



October 27, 2011

(Via e-mail and Hand Delivery)

Hon. Jaclyn A Brillling
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Comments of the City of Rochester: Case 11-C-0425; Matter Number 11-01700
In the Matter of the Joint Petition of PAETEC Holding Corporation, Intellifiber
Networks, Inc., McLeodUSA Telecommunications Services, LLC, US LEC
Communications, LLC, PaeTec Communications, Inc., Talk America Inc., LDMI
telecommunications Inc. and Windstream Corporation for Approval of an Indirect
Transfer of Control of Authorized Telecommunications Providers

Dear Secretary Brillling:

On behalf of the City of Rochester, New York (the "City"), the Corporation Counsel submits the comments set forth herein in opposition to the transfer of PAETEC HOLDING CORPORATION ("PAETEC") to Windstream Corporation ("Windstream") until there has been a thorough examination and resolution of the public interest issues affecting the City of Rochester, the State of New York (the "State") and citizens of both.

The petitioners are essentially requesting approval of the Commission to transfer ownership of valuable New York licenses to provide telecommunications services now held by several PAETEC subsidiaries.

Since the August 1, 2011 announcement of the proposed merger, the City has reached out to representatives of Windstream in an effort to resolve the matters discussed below. In their October 19, 2011 letter to the Commission, PAETEC and Windstream, through their Counsel, J.K. Hage, III, represent that "Windstream most recently spoke with Rochester's Mayor, Tom Richards, on Friday, October 7, 2011." In that conversation, the City was informed that the resolution of the Rochester-related issues



would not occur until December or sometime thereafter. This will be after the petitioners believe there will be final regulatory approval for this matter. Given this timing, the City decided that it had no option but to intervene in this matter.

We remain ready to have discussions with Windstream and PAETEC that, we believe, could lead to a positive result for Windstream, PAETEC and the City.

In recent mergers of gas and electric corporations, the Commission has defined the public interest standard to require a demonstration by the petitioner that the transaction will provide those affected with positive net benefits.¹ The application of this standard requires the balancing of potential benefits from the transaction against the potential risks and harm. Based on the actions of petitioner PAETEC prior to the merger announcement in relationship to the City and the State, it is reasonable that this standard should be applied to this transaction. The Commission should weigh the expected benefits against the related risks and detriments.

The case deserves careful and thorough scrutiny by the Commission. At the very minimum, the Commission should withhold its approval until such time as the proposed new license holder satisfactorily clarifies its intentions regarding PAETEC representations to the City and the State and the significant investments made by the City and State based on those representations, or conditions its approval upon the payment of a public benefit adjustment that will provide a net positive benefit. Moreover, the City remains concerned about the potential service impacts that may occur as a result of the merger.

The Commission should consider the detriment to the City and the State that may occur as the result of the transfer of PAETEC to Windstream. Neither PAETEC nor Windstream have been forthcoming about their intention regarding the matters discussed below, post-approval, and the Commission should not allow the matter to proceed without satisfactory explanation.

¹ See for example, Joint Petition of Iberdrola, S.A., Energy East Corporation, et.al. for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A., Case 07-M-0906, Order Authorizing Merger, January 6, 2009, p.111.

In support of PAETEC's representations, federal, state and local governments have worked for nearly four years to develop a site for the purpose of establishing a PAETEC headquarters in Downtown Rochester; tailoring a development package of customized physical site changes and financial benefits (the "Development Package") and investing millions of dollars to make this location shovel ready for development.

On April 9, 2008, the State legislature appropriated \$55 million for the Midtown Redevelopment Project ("PAETEC Project") largely on the assumption that PAETEC would anchor the redeveloped site. As you will see from the information below, the City, with this assistance from the State, has made significant alterations to the face of the City's downtown in response to and in reliance on representations and demands of PAETEC and its representatives.

Six buildings covering approximately eight acres of the City center have been demolished or significantly altered as part of this project ("Midtown Site"). There is nothing speculative about the consequences to the landscape of the City of Rochester. For the City what has been done cannot be undone. PAETEC must not be permitted to walk away without taking responsibility for its public demands and representations and the actions others undertook in reliance on those demands and representations.

PAETEC now asks the Commission for permission to become a subsidiary of Windstream and effectively transfer its valuable State-granted telecommunications licenses. These are the same licenses that have allowed PAETEC to prosper and become a candidate for a merger arrangement beneficial to PAETEC officers and shareholders. PAETEC requests this treatment without regard to its previous public representations and the subsequent actions taken by the City and State in reliance on those representations.

While the City worked diligently to develop the Midtown Site for PAETEC'S headquarters, PAETEC applied direct pressure on the City and publicly confirmed their commitment to the Project, while privately conducting negotiations to sell the company. Beginning with the announcement of the PAETEC Project in 2007, there were numerous public statements by representatives of PAETEC regarding the Project and

PAETEC's demands and expectations of the City and State. Please see Exhibit A for schedule of those statements.

PAETEC'S efforts were not limited to negotiations with Windstream. Filings with the United States Security and Exchange Commission ("SEC") reveal that PAETEC was actively pursuing merger transactions. SEC Form 8-K dated October 14, 2011 and filed by Windstream Corporation, indicates that PAETEC was involved in negotiations not only with Windstream but also with two other companies, referred to as Company A and Company B. In fact, according to a September 1, 2001 article in the *Democrat & Chronicle*, PAETEC entered into non-disclosure agreements with six (6) companies in regards to possible mergers during this period.

Attached as Exhibit B is a chronology of the actions taken by the City of Rochester and New York State, including numerous approval procedures which the City undertook or expedited, physical actions undertaken by the City and the elements of the Development Package, which demonstrate the City's and State's commitment to the PAETEC headquarters construction project.

We know that the City and State have acted in good faith. As noted in Exhibit B, the State and City have already committed more than \$69 million based on PAETEC's representations. We also know that there is no assurance in the Petition submitted by PAETEC and Windstream that they intend to honor PAETEC's commitment to the Project or to mitigate any level of employment in Rochester. If the Commission approves the license transfer as proposed, the only guaranteed winners of this transaction will be the shareholders and officers of PAETEC and Windstream. The losers stand to be the terminated employees, the City and the State and potentially PAETEC's customers.

Over a four year period, the City took significant actions in reliance on PAETEC's repeated representations that they intended to proceed with the PAETEC Project. City staff dedicated hundreds of hours of work to accommodate PAETEC's demands, to ensure that the project would be timely and successful.

This was not simply wishful thinking on the City's part, but a reasonable reliance on words and actions by PAETEC, including threats by PAETEC that they would build their headquarters elsewhere if the City would not accept its many demands. New York State provided the PAETEC Project's most significant monetary investment, based on the understanding that the Project would retain and grow employment in the Rochester region.

In determining whether the requested merger transaction will serve the public interest, the Commission is urged to consider not only the narrow and unsubstantiated benefits claimed by the Petitioners, i.e., that they will provide improved telecommunications services because of the "efficiencies and economies of scale" and strengthened financial circumstances of the merged company, but to examine the financial and planning impact that this merger will have on the City and State, including the effect these "efficiencies" will have on employment in the City of Rochester and the surrounding communities.

The Development Package described in Exhibit B required the City to take significant actions. Some incentives in the Development Package are specific to the PAETEC Project and will no longer be available if the PAETEC Project is abandoned by PAETEC or its proposed successor in interest. The City will be adversely impacted by the loss of the PAETEC Project and its effect on the development of the remainder of the Midtown Site. Many of the unique incentives in the Development Package will not be available to other companies or developers. Benefits that could have been directed to other entities will be wasted and the redevelopment of the Midtown area will be delayed, at the very least. As part of its examination, the Commission is urged to review the effect the proposed transfer will have on these actions taken by the City on behalf of PAETEC and the detriment to public interest if the PAETEC Project does not occur.

The Development Package was intended to benefit a New York State employer and help that employer retain its current employees and hire additional employees to grow its business. Despite all the efforts of the City to facilitate and provide the positive economic environment for the PAETEC Project, Windstream has indicated that it intends to reduce PAETEC's current 850-employee Monroe County workforce.

Retention of the current PAETEC workforce as well as the anticipated additional hiring of employees was a critical part of the PAETEC commitment which led the City to produce the Development Package and take the other actions described in Exhibit B.

The loss of those employees from the City's struggling but redeveloping downtown, would have a significantly negative impact on the City, the region and New York State and therefore the public interest. It is urged that, as part of its examination, the Commission review the loss of local jobs and the effect that loss will have on the City as well as the greater Rochester region. Petitioners refer to the Land Disposition Agreement (LDA) executed by PAETEC and the City on December 28, 2010 and imply that certain conditions have not been satisfied due to inaction by the City. What they fail to indicate is that conditions not yet satisfied have been delayed by PAETEC's failure to follow through on its responsibilities. Attached as Exhibit C is a summary of LDA conditions, together with the status of each. While the City was pressed by PAETEC to fulfill its conditions without delay, PAETEC has been dilatory at best in completing the actions that it now suggests have not been satisfied.

In addition to the issues discussed above, the examination of the negative consequences which will result from the proposed transfer requires a review of the additional State and Federal concerns raised by Senator Schumer in his correspondence to this Commission.

Based upon PAETEC's representations of a significant PAETEC employee presence in the City, there have been major efforts made by State officials and Empire State Development to assist the PAETEC Project. The State's impressive commitment to the PAETEC Project would not have occurred without PAETEC's commitment to maintaining its Monroe County jobs and relocating to an area of the City which needs an influx of jobs and people. Any workforce reduction in New York State as well as the loss of a New York State employer has a negative public interest consequence.

PAETEC has an integral role in the provision of services to agencies and institutions throughout the State. In 2007, PAETEC was chosen by State of New York Office of General Services (OGS) as one of several providers of phone and data service to over

6,800 municipal, city, and state agencies, educational institutions, and not-for-profit organizations throughout the state for a period of ten (10) years. These municipalities and agencies must have reliable, high quality telecommunication services. To date, the current Monroe County PAETEC workforce has supplied such service. The proposed transfer and related workforce reductions will have a negative impact on the service currently being provided to all those municipalities and agencies being served. This point is supported by PAETEC's Central New York regional manager, Keefe Keahey in an article by Claire Duffett dated December 2, 2005 in AllBusiness.com. Mr. Keahey describes the strength and benefits of PAETEC's business model:

The thing we do different[ly] from the competition is that we have not removed the human element. We believe in live-body support as opposed to call centers or automated response.

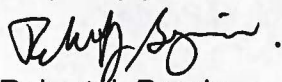
The article further reads:

While most of the major players in the telecommunications industry direct customers to call centers in New York City, Boston, or India, each of Paetec's markets has its own regional office, so account managers can visit a site when there is a problem, Keahey explains. It is this loss of the "live-body" support in New York which will have an adverse impact on the telecommunications services being provided to New York agencies and municipalities and may outweigh the benefits alleged by the Petitioners from the requested merger transaction. The very "efficiencies and economies of scale" which may be beneficial to the merged companies' bottom line is a euphemism for loss of local jobs and the resultant reduced local presence that threatens the quality of customer service.

As explained by Senator Schumer in the above mentioned correspondence, based on the 36,800 route mile infrastructure owned by PAETEC, PAETEC and its subsidiaries also have a key role in providing telecommunication services to governmental entities, such as the Department of Defense and Defense Information Systems Agency, FAA, Department of Treasury, Department of Veterans Affairs, U.S. Army, Air Force and Navy, U.S. Courts, and the Department of Homeland Security. It is in the public's interest that the subject proposed merger and related workforce reductions not negatively impact the critical operations of the Federal government. Any reduction in services would be detrimental to the public interest.

In conclusion, it is requested that the Commission thoroughly examine the actions by the City and the State which were taken in reliance on PAETEC's originally stated and repeated commitment to the PAETEC Project. When reviewing the impact of the transfer from PAETEC to Windstream on the public interest, the Commission is asked to consider the real and verifiable negative impact of the abandonment of the PAETEC Project in terms of economic development and job loss, the negative impact on State contracts, and the consequences to telecommunications services provided to national governmental entities, as opposed to the speculative improvement to telecommunications service and financial benefits to the merged companies alleged by the Petitioners. The requested transfer from PAETEC to Windstream should not be approved until a full review is conducted and conditions are imposed which will mitigate any detrimental impact to the City, State and their citizens as the result of the proposed transfer.

Very truly yours,



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EXHIBIT A

The following is a four-year history describing public statements made by PAETEC regarding the PAETEC Project and demonstrates the public statements of commitment PAETEC made to the City of Rochester, and the public pressure exerted by PAETEC on the City. Over the four-year period of 2007 to 2011, PAETEC publicly expressed its commitment to build its headquarters in Downtown Rochester and raised the expectations of the State of New York, the City of Rochester and the greater community that this move would happen.

- On Oct. 17, 2007, a *Democrat and Chronicle* editorial entitled, "Downtown's Spark" praised Arunas Chesonis for his commitment to the PAETEC Project.

PAETEC CEO Arunas Chesonis told this page he could even see an urban version of the Pittsford Wegmans in that area. Chesonis deserves the first round of cheers for his willingness to invest in the city's core to address the company's growing workforce needs.

- On Oct. 21, 2007, in a *Democrat and Chronicle* article entitled, "PAETEC Raises Its Stock at Home," the company continued to raise expectations in the community. The article states that:

Arunas Chesonis wants downtown's next high rise to be tall as well as tall enough that the PAETEC name can be seen far and wide. Maybe then the rapidly growing company won't be quite so anonymous in its hometown.

In Chesonis' mind, PAETEC's new headquarters is part of a line of vibrant downtown activity running from East Avenue down Main Street to High Falls. 'You could have incredible stuff going on in that corridor, but the center can't be what it is today,' he said. Hence the decision to go for downtown instead of a suburban spot for the company's expansion.

- On Oct. 27, 2007, the PAETEC CEO expressed his enthusiasm for the Project and business leaders praised Chesonis in a *Democrat and Chronicle* article for his commitment to the Midtown project.

'Ten or 20 years from now, this city will be a mini-version of Boston or Dallas or one of the towns attracting our younger people away,' Chesonis said Tuesday. 'But we all have to pitch in to do it.'

Community leaders were struck by PAETEC's commitment. 'The statement a company like PAETEC is making by moving forward on a project like this is as important as the real estate,' said Heidi Zimmer-Meyer, president of the Rochester Downtown Development Corp. 'It's the confidence.'

'Chesonis sets a standard where he says, "Look, it's worthwhile coming into downtown"' said Sandy Parker, chief executive of the Rochester Business Alliance.

- In an April 22, 2009 *Democrat and Chronicle* article, Chesonis pressed for public financing, referring to it as the 'linchpin' in the deal:

Despite the setbacks, CEO Arunas Chesonis said in an interview last week that the company remains strongly committed to the plan as long as promised public funding comes through.

In fact, Chesonis said, the linchpin and only barrier to the project is public financing, specifically the estimated \$55 million needed to remove asbestos from Midtown and then demolish most of the complex, likely saving the old office tower for redevelopment by someone other than PAETEC.

'We didn't want to go downtown and have dilapidated buildings next to us,' Chesonis said in explaining why he considers redevelopment of the entire 8.5-acre site vital.

- On February 4, 2010, in an article in the *Democrat & Chronicle*, Arunas Chesonis was quoted as saying that one vital fact about his company's headquarters hasn't changed:

It is going to be moved from Perinton to downtown Rochester. Pressed to imagine a scenario in which the company would pull out of the Midtown project, Chesonis said he could not.

- On May 27, 2010, a *Democrat and Chronicle* article entitled "PAETEC Strikes Strident Tone on Midtown." stated:

PAETEC Holding Corp. won't proceed with a downtown Rochester headquarters until the planning and funding of redevelopment of the Midtown site are solidified, Chief Executive Officer Arunas Chesonis said Wednesday.

'We don't put a shovel in the ground until the entire site is set,' Chesonis said. 'We are not going to do something half-baked.' Chesonis said his sense of urgency is due to the fact that his Perinton-based telecommunications company faces a lease expiration in a little more than two years, and construction of a new headquarters is likely to take 18 to 24 months. 'If the site is not ready by the end of the year, it's going to impact our schedule,' he said.

- In a June 22, 2010 article in the Democrat & Chronicle reporting on a meeting of the Rochester Downtown Development Corporation:

Arunas Chesonis, chief executive of PAETEC Holding Corp., said some things Monday that Rochester-area residents have been waiting to hear for almost three years. ... Before a large crowd of movers and shakers at the Hyatt Regency Rochester, Chesonis began to fill in the blanks. He said the framework of an agreement with the city was "100 percent there" as of last Thursday. But Chesonis ... talked of how PAETEC has grown, from 750 Rochester-area employees in the fall of 2007 to 893 now. By the time the company consolidates its local operations in the new headquarters, he said he expects 1,000 people to be making the move. And the building will have room for 200 more.

- On December 2, 2010, PAETEC continued to exert pressure on the City to close the deal on Midtown and the *Democrat and Chronicle* reported:

But wait - PAETEC is counting. A company spokesman said Wednesday that the Perinton telecommunications firm was frustrated with the process and could opt to move its headquarters elsewhere if terms of the relocation deal were not finalized by Dec. 31.

'We want to keep the ball moving,' said Christopher Muller, PAETEC's director of communications. 'We need space.'

Muller said the delays in signing agreements about Midtown Plaza - demolition on the plaza began this summer - mean the company will soon have to move employees into a sixth building in Bushnell's Basin, about one mile from PAETEC's five-building campus.

The whole justification for a PAETEC headquarters downtown was to centralize employees, a goal that Muller said the company was still working toward.

Muller said PAETEC officials have options to move their headquarters elsewhere, and that the delay in an agreement between the city and PAETEC has brought out real estate agents who are lobbying to move PAETEC into other facilities.

- In a December, 8, 2010 *Rochester Business Journal* article, PAETEC spokesman Christopher Mueller said:

'We're in five buildings as it is. We're running out of space and we're running out of time.' The reporter asked, 'Exactly what would PAETEC do if the city is unable to meet the Dec. 31 deadline?' 'That's not something we want to say at this time,' Muller said.

- On December 9, 2010, PAETEC held a press conference exerting more pressure on the City. The *Democrat and Chronicle* stated:

Before the luncheon, PAETEC officials held an informal news conference to plead their case that the agreement needs to be inked soon. If not, PAETEC could relocate elsewhere, company officials said. 'The city has 23 days,' said Peter Connoy, PAETEC vice president of corporate finance, adding that the urgency is due to the company's space constraints. 'Now we're literally running out of space.' Connoy said PAETEC and city officials would meet immediately after the luncheon in a lengthy negotiating effort.

- In a December 29, 2010 article in the Democrat & Chronicle PAETEC CEO's appearance at a press conference was described:

Stepping to the podium on Tuesday to a standing ovation at City Hall, Arunas Chesonis clapped his hands, wiped his brow and let out a "Whew!" After more than three years of complex and sometimes difficult negotiations, Chesonis' PAETEC Holding Corp. has signed a deal with the city to build its headquarters downtown. The \$55 million project will anchor Midtown redevelopment and bring in 1,000 or more employees, transforming the center city. Not only was PAETEC's commitment instrumental in securing state money to demolish Midtown, but it cemented a momentum that has drawn other companies downtown, said Mayor and Lt. Gov.-elect Robert Duffy, who leaves office Saturday. "This is the anchor," Duffy said. "This is what we wanted."

The article further describes the reaction by a Rochester developer to PAETEC's announcement.

Getting the PAETEC deal signed 'certainly helps our project get financed, and it certainly shows that now there is now going to be critical mass,' said Midtown Tower developer Dave Christa, whose Christa Companies is working on the project with Morgan Management. 'I can't think of anything that has been more important to the city ... the county ... this community, than that (deal) happening.' Morgan/Christa is awaiting word on a federal loan and hopes to begin construction in 2012, estimating the work will take 18 months to complete. 'If PAETEC didn't go forward, I think it would make our project a lot less viable,' Christa said. 'It creates housing opportunities ... (and draws) commerce, retail. The rising tide, everybody is going to prosper because of it.'

- On Jan. 2, 2011, after PAETEC signed the LDA with the City, the *Democrat and Chronicle* interviewed Chesonis asking about the company's plans if they had been unable to reach an agreement. His response below conveys his intent to move on if not satisfied with the deal:

There were a lot of Plan B's. The landlord here in Willowbrook is very good. One of the ideas was just to extend and expand this building by another 100,000, 200,000 square feet. That was an opportunity for us. I can't tell you there were 50 Plan B's. But there were at least eight or 10. That wasn't our issue. The issue was to try to something that made sense for the community and PAETEC. I'm not sure it would've been necessarily Monroe County. There were other counties that were interested. And we would've considered that, too. To me it was the Rochester metropolitan region we cared about.

- A January 25, 2011 article in the Democrat & Chronicle describes a speech made by the PAETEC CEO at the University of Rochester:

Chesonis told an audience at the University of Rochester that he has high hopes for the former Midtown Plaza, where the 3½ story corporate headquarters will be built, and for the building itself, which he said he expects will inject a bit of fun and excitement into downtown. 'I'd like it that when you fly into Rochester and look down on the city, you'd see lights, you'd see something more exciting than what you see now,' Chesonis said. 'We don't have to be Vegas but the city can be more than it is.' He said that the headquarters will do its part in jazzing up the Main and Clinton area. 'We'll have LED lighting on the outside of our building that will go red, white and blue on the Fourth,' he said. 'We'll have a rooftop garden for catering and concerts.' He said he expects to have a grocery store among the first-floor retail storefronts, 'maybe a Wegmans or a Whole Foods.'

- In a March 21, 2011 press release PAETEC announced that it had chosen Rochester architectural firm Bergman Associates P,C. to design its headquarters building:

After considering many outstanding firms, we ultimately selected Bergmann Associates for its stellar reputation, experience designing prominent buildings, and their understanding of the Rochester community, said PAETEC CEO Arunas Chesonis.

- In an April 28, 2011 press release PAETEC announced that it had chosen the Pike Company of Rochester to build PAETEC's \$55 million headquarters building:

'For well over a century, The Pike Company has been synonymous with both innovation and quality in Rochester,' said Arunas Chesonis, chief executive of PAETEC. 'Our goal has always been to use local talent and crews to build our new headquarters. With Pike alongside local architect Bergmann Associates, we have a great team leading the way for the revitalization of Midtown Plaza.'

- On May 19, 2011, the Rochester Business Journal describes a meeting of the Rochester Chapter of Financial Executives International:

Arunas Chesonis stated in his keynote address to the Rochester chapter of Financial Executives International that the new Midtown headquarters, would include 'a late-night rooftop happy hour during the annual summer jazz festival and a screen on the side of the building on which movies can be viewed.'

Exhibit B

1. In 2007, PAETEC Holding Corporation (“PAETEC”) approached the Mayor of the City of Rochester (“the City”) to discuss the purchase of a portion of the former Midtown Plaza site (“Midtown Site”) in the heart of the City of Rochester to construct a new corporate headquarters on the site (the “PAETEC Project”). The initial plan discussed by PAETEC was for a 35 story building.
2. On October 16, 2007 Gov. Spitzer announced that New York State (“NYS”) would pay to demolish the 8 acre, 6 building Midtown Plaza complex so that the PAETEC Project could be completed and PAETEC could locate 1,200 people there. The New York State Empire Development Corporation (“ESD”), City and PAETEC signed an agreement to redevelop the Midtown Site.
3. November 15, 2007 ESD authorized \$750,000 Urban and Community Development Program (UCDP) grant to the City to undertake urban and real estate planning, garage analysis, and an Environmental Impact Statement (EIS) for the Midtown Site.
4. December 7, 2007 - Rochester Economic Development Corporation (REDCO) approved \$500,000 for relocation expenses for Midtown Plaza tenants.
5. December 18, 2007 – City Council authorized acquisition by negotiation or condemnation of the Midtown Plaza parcels and approved an agreement (\$255,100) with a consultant to assist with relocation the Midtown Plaza tenants.
6. January 14, 2008 - ESD hired an Upstate Director of Construction to oversee the entire project abatement and demolition.
7. January 15, 2008 - City authorized agreement with LaBella Associates for master planning of the Midtown site.
8. February 12, 2008 - City approved \$340,000 from the sales proceeds of Urban Renewal property to be used for Midtown tenant relocation expenses.

9. March 20 2008 - ESD increased the UDCP grant by an additional \$100,000 (totaling \$850,000) for engineering and demolition impact analyses on the Midtown Site's 1820-space underground garage.
10. March 20, 2008 - ESD awarded \$350,000 contract to LiRo Engineers. Inc. to perform Phase II environmental studies.
11. April 9, 2008 - NYS Enacted Budget included \$55 million Upstate City-by-City funds for the Midtown Redevelopment Project.
12. April 15, 2008 - City authorized approximately \$7.3 million for the purchase of the properties, tenant relocations, and property management/operating costs.
13. April 17, 2008 - ESD awarded \$100,000 legal services contract to Phillips Lytle to perform all services related to the site development agreement(s).
14. May 28, 2008 - City acquired title to Midtown properties (this does not include the properties located at 233-257 E. Main Street which were not owned by the Midtown Plaza property owner). The City expedited the eminent domain proceedings on the main parcel of the Midtown Parcel.
15. July 25, 2008 – The City closed Midtown Plaza and all related buildings, followed by the successful relocation of 47 tenants, including Clear Channel, Trailways and Minuteman Press.
16. September 15, 2008 - ESD awarded contracts to structural engineer (LaBella Associates) and construction manager (LiRo Engineers Inc.).
17. October 3, 2008 - PAETEC announced the reduction of the PAETEC Headquarters to a 350,000 square foot, 9-10 story building
18. March 16, 2009 - The City of Rochester Planning Commission held public hearings to consider the Midtown Site Plan as an amendment to the previously adopted Urban Renewal Plan and made a recommendation to the Rochester City Council.

19. May 21, 2009 - ESD awarded abatement contract to Cambria Contracting, Inc. in an amount of \$34.1 million and Paradigm Environmental in an amount of \$1.69 million.
20. September, 2009 - Cambria finalizes agreement with Local Laborers 435, and selects subcontractors Marcor and Bristol.
21. October, 2009 - City commenced preliminary site infrastructure and subdivision design.
22. November 9, 2009 - Rochester City Council approved legislation amending the City of Rochester Comprehensive Plan and Zoning Map by adopting the Amended Midtown Urban Renewal Plan.
23. December 10, 2009 – The City issued a Request for Quotes for Midtown site planning and engineering design services.
24. February 23, 2010 - The City issued a Request for Proposals for Midtown demolition and site preparation.
25. February 25, 2010 - LaBella began preliminary design at Midtown Rising site.
26. May 18, 2010 - the City obtained Empire Zone Corporation certification of PAETEC as an entity eligible to obtain Empire Zone benefits (One of the last companies to be certified before the Empire Zone Program terminated).
27. June 15, 2010 - ESD awarded demolition contract for Midtown Plaza.
28. June 30, 2010 - The City completed a site-specific review under the State Environmental Quality Review Act.
29. June 30, 2010 - The City completed the Site plan.
30. July 28, 2010 - The City completed the National Environmental Policy Act process.
31. September 29, 2010 - City finished the acquisition of the three (3) properties at 233-257 E. Main Street which were needed for the PAETEC Project, for a total

cost of \$3,189,000. The City expedited the proceedings on these three parcels of the Midtown Parcel.

32. December 12, 2010 – PAETEC CEO Arunas Chesonis publically imposed a deadline of December 31, 2010 for the parties to enter into an agreement to set forth the responsibilities and obligations of each of the parties concerning the PAETEC Project.

33. December 28, 2010 - The City and PAETEC executed a Land Disposition Agreement (“LDA”). The LDA sets forth the responsibilities and obligations of each of the parties concerning the sale of the applicable parcel to PAETEC, the completion of the PAETEC Project and the development of the Midtown Site.

Pursuant to the LDA, the City agreed to:

- Sell the subject parcel to PAETEC for \$1.00 rather than for appraised values (1.8 acres at \$1,000,000 an acre.)
- Grant PAETEC an option on an adjoining parcel which resulted in the City not being able to accept other development proposals- City actually turned some away.
- Plan and produce funding to renovate the underground parking garage under the Midtown Site (the “Midtown Garage”) which has sufficient parking to meet the needs of PAETEC employees, customers and other visitors.
- Enter into a parking agreement whereby PAETEC employees can park in the Midtown Parking Garage at reduced rates for the first twenty years.
- Construct a pedestrian tunnel connecting PAETEC’s corporate headquarters to the Midtown Garage.
- Develop renovation plans for the existing underground truck tunnel which runs under the Midtown Site to service PAETEC’s corporate headquarters.
- Execute a Declaration of Covenants including restrictions specifically for PAETEC; i.e., widening the sidewalks at additional expense to the City.

- At this point, PAETEC reduced the PAETEC headquarters to a three and one-half story, 222, 440 sq. ft. building.
34. February 4, 2011 - The City completed the New York State Historic Preservation Office process.
 35. Property Taxes - During 2010, the City assisted PAETEC in gaining Empire Zone benefits which provide a refund of property taxes paid during the first ten (10) years PAETEC of ownership. On March 15, 2011, the County of Monroe Industrial Development Agency granted PAETEC a real estate tax exemption for the eleventh year through the twentieth year so that combined with the Empire Zone benefit PAETEC will not have full real estate tax liability until twenty years after the completion of the PAETEC Project. (These benefits will be available if PAETEC and its wholly owned subsidiary PAETEC Realty, LLC continue to survive as entities and the Empire Zone employment requirements are met after the merger with Windstream).
 36. June 10, 2011- City representatives met with PAETEC to review project status and importance of Project timeline.
 37. During 2010 and 2011, the City assisted PAETEC in obtaining financing through New Markets Tax Credit (NMTC) funding ventures, HUD Section 108 loan, Interest Rate Subsidy Grants, ESD Blueprint NY Grant, and private lenders.
 - Rochester Economic Development Corporation (“REDCO”) entered into two contracts, one dated June 29, 2010 and the other dated August 30, 2011, with the National Development Council (“NDC”) for \$72,000 each to assist the City in obtaining funding for the redevelopment of the Midtown Site and, in particular, the PAETEC Project.
 - On July 2, 2010, the City prepared and submitted a Brownfields Economic Development Initiative (BEDI) grant application to HUD.

- July, 2010 the City granted PAETEC a City loan funded with Federal Community Development Block Grant funds (“CDBG”) in the amount of \$800,000.
 - On October 26, 2010, the City submitted a Section 108 Loan Application to HUD Buffalo as well as a request for a Public Benefits waiver. On December 9, 2010, HUD Buffalo made a formal recommendation to HUD headquarters in Washington that both the Section 108 loan application and the request for the waiver of the public benefit requirement be approved by HUD Washington.
 - The City obtained permission to transfer the ESD Blueprint NY Grant in the amount of \$1,200,000 from another project to the PAETEC Project
 - May 4, 2011, 2010 the City granted PAETEC an Interest Rate Subsidy Grant in the amount of \$7,368,042 which PAETEC could use to pay down the interest rate on its bank financing for the PAETEC Project.
 - June, 2011, Rochester Economic Development Corporation entered into an agreement with Cannon Heyman & Weiss, LLP for an amount not to exceed \$100,000 for costs and expenses for legal and advisory services related to the preparation of a NMTC application. To date, REDCO has paid Cannon Heyman & Weiss, LLP \$53,113 for services on this application. REDCO prepared and submitted on July 26, 2011, the New Markets Tax Credit application to the CDFI Fund.
38. When planning and implementing the Midtown Redevelopment Project, at the request of PAETEC, the City and ESD expedited and customized the demolition of the existing buildings at the site so as to accommodate PAETEC’s construction schedule and provide a foundation for PAETEC’s corporate headquarters.
39. At the request of PAETEC, the demolition project was amended so that the first three floors of the existing Seneca building were left to accommodate design of the PAETEC’s Headquarters.

40. At the request of PAETEC, the City had caused and paid approximately \$15,000 for the relocation of the two bus shelters at the Midtown Site near the PAETEC Headquarters site, which were relocated away from the site.
41. Since the October 2007 announcement, the City has customized solutions for a redesigned street grid, utilities, water, sewer, gas, electric, telephone and drainage facilities and all other utilities and public or quasi-public improvements to meet the needs of the PAETEC Project.
42. To date, the City and NYS have spent \$69,286,000 just in costs to relocate former tenants, acquire, and demolish former improvements to create a shovel ready site.

Exhibit C

Until the announcement of the merger agreement on August 1, 2011, PAETEC was willing to let the City spend money satisfying the conditions precedent that were the City's responsibility, while PAETEC was not willing to spend funds to complete its tasks. Since the merger announcement, PAETEC has refused to take further action. PAETEC's failure to satisfy the conditions precedent and its insistence that the City proceeded at an accelerated pace, created considerable detriment to the City and State.

Set forth below (or on Schedule B) are the Conditions Precedent which the City has already satisfied:

1. Revised existing License Agreement (to permit Purchaser and its representatives, agents, employees, lenders, contractors, appraisers, architects and engineers access to and entry upon the Premises to examine, inspect, measure and test the Premises for any reasonable purpose).
2. Delivered abstracts of title, surveys, copies of any existing title reports or policies, court orders related to condemnation, and other related documents currently in its possession or in possession of its consultants including LaBella Associates and others.
3. Obtained resubdivision of the Premises approved by Purchaser so that site is combined as one (1) City lot with one (1) tax identification number.
4. Delivered any and all appraisals of the Premises/Project in City's possession.
5. Prepared and delivered to PAETEC true and complete copies of all architectural and engineering plans, maps, prints and drawings relating to the Project, including the UPG and Tunnel, which Seller has agreed to contract for, including, but not limited to engineering studies, any warranties on improvements, environmental reports, traffic studies, utility studies and all other reports and studies relating to the Project and a certification to Purchaser prepared by LaBella Associates PC as to the integrity of the Tunnel.

6. Determined that RGE does not need to continue using the existing vault in the Seneca Building basement containing live electrical power and City committed to deliver the space and to enclose, waterproof and construct an inside door/entryway for PAETEC to use.
7. Supplied Bond Counsel opinion regarding the Parking Agreement.
8. Obtained City Council Ordinances authorizing the sale of the Premises and the terms of the LDA within the time frames set forth.
9. Obtained City Council Ordinance authorizing the Interest Rate Subsidy Grant(s).
10. Prepared a Parking Agreement. Parties were to enter into a Parking Agreement for parking at the Midtown Garage. City prepared the Parking Agreement and despite successful negotiations, PAETEC did not sign the parking agreement.
11. Caused the permanent relocation away from the Premises of the bus stops currently located as follows (a) on the east side of Clinton Avenue just south of East Main Street and (b) on the south side of East Main Street in front of Midtown Plaza.
12. Ensured that all water, sewer, gas, electric, telephone and drainage facilities and all other utilities and public or quasi-public improvements upon or adjacent to the Premises required by law and for the operation of Purchaser's uses are installed, and are able to connect under valid permits, in good working order, sufficient to service Purchaser's intended use of the Premises and located at the lot line of the Premises.
13. Received State approval and other necessary approvals for the ESD Blueprint NY Grant.

The following are Conditions Precedent which were to have been completed by now but due to lack of activity by PAETEC have not yet been satisfied:

1. City to have obtained HUD and other necessary approvals for the Section 108 loan, including but not limited to an approval of the waiver requested from HUD

and final NEPA review. The City has submitted all documents and completed all necessary reviews and obtained the necessary waiver; however, final HUD approval has not been obtained yet because PAETEC financing has not finalized.

2. City to have completed all work required on the Demolition Plan such that the Premises shall be in Shovel Ready Condition (In the event a portion of the work required on the Demolition Plan and Shovel Ready Condition schedule cannot be completed until after the Closing, City continues to be obligated to perform such work as quickly as practicable and to coordinate such work with PAETEC'S construction activity so as not to interfere with same) The City has completed as much work on the Demolition Plan as it can without interaction from PAETEC. Since the August 1, 2011 announcement, PAETEC staff members have stopped participating in the Demolition meetings.
3. Parties have agreed upon terms and conditions of Interest Rate Subsidy Agreement(s). The City prepared the agreements and negotiated the terms and conditions with PAETEC and its lender, M&T Bank; however, PAETEC has not signed the Interest Rate Subsidy Agreement.
4. City has received commitment from the Rochester Police Department (RPD) to locate a police substation within the Premises on terms satisfactory to PAETEC and Tenant and City is to provide a form lease or sublease containing standard lease clauses and mutually agreeable terms but at no rent charge to the RPD for the substation space. PAETEC has not yet determined where it wants the substation located and how much space it will dedicate to the substation.
5. Preparation of a Tunnel Agreement. The agreement has been drafted but the PAETEC involvement in the process has stopped.

The following Conditions Precedent are not due yet but based on the lack of activity by PAETEC will most likely not be accomplished in the required time frame:

1. PAETEC to have obtained all final financing commitments and approvals to construct the Project on terms and amounts satisfactory to Purchaser including;
 - a. Construction Loan *
 - b. Permanent Loan *
 - c. Section 108 Loan in the amount of \$16,500,000 (or if there is a reduction in Project Costs in excess of five percent [5%] , the amount of this loan as proportionately reduced to the reduced Project Costs)
 - d. ESD Blueprint NY Grant in the amount of \$1,200,000
 - e. NMTC Leveraged Equity.

*PAETEC has been unwilling to finalize the loan process with its lender M&T Bank. In several project meetings with PAETEC, the City and ESD, PAETEC personnel, Peter Connoy, instructed City staff he would get back to M&T issues later and did not want to push the lender "right now".

2. PAETEC to conduct any engineering and other inspections of the Premises and be satisfied with the condition of the Premises to support its intended structure including confirmation of the structural integrity of the Tunnel to support Purchaser's Building and for its intended uses including to ensure availability of all necessary utilities required to service the Premises for its intended uses.
3. PAETEC to obtain all necessary governmental, municipal and other approvals and/or permits, including re-zoning, resubdivision, site plan, SEQR, NEPA, necessary variances, special permits, curb cut approval required for Purchaser's uses at the Premises including approvals to use the rooftop for its intended improvements and business purpose and for communication purposes including antenna and satellite dishes.

The remainder of the Conditions Precedent are to be addressed in later phases of the project.