimately hold an estimated aggregate of 40.3% of the voting equity in New Windstream indirectly through an aggregator entity, Nexus Aggregator L.P., a Delaware limited partnership.⁸ When the Windstream Licensees initially emerge from Chapter 11 Bankruptcy protection, Elliott will temporarily hold a 49.9% share in New Windstream until the FCC approves the exercise of warrants by foreign investors, described below.

2. Other Owners

The remaining First Lien Investors, consisting of funds controlled by five other investment companies, are anticipated to hold approximately 40.9% of the equity in Windstream

⁸ The ultimate percentage interest held by each First Lien Investor in New Windstream will depend on the exercise of subscription rights for Windstream equity interests by creditors including the backstop parties pursuant to the Backstop Commitment Agreement described in the reorganization plan. The percentages set forth in this Application represent the anticipated interests assuming full participation in the rights offering, and (in the event of more limited participation) may ultimately be modestly higher, although this is highly unlikely to result in entities affiliated with Elliott holding an economic interest in New Windstream exceeding 50%. The Applicants will promptly notify the Commission in the event that the exercise of rights under the Backstop Commitment Agreement results in any material changes to the amounts held by the First Lien Investors, and will confirm final percentages held in New Windstream in applicable post-consummation notices.

post-consummation.⁹ As with Elliott, in each case the investment company will control the voting in New Windstream for the funds. These investment companies are: (1) Pacific Investment Management Company LLC (“PIMCO”), and its subsidiaries, which is a global investment management firm that is headquartered at 650 Newport Center Drive, Newport Beach, California 92660 and one of the largest investment management firms in the U.S. with almost \$2 trillion of assets under management; (2) Oaktree Capital Group, and its subsidiaries (“Oaktree”), which is a global investment management firm that is headquartered at 333 S. Grand Avenue, 28th Floor, Los Angeles, California 90071, and has additional offices in eighteen other locations in the United States, Europe, the Middle East, East Asia and Australia; (3) HBK Capital Management (“HBK”), which is an investment firm that is headquartered at 2300 North Field Street, Suite 2200, Dallas, TX 75201, with additional offices in New York, London, and Charlottesville, Virginia; (4) Franklin Resources Inc. (NYSE: BEN), operating as Franklin Templeton (“Franklin”), which is a U.S. global investment firm headquartered at One Franklin Parkway, Building 970, 1st Floor, San Mateo, California 94403; and (5) Brigade Capital Management, L.P., headquartered at 399 Park Avenue, Suite 1600, New York, NY 10022. As described below, each of these entities is solely an investment holding company with no other operations than to hold debt interests and, ultimately, common stock in New Windstream. When the Transaction is completed, it is anticipated that, other than Elliott (as described above) only PIMCO will control an ownership interest of ten percent (10%) or more of New Windstream.

III. DESIGNATED CONTACTS

All communications and correspondence concerning this Joint Application should be directed to Applicant’s counsel as identified below:

⁹ Subject to the exercise of rights under the Backstop Commitment Agreement described in note 8, *supra*.

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IV. DESCRIPTION OF THE TRANSACTION

As described above, Windstream filed its amended plan of reorganization on May 6, 2020. That plan sets forth the details of the Transaction, through which Windstream and its subsidiaries will emerge from bankruptcy with a deleveraged capital structure and sufficient

liquidity to fund the company’s post-emergence business plan. As is common in bankruptcy situations, the interests held by the stockholders of Windstream Licensees’ ultimate parent company, Windstream Holdings, will be canceled and the company will be reorganized as part of the Transaction. The creditors who today hold the first lien debt of Windstream Services will, when the reorganization is complete, hold 100% of the equity¹⁰ in the New Windstream.¹¹ A substantial majority of New Windstream’s equity will be held by subsidiaries or affiliates of six investment companies (collectively with their subsidiaries and affiliates, 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.¹²

The Transaction, which is also subject to review and approval by the FCC, is expected to occur in two steps, described below. Applicants are using this two-step 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

¹⁰ The details of the terms on which the new equity interests will be issued are set out in the First Amended Plan of Reorganization, filed with the bankruptcy court on May 6, 2020. A copy of that document is available at <http://www.kcellc.net/windstream/document/list/4837>. Applicants will provide the Commission with notice of any updates or amendments to the Plan of Reorganization, as well as any relevant orders of the Bankruptcy Court.

¹¹ The reorganization may involve *pro forma* changes to the holding company structure and/or internal asset transfers through which New Windstream will become the ultimate parent of Windstream Holdings’ subsidiaries including the Windstream Licensees. *See n. 6 supra*. The precise form of these arrangements is still under consideration, but any such changes will be at the holding company level and will not affect the form or organization of the Windstream Licensees. Applicants will provide the Commission with updated organizational charts depicting any such changes once finalized.

¹² As part of the process of emergence from bankruptcy, certain creditors (other than the first lien debtholders noted above) will have the right to obtain equity in New Windstream. In addition, a small amount of equity may be allocated to other functions, such as a management incentive plan. As a result, the exact ownership percentages of the new owners of New Windstream will not be finalized until the company emerges from bankruptcy and the first step of the two-step process described in the text below is completed. Applicants will provide the Commission with a notice of consummation at the completion of each step of the process, along with ownership details available at that time.

additional review of foreign ownership above defined thresholds in entities that hold certain FCC-issued licenses and federal authorizations held by Windstream affiliates.¹³

Even where, as here, there is no reason to believe that the FCC will disapprove foreign investors' acquisition of equity interests in wireless licensees, approvals of such transactions can take much longer to complete than approvals that do not. At the same time, it is generally important—both economically and operationally—for an entity to emerge from bankruptcy as soon as practicable. As a result, 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, the 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. Then—after the company has emerged from bankruptcy—the entities assigned warrants in the first stage seek FCC approval to exercise those warrants, at which point the FCC reviews the foreign ownership, with the warrants exercised only after FCC approval. This process permits the company to emerge from bankruptcy sooner by deferring the FCC's sometimes lengthy review of foreign ownership issues until after emergence and allowing FCC review of the first step to be limited to a transfer of ownership to domestic (or mostly domestic) owners.

Under this two-step process, Windstream will emerge from bankruptcy with the First Lien Investors holding a mix of equity interests that do not require FCC review or approval of

¹³ Windstream affiliates hold FCC common carrier wireless spectrum licenses and Section 214 authorizations. *See generally* 47 U.S.C. § 310; *In re Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, 31 FCC Rcd 7456, 7458 ¶ 6 (2016).

foreign ownership and warrants in New Windstream.¹⁴ Then, New Windstream will request FCC approval for the warrant holders to exercise the warrants. Once that approval is granted, the warrants will be exercised, with the First Lien Investors controlling essentially all of the equity of post-bankruptcy New Windstream.

Here, Applicants respectfully request that the Commission issue an order approving the Transaction—that is, approving the complete two-step process described above. Applicants request approval, to the extent required, of both (1) the initial reorganization of Windstream and issuance of equity and warrants by which the First Lien Investors will come to own equity in New Windstream, as described above; and (2) the ultimate exercise of those warrants. This will permit Windstream to emerge from bankruptcy more quickly, while at the same time accommodating all appropriate regulatory reviews. As a result of the reorganization, the company’s debt will be reduced by approximately 50%. Thus, the Transaction will effectively deleverage the company and place it on a sound financial footing, enabling it to expand its current investment in enhanced customer experience, product innovation and infrastructure.

The Transaction allows for new ownership interests in Windstream only; it does not affect the Windstream Licensees. The Transaction also will not involve a change of service provider for any customer of the Windstream Licensees. Indeed, the change of ownership of Windstream is expected to be transparent to the Windstream Licensees’ customers. Consequently, Applicants submit that customer notice of the Transaction is not required.

¹⁴ The details regarding the terms on which the warrants will be issued are laid out in the documents filed in the Bankruptcy Court noted above.

For the Commission's convenience, corporate organization charts for pre- and post-Transaction are provided as **Exhibit 1**. The post-transaction chart is excerpted from the FCC filings referenced in footnote 3, above; additional detail is available in those filings.

The Transaction is expected to occur before August 28, 2020, contingent upon approval of the Bankruptcy Court and the satisfaction or waiver of other customary closing conditions.¹⁵

V. REQUEST FOR APPROVAL

Applicants respectfully request the Commission's approval pursuant to Section 99(2) of the Public Service Law, which requires approval for a telephone corporation to assign, transfer or lease its operating authority, works or system or any part thereto to another person or corporation, and pursuant to Section 100, which requires approval for a stock corporation to purchase or acquire, take or hold more than 10 percent (10%) of the voting capital stock issued by any telephone corporation in New York. The Commission has stated that since Section 99(2) provides no specific approval criteria, approval requires only establishment for a rational basis for the transaction.¹⁶ Under Section 100, the criterion for approval is whether the "acquisition in the public interest" and an important factor in that determination is the impact the acquisition will have on competition.

¹⁵ Pursuant to 16 N.Y.C.R.R. § 3.1, Applicants state that in addition to seeking the approval of the Commission for the transfer of the New York telecommunications authorizations held by the Windstream Licensees, Applicants are seeking approval for the Transaction from the Federal Communications Commission. Applicants also are in the process of obtaining the necessary regulatory approvals of the Transaction in the appropriate state jurisdictions from the state utilities regulators in Colorado, Washington, D.C., Kentucky, Minnesota, Mississippi, New Jersey, Ohio, Pennsylvania, South Carolina, Texas, Virginia, and West Virginia. Applicants are also in the process of providing notice to the appropriate regulatory bodies in Alabama, California, Georgia, Indiana, Louisiana, Maryland, and Nevada.

¹⁶ See Proceeding on Motion of the Commission as to the Joint Petition of New York Telephone Company, NYNEX Corporation and Bell Atlantic Corporation, NYPSC Opinion 97-8, issued and effective May 30, 1997.

As stated above, the Transaction does not involve a transfer of the Windstream Licensees' operating authority, assets, or customers, and the Transaction is expected to be virtually seamless to end user customers. Other than the indirect transfer of control described above, the Windstream Licensees will not be directly affected by the Transaction and will continue to provide high quality telecommunications service. As demonstrated in this Joint Application, therefore, the Transaction satisfies all applicable criteria. The Transaction will enhance competition and will be in the public interest for the reasons set forth herein.

VI. PUBLIC INTEREST CONSIDERATIONS

Applicants respectfully request that the Commission grant approval expeditiously so as to enable the Windstream Licensees to move forward with a stable capital structure, uninterrupted service, and an increased capability to compete to bring advanced services to New York consumers. As more fully discussed herein, the transaction clearly satisfies the applicable standards established by statute and the Commission's rules.

A. The Transaction Will Create Substantial Affirmative Public Interest Benefits

The Transaction is demonstrably in the public interest. The Transaction will generate substantial affirmative benefits and result in no countervailing harms. Primarily, the Transaction will facilitate the emergence of Windstream and its subsidiaries, including the Windstream Licensees, from bankruptcy with substantially less debt and improved operational and leasing arrangements with Uniti, while at the same time providing compensation to their creditors. Upon emerging from Chapter 11 protection as financially stronger competitors, the Windstream Licensees will be well positioned to continue delivery of their comprehensive portfolio of innovative communication solutions to customers in New York and across the United States. Consequently, the Transaction will enhance Windstream's presence in the telecommunications

marketplace to the ultimate benefit of customers, without harming customers or competitors in any market sector.

The Transaction also ensures continuity of operations for Windstream, including the Windstream Licensees, to the ultimate benefit of customers. Windstream's wireline, fixed wireless and broadband customers, whether residential or enterprise and whether served through its ILEC or CLEC operations, will all benefit from continuing to have access to uninterrupted telecommunications and information services. Because the Transaction is structured only as a change of ownership at the holding company level, it will not affect any of the operations of the Windstream subsidiaries. The Windstream Licensees' customers will continue to have the same service providers and will continue to receive substantially the same services and the same rates, terms and conditions of service. Any future changes will result from the normal course of business operations, as was the case prior to the Transaction. The Transaction will result in no disruption to any customer facing operations such as ordering, service installation, customer service, and billing, which will continue to be provided as before. This restructuring and the newly configured financial resources available to Windstream should ensure that Windstream's subsidiaries, including the Windstream Licensees, continue to offer competitive, high-quality communications and cloud service offerings to customers in New York and throughout the United States. At the same time, the Transaction will have no adverse impact on the current customers of the Windstream Licensees. The Transaction will thus be transparent to the Windstream Licensees' customers.

B. The Transaction Will Preserve the Beneficial Aspects of the Status Quo for Customers

The Transaction will have no adverse effects upon the New York or interstate telecommunications markets. The Transaction will result in Windstream’s continued existence and therefore does not eliminate any market participants nor will it, in any respect, reduce the service choices available to consumers. Indeed, approval of the transfer of control will increase competition.¹⁷ It will allow a much more stable and solvent Windstream, freed from the operational constraints of bankruptcy, with a stronger capital structure, and better access to capital, to drive investment in faster services, enhanced customer service, and competitive offerings for the residential and enterprise markets. In particular, the Commission’s approval of the reorganization and emergence from bankruptcy will enable Windstream to:

- enhance the broadband capabilities available to both residential and small and medium businesses in New York and place Windstream in a better position to offer competitive alternatives to services offered by cable operators;
- invest in its enterprise service capabilities and other competitive service offerings incorporating next generation technologies geared towards large business customers, strengthening its ability to provide a competitive alternative to incumbent providers’ services;

¹⁷ The Commission recently approved an application for a transaction that is currently pending FCC approval. If approved by the FCC, Elliott would hold a non-controlling minority interest in LogMeIn, Inc. (“LogMeIn”), a provider of web conferencing and web event platforms and services that holds telecommunications authorizations issued by the Commission and various other state regulators. Matter 20-00338 (May 6, 2020). Additional details regarding Elliott’s pending investment in LogMeIn are provided in the LogMeIn petition, cited above. Approval of this application, however, would not result in Elliott holding a controlling interest in either Windstream or LogMeIn, and the Unified Communications as a Service (“UCaaS”) marketplace is in any event highly competitive and represents only a small portion of Windstream’s current business.

- continue its investments in customer service and support, enhancing its customer experience and satisfaction; and the enhanced financial and operational flexibility resulting from the restructuring will allow Windstream to participate more robustly in broadband partnerships and funding programs, such as the federal Rural Digital Opportunity Fund and any potential state and local opportunities, to facilitate the further deployment of rural broadband in New York.

With far less debt, access to an improved network, and better access to capital, Windstream will accordingly be positioned as a stronger competitor for both the residential and small and medium business markets inside its ILEC footprint and for the enterprise market outside of it. These advances serve the public interest.

Moreover, while conveying all of the previously noted benefits, the Transaction holds no adverse effects for customers in New York. The Transaction and the additional financial support Windstream will receive ensure that Applicants, including the Windstream Licensees, are able to continue providing services to their customers without any interruption or diminishment of service quality. Upon the emergence of Windstream from Chapter 11, the Windstream Licensees' customers will continue to receive the same services as they do today, pursuant to the same rates, terms and conditions.

VII. QUALITY OF SERVICE

As described above, the Transaction will have no adverse effects on the quality of service enjoyed by the Windstream Licensees' customers. Once the Transaction is completed, New Windstream will continue to be technically, managerially and financially well-qualified to be the ultimate owner of the Windstream Licensees. Likewise, the Windstream Licensees will continue to have the managerial, technical, financial, and customer care qualifications to provide high

quality telecommunications services to consumers in New York. For additional detail on the financial, technical and managerial qualifications of Windstream, please see www.windstream.com.

VIII. FINANCIAL INFORMATION

Upon completion of the Transaction, each of the Windstream Licensees will continue to be financially capable of fulfilling all of the requirements of operating as a telecommunications carrier in New York. Additionally, as noted above, Windstream's debt load will be reduced by approximately 50%. As a result, the Transaction will enhance Windstream's financial position, and providing Windstream Licensees with the financial stability required to succeed in the competitive telecommunications marketplace.

IX. REQUEST FOR EXPEDITED REVIEW

The emergence of Windstream from Chapter 11 as soon as practicable is critical for the success of the reorganization and the continued competitive viability of Windstream, including its New York operations. Consequently, Applicants propose to complete the Transaction on August 28, 2020. Applicants respectfully request that the Commission grant this Joint Application expedited review and approval so that the Transaction may close as soon as possible but no later than August 28, 2020.

X. CONCLUSION

For the foregoing reasons, Applicants respectfully submit that the Transaction furthers the public interest and convenience and poses no competitive risks, thereby satisfying Sections 99 and 100. Applicants respectfully request that the Commission expeditiously approve the Transaction described herein and grant any other relief deemed necessary and appropriate by the Commission.

Respectfully submitted,

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DATED: May 27, 2020

EXHIBIT 1

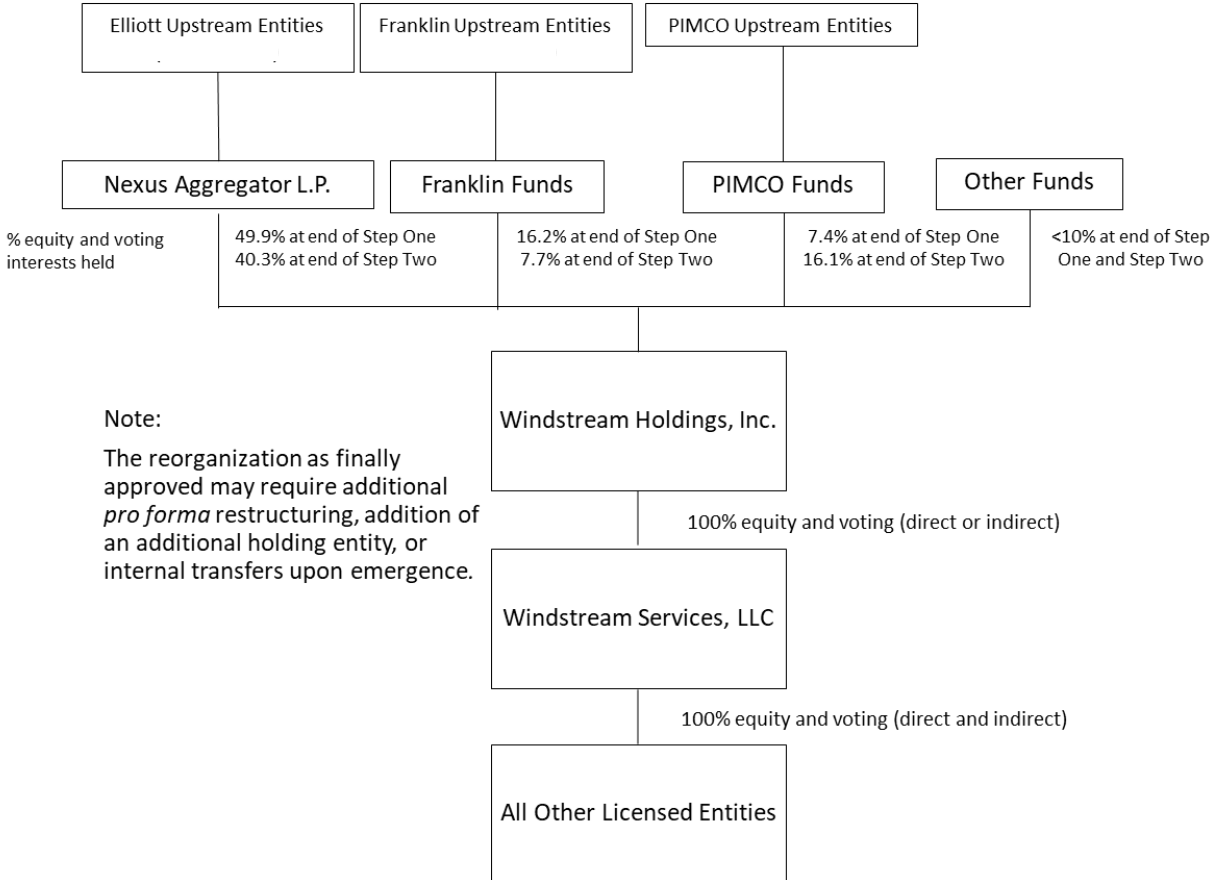
Windstream Pre-Emergence Chart



Windstream Post-Emergence Chart

Windstream Post-Transaction Structure

Shows Disclosable interests through Step One and Step Two as Described in the Application



VERIFICATION

I, Kristi Moody, do hereby state the following:

1. I am the Executive Vice President – General Counsel & Corporate Secretary, of the Applicants and I am authorized to make this Verification on behalf of each Applicant; and
2. The facts set forth in the foregoing Application are true and correct to the best of my knowledge, information and belief, and Applicants expect to be able to prove the same at any hearing hereof.

Dated this _____ day of May, 2020 in Pulaski County, Arkansas.

Kristi Moody, Executive Vice President – General
Counsel & Corporate Secretary
Windstream Holdings, Inc.
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Little Rock, AR 72212