



PUBLIC NOTICE

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DA 20-675
June 25, 2020

**APPLICATIONS FILED FOR THE TRANSFER OF CONTROL
OF WINDSTREAM HOLDINGS, INC., DEBTOR-IN-POSSESSION,
TO WINDSTREAM HOLDINGS, INC.**

PLEADING CYCLE ESTABLISHED

WC Docket No. 20-151

Comments Due: July 9, 2020

Reply Comments Due: July 16, 2020

By this Public Notice, the Wireline Competition Bureau, International Bureau, and the Wireless Telecommunications Bureau seek comment from interested parties on applications filed by Windstream Holdings, Inc, Debtor-in Possession (Holdings), its subsidiary, Windstream Services, LLC (Windstream), and post-bankruptcy Windstream Holdings, Inc. (New Windstream, and together with Holdings, Applicants), for consent to transfer control of licenses and authorizations held by Windstream and its subsidiaries to effect a transaction under which they will emerge from federal bankruptcy protection (as proposed, the Transaction).¹ Applicants also filed a petition requesting a temporary and limited waiver² of sections 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the rules.³

¹ See 47 U.S.C. §§ 214, 310(d); 47 CFR §§ 63.04, 63.24; *see also* Application of Windstream Holdings, Inc., Debtor-in-Possession, Transferor, and Windstream Holdings, Inc., Transferee, for Consent to Transfer of Licenses and Authorizations, WC Docket No. 20-151 (filed May 21, 2020) (Lead Application). The Commission licenses and authorizations subject to the applications are listed in Appendix A hereto and include existing domestic and international section 214 authorizations, millimeter wave licenses, common carrier fixed-microwave licenses, microwave industrial/business pool licenses, and additional miscellaneous wireless licenses.

² Petition for Temporary and Limited Waiver; WC Docket No. 20-151; IB File Nos. ITC-T/C-20200522-00081, ITC-T/C-20200522-00082, ITC-T/C-20200522-00083, ISP-WAV-20200611-00004, ITC-WAV-20200611-00091; ULS File Nos. 0009081087, 0009082139, 0009082351, 0009082392, 0009082434, 0009082528, 0009085568, 0009085592, 0009085614 (dated June 11, 2020) (Waiver Request) (seeking waiver of sections 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18 and 63.24 of the Commission's rules).

³ 47 CFR §§ 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, 63.24.

Applicants

Windstream, a Delaware limited liability company, is a wholly-owned direct subsidiary of Holdings, a Delaware corporation.⁴ Windstream's operating subsidiaries provide voice, data, and transport services on a local and long-haul fiber network currently spanning approximately 150,000 route miles.⁵ Applicants state that Windstream's consumer and small business segment includes approximately 1.4 million residential and small business customers.⁶ In addition, Windstream provides 100 Gbps bandwidth and transport services to wholesale customers, including telecommunications companies, content providers, and cable and other network operators.⁷ Windstream's incumbent local exchange carrier subsidiaries (LEC) serve customers in 18 states, while Windstream's competitive LEC subsidiaries serve primarily enterprise and government customers in all 50 states and the District of Columbia.⁸

Description of the Transaction

On February 25, 2019, Holdings filed voluntary petitions for relief for itself, Windstream, and Windstream's subsidiaries under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.⁹ Following the filing of the petitions and the securing of \$1 billion in debtor-in-possession financing, Windstream continued to provide service to its customers as it negotiated a comprehensive restructuring plan with its creditors.¹⁰ On April 1, 2020, Holdings filed a plan of reorganization proposing a restructuring, through a two-step transaction, that would allow Holdings, Windstream, and Windstream's subsidiaries to emerge from bankruptcy "with a deleveraged capital structure and sufficient liquidity to fund the post-emergence business plan."¹¹

In "Step One" of the Transaction, the interests held by the existing stockholders of Holdings will be canceled, and the company will be reorganized.¹² The creditors who hold the first lien debt of Windstream will equitize a portion of their debt claims against Holdings and Windstream and receive repayment or replacement loans for the remaining portion.¹³ As a result of equitizing their

⁴ See Lead Application at Attach. 1, Description of Proposed Transaction and Public Interest Statement (Public Interest Statement), at 2. New Windstream is a new holding company that will be formed to hold newly-issued equity in the existing Windstream or its successor, a similar, newly-formed entity, following its emergence from bankruptcy, with former first lienholders having acquired all the equity in New Windstream. Lead Application at Attach. 2 at 1.

⁵ Public Interest Statement at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* Windstream's incumbent LEC operating subsidiaries provide services in Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas. Lead Application at Attach. 2 at 2.

⁹ Public Interest Statement at 7-8 (citing *Windstream Holdings, Inc., Debtors*, Chapter 11, Case No. 19-22312 (Bankr. S.D.N.Y. 2019)).

¹⁰ Public Interest Statement at 7.

¹¹ *Id.* at 7-8.

¹² *Id.*

¹³ *Id.*

debt and exercising subscription rights and equity commitments in connection with the reorganization plan, the existing holders of first lien debt of Windstream, as a group, will acquire 100% of the equity of New Windstream.¹⁴ Applicants do not anticipate that any entity would obtain either *de jure* or *de facto* control of New Windstream.¹⁵ The Applicants state that the following U.S.-based entities will hold a 10% or greater equity or voting interest in New Windstream after the completion of Step One: Nexus Aggregator, L.P. (estimated 49.9% voting and equity interest) and Franklin Resources, Inc. (estimated 16.2% voting and equity interest).¹⁶ Nexus Aggregator, L.P. is an investment fund affiliated with Elliott Management Corporation and its affiliates (collectively Elliott).¹⁷ Applicants list the nine Elliott entities that will have a 10% or greater direct or indirect voting interest in New Windstream following consummation of Step One.¹⁸ While Elliott does not provide communications services, it will (pending Commission approval of several transactions) have a disclosable interest in LogMeIn, Inc. (LogMeIn), which has wholly-owned subsidiaries that hold telecommunications authorizations.¹⁹ Funds controlled by four other investment companies and their subsidiaries, some with foreign ownership, will combined hold an estimated 32.1% of the equity and voting interests of New Windstream following consummation of Step One of the Transaction: Pacific Investment Management Company, LLC (PIMCO); Oaktree Capital Group; HBK Capital Management; and Brigade Capital Management, LP.²⁰

To facilitate Windstream's prompt emergence from bankruptcy, Applicants request that the Commission approve the present transfer of control applications as part of Step One to permit Windstream to emerge from bankruptcy. Applicants assert that they will emerge with aggregate foreign ownership below the 25% statutory benchmark set forth in section 310(b)(4) of the Act and with no foreign investor holding 10% or more of New Windstream's stock.²¹ According to Applicants, to achieve the necessary levels of foreign ownership, certain prospective foreign investors would hold upon closing Special Warrants entitling them to obtain indirect equity interests in Windstream, but they could not exercise such Special Warrants until the Commission approves a higher level of foreign investment in "Step Two" of the Transaction.²² In Step Two, within 30 days of Windstream's emergence from bankruptcy, Applicants would file a Petition for Declaratory Ruling requesting Commission approval to permit the exercise of the Special Warrants by foreign

¹⁴ *Id.* As part of the bankruptcy proceeding, Holdings has sought approval from the Bankruptcy Court of a renegotiated agreement among Holdings, Windstream, and Uniti Group Inc. (Uniti) for Windstream's lease of Uniti's network assets to support provision of service to Windstream's customers. *Id.* at 9.

¹⁵ *Id.* at 8.

¹⁶ Lead Application at 5-7; Public Interest Statement at 4-7, Exhs. B, D.

¹⁷ Lead Application at 5; Public Interest Statement at Exh. C.

¹⁸ Lead Application at 5-7.

¹⁹ *Id.* at Attach. 2 at 2-3; Letter from Christopher W. Savage, Counsel to Windstream Holdings, Inc. and Windstream Services, LLC, Samuel L. Feder, Counsel to Nexus Aggregator L.P., and Meredith S. Senter, Jr., Counsel to the First Lien Debtholders Group, to Marlene H. Dortch, Secretary, FCC (June 12, 2020) (on file in WC Docket No. 20-151) (Applicants' Supplement Letter). *See also Domestic Section 214 Application Filed for the Transfer of Control of LogMeIn, Inc. to Logan Parent, LLC*, WC Docket No. 19-396, Public Notice, DA 20-78 (WCB 2020).

²⁰ Public Interest Statement at 6-7. Applicants state that none of these entities will individually have a disclosable interest upon completion of the first step of the transaction and that upon completion of the second step, they anticipate that only PIMCO will control an ownership interest of 10% or more. *Id.* at 6-7.

²¹ *Id.* at 10-12 (citing 47 U.S.C. § 310(b)(4)).

²² *Id.* at 11.

entities of indirect interests in New Windstream at levels that would require disclosure or specific approval in some cases, and in the aggregate greater than 25%.²³

Upon emergence from bankruptcy, and pursuant to a grant of the present applications, New Windstream will continue to be Windstream's parent, and the ultimate parent of Windstream's operating subsidiaries, and will indirectly hold all licenses and authorizations held by Windstream and its subsidiaries.²⁴ These changes will not affect the form or organization of any subsidiaries below Windstream.²⁵

Statement of Public Interest

According to the Applicants, following consummation of this Transaction, Windstream "will move forward with a stable capital structure, uninterrupted service, and an increased capability to compete to bring advanced services to consumers across the country."²⁶ The reorganization plan contemplates that the Applicants will secure \$3.25 billion in exit financing and aims to reduce the company's overall debt by approximately 50%, thus deleveraging the company and placing it on a "sound financial footing."²⁷ Applicants state that some of LogMeIn's competitive LEC operations in certain metro areas overlap Windstream's incumbent LEC service area or parts of its fiber network.²⁸

According to Applicants, the Transaction will generate substantial public interest benefits, such as (1) the emergence of Windstream from bankruptcy with substantially less debt and without service disruption to its customers; (2) improved operational and leasing arrangements with Uniti;²⁹ (3) compensation for the company's creditors; and (4) increasing competition due to a more stable and solvent Windstream with a stronger capital structure and better access to capital, thus enabling Windstream to improve its broadband service offerings and its enterprise service capabilities, continue its investments in customer service and support, enhance its financial and operational flexibility, and participate in Commission broadband deployment funding auctions.³⁰

²³ *Id.*; Waiver Request at 2, 7-8.

²⁴ Public Interest Statement at 10.

²⁵ *Id.* at 3.

²⁶ *Id.* at i.

²⁷ *Id.* at 8-9.

²⁸ Applicants' Supplement Letter at 2-4.

²⁹ Also as part of the bankruptcy proceeding, the Applicants renegotiated their agreement with Uniti for Windstream's continued lease of Uniti's network assets, the settlement of certain claims, the sale of certain assets, and Uniti's investment of \$1.75 billion in its network to support 1 Gigabit broadband speeds for consumers and small and medium businesses in Windstream's service areas. According to Applicants, these investments, along with the new capital structure that Windstream will be able to achieve after emergence, would allow New Windstream to expand its 1 Gigabit fiber-based internet service and execute a post-emergence business plan that enhances New Windstream's competitive position. *Id.* at 9-10.

³⁰ *Id.* at 14-17.

Waiver Request

The Applicants seek a temporary and limited waiver of sections 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, "to the extent required to expedite initial review and permit the two-step approval process"³¹ proposed in the transfer applications.³² Applicants state that similar waivers previously have been granted allowing companies to emerge from bankruptcy using a two-step review and approval process.³³ Applicants note that, in Step One, some investors will receive Special Warrants in New Windstream, and some investors, including foreign affiliates of Elliott and Brigade Capital Management, L.P., will own Special Warrants in their own U.S. affiliates.³⁴ Special Warrants cannot be exercised until subsequent Commission approval in Step Two of the Transaction.³⁵ Applicants agree to file, no later than 30 days following emergence from bankruptcy, a Petition for Declaratory Ruling seeking Commission approval to permit exercise of the Special Warrants issued at Step One.³⁶ Specifically, the Petition would seek authorization for New Windstream to be up to 100% foreign owned in the aggregate, consistent with the Commission's rules governing such requests, and would seek specific approval of any foreign investor that would have sufficient post-exercise voting or equity to require such approval.³⁷

Applicants state that this two-step process would allow New Windstream, Windstream, and their subsidiaries to emerge expeditiously from bankruptcy protection and to avoid the adverse consequences that could result from a delay in implementing the reorganization plan.³⁸ According to Applicants, operating as a debtor-in-possession imposes significant financial and operational burdens on Windstream, such as a potential need to incur additional indebtedness to maintain liquidity.³⁹ Applicants argue that prompt emergence from bankruptcy would allow the company to resume normal operations and would have significant public interest benefits, including providing even greater assurance of continuity of service to customers.⁴⁰

General Information

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

³¹ Waiver Request at 7.

³² *Id.* at 7.

³³ *Id.* at 4 (citing *Applications Granted for the Transfer of Control of Fusion Connect, Inc., Debtor-in-Possession, and Subsidiaries*, Public Notice, 35 FCC Rcd 409, 413 (WCB/IB 2020); *Liberian Television of Dallas License LLC, Debtor-in-Possession et al.*, Order, 34 FCC Rcd 8543, 8551 (MB 2019)).

³⁴ Waiver Request at 1-2.

³⁵ Public Interest Statement at 11; Waiver Request at 2.

³⁶ Waiver Request at 2.

³⁷ *Id.*

³⁸ *Id.* at 2, 5-6.

³⁹ *Id.* at 2.

⁴⁰ *Id.* at 2.

Interested parties may file comments and petitions **on or before July 9, 2020**, and reply comments or oppositions to petitions **on or before July 16, 2020**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁴¹
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

In addition, please provide one copy of each pleading to each of the following:

- (1) Mike Ray or Dennis Johnson, Wireline Competition Bureau, michael.ray@fcc.gov; dennis.johnson@fcc.gov;
- (2) Kimberly Cook, International Bureau, kimberly.cook@fcc.gov;
- (3) Linda Ray, Wireless Telecommunications Bureau, linda.ray@fcc.gov; and
- (4) Jim Bird, Office of the General Counsel, jim.bird@fcc.gov.

This proceeding will be treated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules.⁴² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then

⁴¹ In response to the COVID-19 pandemic, the Commission has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁴² 47 CFR § 1.1200 *et seq.*

the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's Rules.⁴³ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.⁴⁴ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Mike Ray, Wireline Competition Bureau, (202) 418-0357; Dennis Johnson, Wireline Competition Bureau, (202) 418-0809; Kimberly Cook, International Bureau, (202) 418-7532; or Linda Ray, Wireless Telecommunications Bureau, (202) 418-0257.

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⁴³ 47 CFR § 1.1206(b).

⁴⁴ See 47 CFR § 1.45(c).

APPENDIX A

SECTION 214 AUTHORIZATIONS

A. International

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20200522-00081	Windstream Services LLC, Debtor-in-Possession ⁴⁵	ITC-214-19980925-00658
ITC-T/C-20200522-00082	American Telephone Company (Debtor-in-Possession)	ITC-214-20061201-00539
ITC-T/C-20200522-00083	MassCom Inc., Debtor-in-Possession	ITC-214-20080220-00084

B. Domestic

A list of the Windstream subsidiaries that provide domestic section 214 service are listed in Attachment 2 to the Lead Application. Applicants do not request streamlined treatment for the transfer of domestic section 214 authorizations.⁴⁶

SECTION 310(d) APPLICATIONS

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0009081087	BOB, LLC dba Business Only Broadband	WQCC512
0009082139	Windstream Services, LLC, Debtor-In-Possession	WQNK758
0009082351	D&E Communications, Inc.	WQJH937
0009082392	Windstream D&E Systems Inc. (Debtor-in-Possession)	WPNA263
0009082434	MPX INC	WPSQ536
0009082528	Oklahoma Windstream, LLC	KPP33

⁴⁵ A list of those subsidiaries that provide international services under the section 214 authorization held by Windstream Services, LLC also are listed in Attachment 2 to the Lead Application.

⁴⁶ See 47 CFR § 63.03; Lead Application at 10.

0009085568	Valor Telecommunications of Texas, LLC d/b/a Windstream Communications Southwest	KKK59
0009085592	Windstream New York Inc (Debtor-In- Possession)	WNWM304
0009085614	Windstream NTI, LLC, Debtor In Possession	WLN878

WAIVER REQUESTS

The Petition for Temporary and Limited Waiver of sections 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules has been assigned IBFS file numbers ISP-WAV-20200611-00004 and ITC-WAV-20200611-00091, and is available in the following docket and file numbers:

- IB File Nos. ITC-T/C-20200522-00081, ITC-T/C-20200522-00082, ITC-T/C-20200522-00083, ISP-WAV-20200611-00004; ITC-WAV-20200611-00091
- ULS File Nos. 0009081087, 0009082139, 0009082351, 0009082392, 0009082434, 0009082528, 0009085568, 0009085592, 0009085614.
- WC Docket No. 20-151