

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
<b>Windstream Holdings, Inc.,</b>	)	WC Docket No. 20-__
<b>Debtor-in-Possession</b>	)	
<b>Transferor</b>	)	ITC-T/C-2020____ - _____
	)	
and	)	
	)	
<b>Windstream Holdings, Inc.</b>	)	
<b>Transferee</b>	)	
	)	
Application for Consent to Transfer of Control	)	
of Licenses and Authorizations	)	
	)	

**DESCRIPTION OF PROPOSED TRANSACTION  
AND PUBLIC INTEREST STATEMENT**

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## SUMMARY

The Applicants request Commission authorization to implement a plan of reorganization for Windstream Holdings, Inc. (“Holdings”), the parent company of Windstream Services, LLC (“Windstream”), allowing them and their subsidiaries to emerge from a bankruptcy proceeding commenced in February 2019. As contemplated by the plan of reorganization, the interests held by the existing stockholders of Holdings will be canceled and the company will be reorganized. The creditors who today hold the first lien debt of Windstream will, when the reorganization is complete, hold 100% of the equity in Holdings. Following consummation of this 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 services to consumers across the country.

This transaction complies with the Communications Act, other applicable statutes, and the Commission’s rules, will result in substantial public interest benefits, and will cause no competitive or other harms. This transaction does not contemplate any horizontal or vertical concentration in any market in which Windstream currently competes, nor will these transactions result in changes to Windstream’s customer-facing systems or operations or in any disruption to service. Windstream’s emergence from bankruptcy will be transparent to Windstream’s customers, just as its operations have been while under the bankruptcy process.

The Applicants are submitting applications seeking approval to transfer control of Windstream’s licenses and authorizations to the post-bankruptcy ownership structure. Notably, these applications do not propose a new single individual entity with *de jure* or *de facto* control, but instead propose the replacement of a large group of disparate shareholders with a new group

of shareholders consisting of former debtholders of the company. To facilitate Windstream's prompt emergence from bankruptcy, Applicants request that the Commission approve the present applications as a first step, permitting Windstream to emerge from bankruptcy with aggregate foreign ownership lower than the 25% statutory threshold for indirect interests under Section 310(b)(4) and with no foreign-owned investor holding 10% or more of Holdings' stock. Certain prospective foreign investors would hold warrants entitling them to obtain indirect equity interests in Windstream, but such warrants could not be exercised until another, subsequent Commission approval. Specifically, within thirty days of grant of the present applications (and Windstream's emergence from bankruptcy), Applicants would file a Petition for Declaratory Ruling requesting Commission approval for Windstream to be up to 100% foreign owned, and for specific approval of certain foreign investors. This two-step process advances the public interest by permitting Windstream to emerge from bankruptcy and begin normal operations significantly more quickly than might otherwise be possible.

Given the substantial public interest benefits of the proposed transaction and the absence of public interest harms, the Applicants request that the Commission expeditiously consent to the proposed transaction by granting the associated transfer of control applications and the waivers requested herein.<sup>1</sup>

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<sup>1</sup> As detailed in Section III of this Application, Applicants request a waiver of the following Commission rules, to the extent that such waivers are necessary to implement the 2-step process described above: 47 C.F.R. §§ 1.5000(a)(1), 1.948, 1.2112, 63.03, 63.04, 63.18, and 63.24.

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**DESCRIPTION OF PROPOSED TRANSACTION  
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Windstream Holdings, Inc., Debtor in Possession (“Holdings”), its subsidiary Windstream Services, LLC (“Windstream”), and post-bankruptcy Windstream Holdings, Inc. (“New Windstream,”<sup>2</sup> and, together with Holdings and Windstream, the “Applicants”) request the Commission’s consent to the transfer of control of licenses and authorizations held by Windstream and its subsidiaries to effect a transaction under which they will emerge from bankruptcy. The licenses and authorizations subject to these applications include all of Windstream’s and its subsidiaries’ existing domestic and international Section 214 authorizations, millimeter wave licenses obtained at auction, common carrier fixed-microwave licenses, microwave industrial/business pool licenses, and a variety of additional miscellaneous

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<sup>2</sup> 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.”

wireless licenses. As detailed in Section III, the Applicants request, to the extent the Commission may decide it is necessary, waiver of certain of the Commission's rules to facilitate Windstream's prompt emergence from bankruptcy.

## **I. BACKGROUND**

### **A. Real Parties in Interest**

As described in further detail below, the real parties in interest to the transactions contemplated by these applications are as follows. With respect to the transfer of control of authorizations and licenses held by Windstream, the real parties in interest are (i) New Windstream, (ii) affiliates of Elliott Management Corporation, and (iii) affiliates of Franklin Resources Inc., operating as Franklin Templeton. With respect to the transfer of control of authorizations and licenses held by subsidiaries of Windstream, the real parties in interest are (i) New Windstream, (ii) Windstream, (iii) affiliates of Elliott Management Corporation, and (iv) affiliates of Franklin Resources Inc., operating as Franklin Templeton. The FCC Registration Numbers ("FRNs") of the real parties in interest are provided at Exhibit A.

### **B. Windstream, Holdings and New Windstream**

Windstream, a Delaware limited liability company headquartered at 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, is a wholly-owned direct subsidiary of Holdings with stock traded in the "Over the Counter" ("OTC") market under the symbol "WINMQ," headquartered at the same address in Little Rock, Arkansas. Windstream, through its operating subsidiaries, is a leading provider of advanced network communications and technology solutions for consumers, businesses, enterprise organizations, and wholesale customers across the United States.

Windstream's subsidiaries provide voice and data services that enhance the communication capabilities of consumers and businesses across the U.S. In addition,

Windstream's operating subsidiaries supply core transport solutions on a 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., offers solutions to enable businesses to compete more effectively in the digital economy, and offers 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.

Windstream's incumbent local exchange carrier ("ILEC") operating subsidiaries offer services to residential, business, and government customers in Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas. Windstream's competitive local exchange carrier ("CLEC") operating subsidiaries offer services, primarily to enterprise business and government customers, in all fifty states and the District of Columbia.

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 today. These changes will not affect the form or organization of any subsidiaries below Windstream. Applicants will provide the Commission with updated organizational charts depicting any such changes.



## **C. Post-Emergence Disclosable Interest Holders**

The post-transaction ownership structure of New Windstream and Windstream upon grant of the present applications are shown at Exhibit B.

### **1. Elliott**

As a result of the transactions contemplated by these applications, entities affiliated with Elliott Management Corporation and its advisory affiliates, including Elliott Investment Management, L.P. (collectively, “Elliott”), will, through various investment funds, hold an estimated 49.9% share of the equity of New Windstream upon completion of the first step described below, and ultimately hold an estimated 40.3% once the second step is complete.<sup>3</sup>

Elliott, headquartered at 40 W. 57th Street, New York, New York 10019, manages 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 proposed transaction, Elliott’s disclosable equity interest in New Windstream will be held 99% by its investment fund Elliott Associates, L.P. (“EALP”), a Delaware limited

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<sup>3</sup> After the second step, the ultimate percentage interest held by each disclosable interest holder in New Windstream will depend on the exercise of subscription rights for New Windstream equity interests by creditors including the backstop parties pursuant to the Backstop Commitment Agreement described in the reorganization plan. The post-second step 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 disclosable interest holders, and will confirm final percentages held in New Windstream in applicable post-consummation notices.

partnership. EALP will hold this interest indirectly, through Nexus Aggregator L.P., a Delaware limited partnership, which will directly hold Elliott’s equity interest in New Windstream. No disclosable individual or entity above EALP will hold an equity interest in New Windstream. Nexus Aggregator L.P.’s voting interest in New Windstream would be controlled by its general partner Nexus Aggregator GP LLC, a Delaware limited liability company, which, in turn, will be wholly controlled by EALP. EALP’s voting interest in New Windstream—through a series of intermediary entities described in Exhibit C—will ultimately be controlled by Paul Singer, a U.S. citizen.

## **2. Franklin**

Franklin Resources Inc. (NYSE: BEN), operating as Franklin Templeton (“Franklin”), will, through various investment funds, control an estimated 16.2% share of the equity of New Windstream upon completion of the first step described below, and ultimately control an estimated 7.7% once the second step is complete.<sup>4</sup>

Franklin is a U.S. investment firm with global operations headquartered at One Franklin Parkway, San Mateo, California 94403. Franklin was founded over 70 years ago, and today manages almost \$600 billion in assets for its clients. The company provides investment management services, trades in securities, and operates over 100 mutual funds.

Franklin’s disclosable equity interest in New Windstream will be held by three mutual funds registered with the Securities and Exchange Commission (“SEC”) as investment companies under the Investment Company Act of 1940, as amended. Each of the funds is publicly traded and has a unique set of shareholders. The funds are managed by Franklin Mutual

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<sup>4</sup> Subject to the exercise of rights under the Backstop Commitment Agreement described in note 3 *supra*.

Advisers, LLC (“FMA”), a Delaware limited liability company that is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940, as amended. The managing member and sole member of FMA is Franklin/Templeton Distributors, Inc. (“FTDI”), a New York corporation, a registered broker dealer with the Securities and Exchange Commission (“SEC”) and a member of Financial Industry Regulatory Authority. FTDI is a wholly-owned subsidiary of Franklin Resources, Inc. (“FRI”), a Delaware corporation and publicly traded company registered with the SEC and whose shares trade on the New York Stock Exchange. Franklin’s ownership structure is described in Exhibit D.

#### **D. Other Owners**

Funds controlled by four other investment companies are anticipated to hold an estimated 32.1% of the equity of New Windstream upon completion of the first step described below, and ultimately control an estimated 33.2% once the second step is completed.<sup>5</sup> As with Elliott and Franklin, 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 is 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 and its

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<sup>5</sup> Subject to the exercise of rights under the Backstop Commitment Agreement described in note 3 *supra*.

subsidiaries, 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; and (4) Brigade Capital Management, LP, and its subsidiaries, which is an investment firm that is headquartered at 399 Park Avenue, Suite 1600, New York, NY 10022.

PIMCO is, ultimately, owned and controlled by Allianz SE, a multinational financial services company headquartered in Munich, Germany. Oaktree is majority owned by Brookfield Asset Management, an asset management company headquartered in Toronto, Canada.

None of these other investment companies will individually have a disclosable interest upon completion of the first step. Upon completion of the second step, it is anticipated that only PIMCO will control an ownership interest of 10% or more.

## **E. Description of the Transaction**

### **1. Plan of Reorganization**

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

company's post-emergence business plan,<sup>6</sup> which was amended on May 6, 2020.<sup>7</sup> No competing reorganization plans have been filed or are expected to be filed, and the bankruptcy court has scheduled a hearing to consider confirmation of the plan of reorganization on June 24, 2020.

Under the terms of the plan, Windstream's first lien debtholders will equitize a portion of their debt claims against Holdings and Windstream, and receive repayment or replacement loans for the remaining portion. As a result of equitizing their debt and exercising subscription rights and equity commitments in connection with the plan, the existing holders of first lien debt of Windstream, considered as a group, will acquire 100% of the equity of New Windstream (subject to dilution resulting from, among other things, an equity management incentive plan). However, as noted above, no entity is anticipated to obtain either *de jure* control of New Windstream (50% or more of New Windstream's equity) or *de facto* control of New Windstream. The plan contemplates that Applicants will secure exit financing in an amount up to \$3,250,000,000 (inclusive of a target \$750,000,000 in committed revolving credit facilities expected to be undrawn at close), a portion of which will be used, among other things, to repay or replace the company's existing first lien debt. The plan contemplates that some of Applicants' other debt obligations will be discharged, with certain creditors receiving cash payments. As a result of the

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<sup>6</sup> 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);

<sup>7</sup> 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). 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.

reorganization, the company's debt will be reduced by approximately 50%. Thus, the proposed transaction will deleverage the company and place it on a sound financial footing.

Moreover, as part of the bankruptcy proceeding, on March 6, 2020, Holdings filed a motion with the Bankruptcy Court seeking approval of a renegotiated agreement among Holdings, Windstream, and Uniti Group Inc. ("Uniti") for Windstream's lease of Uniti's network assets to support its provision of service to its customers.<sup>8</sup> As part of this agreement (which also settles certain claims and causes of action asserted by Holdings and Windstream against Uniti during the bankruptcy process), in addition to certain amended lease terms, Uniti will contribute up to \$1.75 billion for investment in the network to support more extensive deployments of fiber throughout Windstream's service areas, resulting in expanded availability of 1 Gigabit broadband speeds for consumers and small and medium businesses in Windstream's ILEC footprint, and a stronger network to deliver advanced communications solutions to customers in Windstream's CLEC footprint. Specifically, Uniti has committed to fund up to a range of \$125 million to \$225 million in network improvements per year for each of the ten years starting in 2020, including up to \$125 million in loans for equipment purchases related to network upgrades or customer premises equipment.<sup>9</sup> These investments, along with the new capital structure that Windstream will be able to achieve after emergence, will allow New Windstream to expand 1 Gigabit fiber-based internet service and execute a post-emergence business plan that enhances New Windstream's competitive position and the network it leases. Uniti will further purchase

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<sup>8</sup> 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 (Bankr. S.D.N.Y. entered Mar. 6, 2020).

<sup>9</sup> *Id.* at 10.

certain assets from the Applicants for an aggregate price of approximately \$285 million; and make certain cash payments totaling approximately \$490 million over 20 quarterly installments. In addition, as part of the renegotiated agreement, certain Windstream operating subsidiaries will assign some optical fiber assets to Uniti as part of the overall plan for Windstream to emerge from bankruptcy. The court approved the agreement on May 8, 2020.<sup>10</sup>

As noted above, pursuant to the reorganization, New Windstream will become the ultimate parent company of Windstream's operating subsidiaries and will indirectly hold its licenses and authorizations.<sup>11</sup> The plan will be implemented following the regulatory approvals from the Commission contemplated herein as well as, where required under applicable state law, the public utility commissions in states where Windstream operates.

## **2. Proposed Two-Step Process**

Operating as a debtor-in-possession imposes costs on Windstream that will not be incurred once it has emerged from bankruptcy. Once that has occurred, Windstream may use the funds presently covering those costs for Windstream's business. For this reason, to facilitate the company's prompt exit from bankruptcy, Applicants propose a two-step process under which, as a first step, New Windstream and its subsidiaries would emerge from bankruptcy with aggregate foreign ownership lower than the 25% statutory limit for indirect interests under Section

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<sup>10</sup> See Order Approving the Settlement Between the Debtors and Uniti, Case No. 19-22312 (Bankr. S.D.N.Y. entered May 12, 2020). Windstream is filing a separate application under Section 214 for approval of the assignment of the fiber assets noted in the text to Uniti. This assignment is not dependent on Windstream's emergence from bankruptcy and raises no discernable regulatory issues or concerns. As a result, as noted in the separate application, Windstream respectfully requests that the Commission approve it promptly.

<sup>11</sup> The reorganization may ultimately call for *pro forma* restructuring, addition of an additional holding entity, or internal transfers upon emergence, in which case the Applicants will amend this application.

310(b)(4) and no foreign entity holding an indirect voting or equity interest of 10% or greater (“Step One”). At that stage, various prospective foreign indirect investors in New Windstream would hold warrants entitling them to obtain indirect equity interests. Such warrants could not be exercised until Commission approves a higher level of foreign investment (“Step Two”).

In Step Two, within thirty days after Windstream has emerged from bankruptcy, the then-owners of New Windstream would file a Petition for Declaratory Ruling with the Commission requesting approval to permit the exercise of the warrants which, when exercised, would lead to the acquisition by foreign entities of indirect interests in New Windstream with interests sufficient for disclosure or specific approval in some cases, and in the aggregate greater than 25% (“Step Two”). Specifically, the Petition for Declaratory Ruling would seek authorization of New Windstream to be up to 100% foreign owned and for specific approval of any foreign investors exceeding Commission thresholds including a foreign Elliott affiliate, as well as PIMCO and Oaktree and their affiliated entities.<sup>12</sup> The warrants would not be exercisable until after that approval has been granted.<sup>13</sup> This two-step process will allow New Windstream,

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<sup>12</sup> It is possible that the petition for declaratory ruling will also seek authorization for other investors that are estimated to hold 5% or less of New Windstream’s equity at the conclusion of Step Two, but who may wish to acquire a larger interest after grant of the petition.

<sup>13</sup> See *Applications Granted for the Transfer of Control of Fusion Connect, Inc., Debtor-In-Possession, and Subsidiaries*, Public Notice, 35 FCC Rcd 409 (WCB, IB 2020) (“*Fusion Connect Notice*”); *Liberman Television of Dallas License LLC, Debtor-in-Possession et al.*, Order, 34 FCC Rcd 8543 (MB 2019) (“*Liberman Order*”) (both permitting a two-step process using an initial distribution of special warrants in lieu of equity that advances the public interest by permitting licensees to emerge from bankruptcy and begin normal operations more quickly than would otherwise be possible).



Windstream and their subsidiaries to efficiently emerge from bankruptcy and avoid the significant administrative cost of remaining in bankruptcy for an extended period of time.<sup>14</sup>

With regard to these immediate applications for Step One, the Commission’s rules state that “[i]n calculating foreign equity and voting interests, the Commission does not consider convertible interests such as options, warrants and convertible debentures until converted, unless specifically requested by the petitioner, i.e., where the petitioner is requesting approval so those rights can be exercised in a particular case without further Commission approval.”<sup>15</sup> Applicants are not requesting approval of the exercise of the warrants at Step One, so the Commission need not consider the warrants at this stage.

#### **F. Standard of Review**

The Commission assesses transfers of control under Sections 214(a) and 310(d) of the Communications Act, granting a proposed transfer upon determining that it serves the public interest, convenience and necessity. The Commission makes this determination by first assessing whether the proposed transaction complies with “specific provisions of the Act, other applicable statutes, and the Commission’s rules.”<sup>16</sup> If the proposed transaction does not violate a statute or rule, then the Commission assesses whether the transaction will result in public interest

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<sup>14</sup> As detailed in Section III below, applicants request that the Commission waive the following provisions of its rules to the extent needed to approve the 2-step process described above: 47 C.F.R. §§ 1.5000(a)(1), 1.948, 1.2112, 63.03, 63.04, 63.18, and 63.24.

<sup>15</sup> 47 C.F.R. § 1.5001 Note to paragraph (i)(3)(ii)(A); *see also Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, 28 FCC Rcd 5741, 5774 n. 171 (2013).

<sup>16</sup> *Level 3 Communications, Inc. and CenturyLink, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9585, ¶ 8 (2017) (“*Level 3/CenturyLink Order*”).

harms, including whether the transaction will result in any anti-competitive effect, and whether any such harms can be ameliorated by narrowly tailored, transaction-specific conditions.<sup>17</sup> The Commission then weighs any harms against the public interest benefits of the transaction, with the applicant bearing “the burden of demonstrating that the transaction will not violate or interfere with the objectives of the Act or Commission rules, and that the predominant effect of the transaction will be to advance the public interest.”<sup>18</sup> The Commission may approve a transaction that is unlikely to raise public interest concerns or “if the Commission is able to find that narrowly tailored, transaction-specific conditions are able to ameliorate any public interest harms and the transaction is in the public interest.”<sup>19</sup>

## **II. THE PROPOSED TRANSACTION WILL RESULT IN SUBSTANTIAL PUBLIC INTEREST BENEFITS AND NO COMPETITIVE OR OTHER HARMS**

The proposed transaction will not violate the Communications Act or any Commission rules or policies. The proposed transaction will not result in any change in Windstream’s ongoing operations that would threaten to take it out of compliance with any of its regulatory

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<sup>17</sup> *Id.* at 9585-86, ¶ 9.

<sup>18</sup> *SBC Communications Inc. and BellSouth Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25464, ¶ 13 (2000) (“*SBC/Bell South Order*”); *see also Frontier Communications Corporation and Verizon Communications Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 9812, 9815, ¶¶ 8, 9 (2016) (“*Frontier/Verizon Order*”) (explaining that the balancing test weighs potential harms of a transaction with, among other things, a “preference to protect and promote competition in relevant markets, accelerate private-sector deployment of advanced services, ensure a diversity of license holdings”).

<sup>19</sup> *Id.* at 9586, ¶¶ 10-11; *see also SBC/Bell South Order*, 15 FCC Rcd at 25464, ¶ 13 (The Commission reviews “(1) whether the transaction would result in the violation of the Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission’s implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits”).

obligations or commitments. Windstream remains committed to meeting its obligations to complete deploying broadband facilities in areas in which it was awarded Connect America Fund Phase II funding.<sup>20</sup> Moreover, the Commission has repeatedly validated Windstream’s qualifications to hold licenses and authorizations.<sup>21</sup>

The proposed transaction will generate substantial benefits and result in no countervailing harms. Primarily, the proposed transaction will facilitate the emergence of New Windstream, Windstream, and its subsidiaries from bankruptcy with substantially less debt and improved operational and leasing arrangements with Uniti, while providing compensation to their creditors. As a general matter, “the Commission has long recognized the clear public interest benefits in a license or authorization holder being able to assign or transfer control of its license or authorization freely.”<sup>22</sup> With regard to bankruptcies, the Commission has stated that an emergence through a successful settlement of outstanding debt obligations is, in and of itself, a substantial public interest benefit:

[F]acilitating a telecommunications service provider’s successful emergence from bankruptcy advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors. It is the Commission’s policy to support the goals of the bankruptcy laws and, where

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<sup>20</sup> See “Windstream Meets Its CAF II Broadband Deployment Milestones for 2019,” available at <https://news.windstream.com/news/news-details/2020/Windstream-Meets-Its-CAF-II-Broadband-Deployment-Milestones-For-2019/default.aspx> (last visited May. 16, 2020) (“The company will complete deployment to 100 percent of its CAF II locations by the program’s Dec. 31, 2020 deadline”).

<sup>21</sup> See, e.g., *Wireless Telecommunications Bureau Grants 24 GHz Band Upper Microwave Flexible Use Licenses, Auction 102*, Public Notice, DA 19-1258 (released Dec. 11, 2019), Attachment A at 43-44 (granting 24 GHz licenses won at auction to Windstream following review of the company’s long form application).

<sup>22</sup> *T-Mobile US, Inc. and Sprint Corp.*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10596, ¶ 41 (2019); see also *Level 3/CenturyLink Order*, 32 FCC Rcd at 9585, ¶ 8.

possible, to accommodate those goals with the goals inherent in the Communications Act, which we are charged to implement.<sup>23</sup>

Put another way, “facilitating the retirement of debt and improving access to capital” can result in “significant public interest benefits.”<sup>24</sup> In the present case, the Commission’s approval is a necessary condition for the emergence from bankruptcy and realization of the benefits provided through the reorganization process.

The Commission also considers that enabling a company to emerge from bankruptcy produces a public interest benefit by allowing a company to avoid service disruption to customers.<sup>25</sup> In Windstream’s case, its wireline, fixed wireless and broadband customers, whether residential, business or enterprise, and whether through its ILEC and CLEC operations, will all benefit from continuing to have access to uninterrupted telecommunications and information services. The proposed transaction will not affect any of the operations of Windstream or its subsidiaries. Windstream 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 proposed transaction. The proposed transaction will

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<sup>23</sup> *WorldCom, Inc. and its Subsidiaries and MCI, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 26484, 26503, ¶ 29 (2003) (“*WorldCom/MCI Order*”); *see also Space Station System Licensee, Inc. and Iridium Constellation LLC*, Memorandum Opinion and Order, 17 FCC Rcd 2271, 2289, ¶ 44 (2002) (consummating a reorganization through bankruptcy serves “the public interest by furthering the equitable purposes of the Federal Bankruptcy Act”).

<sup>24</sup> *DBSD North America, Inc. and DISH Network Corp.*, Order, 27 FCC Rcd 2250, 2261, ¶ 26 (2012).

<sup>25</sup> *WorldCom/MCI Order*, 18 FCC Rcd at 26504, ¶ 30.

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.

Separately, the Commission has recognized that allowing a company to emerge from bankruptcy can maintain a viable competitor and thus “serves the competitive goals of the Act and the public interest.”<sup>26</sup> This proposed transaction will not create any new combinations and is thus incapable of generating anticompetitive horizontal or vertical concentration.<sup>27</sup> Moreover the proposed transaction will not otherwise enable Windstream to engage in anticompetitive behavior in any market. Windstream will continue to face competition in its service areas from a variety of different providers using different network technologies.

Indeed, approval of the transfer of control will increase competition. It will allow a much more stable and solvent Windstream with a stronger capital structure and better access to capital. Freed from the operational constraints of bankruptcy, Windstream will be better able 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:

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<sup>26</sup> *Id.* at 26504, ¶ 31.

<sup>27</sup> An application currently pending before the Commission, if approved, would result in Elliott holding 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 state regulators. *See* ECFS Docket No. 19-396; IB File Nos. ITC-T/C-20191230-00203, ITC-T/C-20191230-00204, ITC-T/C-20191230-00205, ITC-T/C-20191230-00206; *Joint Domestic and International Section 214 Application Filed for the Transfer of Control LogMeIn, Inc. from its current shareholders to Logan Parent LLC*. Disclosures regarding Elliott’s pending investment in LogMeIn are provided in the accompanying Section 214 transfer application. Approval of both applications by the Commission, however, would not result in Elliott holding a controlling 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.

- start accessing the benefits of Windstream’s renegotiated agreement with Uniti, under which up to \$1.75 billion in network capital improvements will support an expanded fiber-optic network which will enable Gigabit speeds—enhancing the broadband capabilities available to both residential and small and medium businesses and placing 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;
- continue its investments in customer service and support, enhancing its customer experience and satisfaction; and
- better position itself, with enhanced financial and operational flexibility, to participate in Commission broadband deployment funding auctions, such as the Rural Digital Opportunity Fund.

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.<sup>28</sup>

In sum, the transaction will not violate any statute or rules, will result in no public interest harms, and will directly result in significant public interest benefits that have been long-recognized by the Commission. The emergence from bankruptcy contemplated by the proposed transactions will result in a better capital structure for Windstream, a better arrangement with Uniti, and a stronger competitive landscape for American consumers.

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<sup>28</sup> See *Frontier/Verizon Order*, 30 FCC Rcd at 9825-29, ¶¶ 31, 32, 34, 38 (finding that improved broadband services made possible by a transaction would likely result in benefits to consumers).

### **III. WAIVER REQUEST**

#### **A. Summary of Relief Requested**

As referenced above in the Description of the Transaction, the Applicants request—to the extent required—a waiver of certain Commission rules and processing policies to seek approval of the transfer of control of Windstream as a two-step process. In Step One, certain parties eligible to obtain equity under the Plan of Reorganization would be issued special warrants sufficient to ensure that, following the completion of Step One, (1) no non-U.S.-organized entity holds a ten percent or greater voting or equity interest in New Windstream and (2) the aggregate foreign equity and voting interests in New Windstream would remain below the 25% threshold under Section 310(b) of the Act.

In Step Two of the transaction, the Applicants would file, no later than thirty days following the approval of Step One, a Petition for Declaratory Ruling effectively seeking Commission approval to permit exercise of the special warrants issued at consummation of Step One. The Step Two Petition would include requests for specific approval of each foreign-owned investor that would have sufficient post-exercise voting or equity ownership stakes in New Windstream to require approval. The Petition would also seek advance approval for New Windstream to be up to 100% foreign-owned in the aggregate, consistent with the Commission's Rules governing such requests.

As explained above, 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 Plan of Reorganization. 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. A prompt emergence from bankruptcy will allow the company to resume normal operations and

will have significant public interest benefits, including providing even greater assurance of continuity of service to customers.

## **B. Background**

The Commission has historically refrained from considering pre-paid warrants as present interests for calculating ownership in Commission-regulated entities, a position consistently adhered to in cases covering myriad types of Commission licenses subject to the limitations on foreign ownership under Section 310(b) of the Communications Act. Accordingly, it is well-established that “an option held by an alien to buy stock in a licensee or the parent of a licensee is not cognizable until exercised.”<sup>29</sup> Indeed, the notes to the current rules governing petitions for declaratory ruling under Section 310(b) provide that in “calculating foreign equity and voting interests, the Commission does not consider convertible interests such as options, warrants and convertible debentures until converted, *unless specifically requested by the petitioner, i.e., where the petitioner is requesting approval so those rights can be exercised in a particular case without further Commission approval.*”<sup>30</sup> Here, of course, the Applicants specifically request that warrants *not* be considered at Step One, and that, consistent with the note to the rules, such consideration be deferred to Step Two.

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<sup>29</sup> See *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 6569 (1991). See also *Stratos Global Corp. and Robert M. Franklin*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 21328, 21361, ¶ 78 (2007) (“The Commission has long held that future interests such as warrants, options and convertible debt do not constitute capital stock until exercised or converted and, thus, are not relevant to the foreign ownership analysis”); *Tribune Company and its Licensee Subsidiaries, Debtors in Possession, et al.*, Memorandum Opinion and Order, 27 FCC Rcd 14239, 14245 n.32 (MB 2012); *NextWave Personal Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2030, 2051, ¶ 46 (WTB 1997); *BBC License Subsidiary, L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973 n.12, citing *Univision Holdings, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6672, 6674, ¶ 8 (1992), *recon. denied*, 8 FCC Rcd 3931 (1993).

<sup>30</sup> 47 C.F.R. §1.5001(i), Note to paragraph (i)(3)(ii)(A) (emphases added).



At the suggestion of Commission staff, Applicants seek this temporary and limited waiver to ensure that the special warrants will not be deemed to be equivalent to present equity and therefore subject to Commission approval even without a pending request for their exercise. In recent cases, without definitively deciding this issue, three different Bureaus have granted two specific requests for waiver of Commission Rules governing transfers of control of domestic and international Section 214 authorizations, as well as broadcast and common carrier Title III licenses subject to Section 310(b) of the Communications Act, for the specific purpose of permitting a two-step approval process like that contemplated here.<sup>31</sup> These waivers allowed companies to emerge from bankruptcy without considering interests convertible to equity in step one, but conditioned grant of the waivers upon deferring review of these interests to an immediate second-stage of review.

Delayed consideration of certain potential foreign ownership stakes is warranted to permit a regulatee subject to Section 214 transfer of control review and/or Section 310(b) ownership limits to emerge quickly from bankruptcy without the need for protracted regulatory review of non-U.S. ownership stakes. The equitable powers and role of the Bankruptcy Court in overseeing the Chapter 11 process provide a critical distinction from cases in which warrants are issued in a negotiated private license acquisition. Such was the case in each of the two waiver requests noted above that were granted in order to allow two-step review, permitting early emergence from bankruptcy.

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<sup>31</sup> See *Fusion Connect Notice*, 35 FCC Rcd at 413; *Lieberman Order*, 34 FCC Rcd at 8551, ¶16 (both permitting a two-step process using an initial distribution of special warrants in lieu of equity that advances the public interest by permitting licensees to emerge from bankruptcy and begin normal operations more quickly than would otherwise be possible).

### C. Justification for Waiver

This Application implicates the same basic set of facts as the waiver decisions discussed above: like those applicants, Windstream seeks to emerge from bankruptcy pursuant to a plan expected to receive court approval in the near term.<sup>32</sup> The special warrants to be issued upon emergence at Step One will allow the holders to purchase equity in New Windstream only after all necessary Commission approvals have been granted in Step Two.

The foreign interests that will be considered at Step Two are the types of foreign interests in U.S. Title III licensees and Section 214 authorization holders that the Commission routinely approves following appropriate regulatory review. They are German and Canadian investors in well-established U.S.-based investment management companies and investment vehicles established under the laws of nations like Bermuda and the Cayman Islands. These kinds of investments, from countries with long-standing productive relationships with the United States and important trade and security partners, are commonplace.

This is not a circumstance where a foreign carrier seeks a controlling interest in a U.S. carrier or where ownership interests would be held or controlled by countries with an adversarial trade or security relationship with the United States. Thus, while the foreign ownership interests can be fully vetted prior to the closing of Step Two, there should be no concern about allowing Step One to proceed before that review is completed.<sup>33</sup>

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<sup>32</sup> See, e.g., *Lieberman Order*, 34 FCC Rcd at 8550, ¶14 (“It is the Commission’s longstanding practice to accommodate federal bankruptcy law when doing so will not unduly interfere with its public interest obligations under the Act”).

<sup>33</sup> See, e.g., *Lieberman Order*, 34 FCC Rcd at 8550, ¶ 14 (“[G]rant of the waiver effectively provides interim Section 310(b)(4) authority only, in order to enable the prompt emergence of the LBI Debtors from bankruptcy, while preserving the Commission’s ability to review and rule on LBI’s foreign ownership following such emergence”), citing *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications Inc.*, Order, 23 FCC Rcd 4436, 4444, ¶ 18 (2008)

Enabling a prompt emergence from bankruptcy will also lead to significant and immediate public interest benefits. As the Commission has found, facilitating successful and timely emergence from bankruptcy “advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors.”<sup>34</sup> In addition, allowing Windstream to emerge from bankruptcy will enable New Windstream to focus entirely on improving service to its customers. The net result is clear: the expedited emergence of Windstream and its subsidiaries from bankruptcy with substantially less debt and improved operational arrangements will preserve current service to customers and foster greater near-term competition in local markets for telecommunications services across the country.<sup>35</sup>

**D. Request for Relief**

The Commission may waive any of its rules if “good cause” is demonstrated.<sup>36</sup> In general, waiver is appropriate if (1) special circumstances warrant a deviation from the general rule; and (2) such deviation would better serve the public interest than would strict adherence to

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(granting the petitioners authority to hold on an interim basis up to a non-controlling 49.99% equity and voting interest in SkyTerra Communications subject to and without prejudice to any action the Commission may take on the associated request for permanent authority). *See also Fusion Connect Notice*, 35 FCC Rcd at 413.

<sup>34</sup> *Fusion Connect Notice*, 35 FCC Rcd at 413 (quoting *WorldCom/MCI Order*, 18 FCC Rcd at 26503, ¶29 (2003)). *See also LaRose v. FCC*, 494 F.2d at 1146, n.2 (stating that in applying its policies where an application arises from bankruptcy, the Commission should consider “the public interest in the protection of innocent creditors”).

<sup>35</sup> *See, e.g., Liberman Order*, 34 FCC Rcd at 8551, ¶ 15 (“[P]rompt grant of the Applications, subject to waiver, will expedite LBI Debtors’ emergence from bankruptcy and facilitate operational improvements made possible by new ownership.”).

<sup>36</sup> *See* 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

the rule.<sup>37</sup> The Commission will grant a waiver of its rules in a particular case upon a showing that the relief requested will not undermine the policy objective of the rule in question and will otherwise serve the public interest.<sup>38</sup> In determining whether waiver is appropriate, it is well-established that the Commission should “take into account considerations of hardship, equity, or more effective implementation of overall policy.”<sup>39</sup>

Each of these factors applies in this case. As detailed in the foregoing section, favorable action will produce both public and private benefits by promoting competition and consumer welfare. In contrast, delaying Windstream’s emergence from bankruptcy would impose significant hardships on the Applicants and could have an adverse impact both on Windstream customers and on competition in markets in which Windstream operates.

Accordingly, to the extent required to expedite initial review and permit a two-step approval process, the Applicants seek a temporary and limited waiver of Sections 1.5000(a)(1), 1.948, 1.2112, 63.03, 63.04, 63.18, and 63.24 of the Commission’s Rules to the extent that any of these rules might require immediate scrutiny of pre-paid warrants contemporaneously with approval of present equity interests in Windstream that would exist at emergence. Applicants understand that such a waiver will be conditioned on filing of a Petition for Declaratory Ruling seeking approval to exercise the special warrants in Step Two of the proposed transaction within 30 days of Windstream’s emergence from bankruptcy.<sup>40</sup>

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<sup>37</sup> See *Northeast Cellular*, 897 F.2d at 1166.

<sup>38</sup> See *WAIT Radio*, 418 F.2d at 1157.

<sup>39</sup> *Id.* at 1159.

<sup>40</sup> See *Fusion Connect Notice*, 35 FCC Rcd at 413-14 (granting the applications and waiver requests “conditioned upon the filing, no later than 30 days after closing the transaction authorized by such grant, of a Petition for Declaratory Ruling to exceed the aggregate foreign

#### **IV. ADDITIONAL MATTERS**

##### **A. Additional Authorizations**

Windstream holds numerous Commission licenses and has extensive operations throughout the United States. The Applicants intend for the lists of call signs and other references to licenses and authorizations referenced in the Applications to be complete and to include all licenses held by the respective licensees that are subject to the proposed transaction. Nevertheless, Windstream and/or its subsidiaries may have on file, or may hereafter file, additional requests for authorizations for new or modified facilities which may be granted while the transfer of control applications are still pending. Accordingly, the Applicants request that the Commission's order granting the transfer of control applications include the authority for the Transferees to acquire control of (1) any license or authorization issued to Windstream or its subsidiaries during the Commission's consideration of the transfer of control applications or during the period required for consummation of the transaction following approval, (2) any applications that are pending at the time of consummation, and (3) any leases of spectrum that Windstream and its subsidiaries enter into while this transaction is pending before the Commission or the period required for consummation. In addition, the Applicants ask that Commission approval include any licenses, spectrum leases and authorizations that may have been inadvertently omitted from the applications and related filings. Inclusion of authorizations

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ownership benchmark set forth in section 310(b)(4) of the Act..."). Unlike the circumstance in *Fusion Connect*, the circumstances here require only a Petition for Declaratory Ruling at Step Two as no entity will gain control at either step of the transaction; in *Fusion Connect*, the entity obtaining control at step one was divested of control at step two.

issued while the Transaction is pending and during the consummation period, and applications pending at the time of consummation, is consistent with prior Commission decisions.<sup>41</sup>

## **B. Exemption from Cut-Off Rules**

Pursuant to Sections 1.927(h), 1.929(a)(2), and 1.933(b) of the Commission's rules, and to the extent necessary,<sup>42</sup> the Applicants request a blanket exemption from any applicable cutoff rules in cases where Windstream and its subsidiaries file amendments to pending applications to reflect the change in the ownership of the licenses and authorizations related to the proposed transaction. Specifically, the Applicants request that amendments reporting a change in ownership not be treated as major amendments that require a second public notice for still-pending applications. The scope of the transaction demonstrates that the ownership changes would not be made for the acquisition of any particular pending application, but as part of a larger transaction undertaken for an independent and legitimate business purpose. Grant of this

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<sup>41</sup> See, e.g., *AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8773, ¶ 165 (2010); *AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21627, ¶ 275 (2004).

<sup>42</sup> See *Sprint Nextel Corp. and Clearwire Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶ 105 (2008). With respect to cut-off rules under Sections 1.927(h) and 1.929(a)(2), the Commission previously has found that the public notice announcing the transaction will provide adequate notice to the public with respect to the licenses involved, including for any license modifications pending. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. See *Ameritech Corp. and GTE Consumer Services Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 6667, 6668, ¶ 2 n.6 (1999); *Comcast Cellular Holdings, Inc. and SBC Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 10604, 10605, ¶ 2 n.3 (1999).

request would be consistent with previous Commission actions routinely granting a blanket exemption in cases involving multiple licenses.<sup>43</sup>

### **C. Unconstructed Facilities**

Nearly all of the Commission authorizations covered by the transfer of control applications involve constructed facilities. However, certain of these authorizations relate to spectrum that Windstream acquired in Auctions 101, 102 and 103.<sup>44</sup> These authorizations have been issued but are not yet required to be constructed, and have not yet been constructed. The transfer of control of these unbuilt facilities is incidental to this transaction, and no separate payment has been or will be made for any individual authorization or facility. Consequently, there is no need to review the transaction under the Commission's anti-trafficking rules.<sup>45</sup>

### **D. Unjust Enrichment**

None of the licenses or authorizations held by Windstream were obtained pursuant to set-asides or bidding credits for designated entities. Consequently, the unjust enrichment provisions of the Commission's auction rules do not apply.<sup>46</sup>

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<sup>43</sup> See, e.g., *Comcast Corp. and AT&T Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23330-35, ¶ 224 (2002); *PacifiCorp Holdings, Inc., and Century Telephone Enterprises, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8915-16, ¶ 47 (1997).

<sup>44</sup> The specific authorizations at issue are listed in Exhibit E.

<sup>45</sup> See 47 C.F.R. § 1.948(i)(1) (authorizing the Commission to request additional information if the transaction appears to involve unconstructed authorizations obtained for the "principal purpose of speculation"); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities provided that they are "incidental to the sale [of] other facilities or merger of interests.").

<sup>46</sup> See 47 C.F.R. § 1.2111(b)-(d).

**E. Environmental Impact**

The transfers of control of licenses and spectrum leases involved in this transaction will not have a significant environmental effect, as defined by Section 1.1307 of the Commission’s rules.<sup>47</sup>

**F. No Other Waivers**

Aside from the waiver request in Section III, above, and the exemption from the cut-off rules, the Applicants are not requesting any other waivers in connection with these applications.

**G. Permit-But-Disclose *Ex Parte* Status**

The Applicants request that the Commission designate all proceedings related to the proposed transactions as “permit-but-disclose” proceedings under the Commission’s rules controlling *ex parte* presentations.<sup>48</sup> By designating these proceedings as “permit-but disclose” under Section 1.1206, the Commission will encourage and facilitate the development of a full record upon which it can base a fully supported and well-reasoned decision.

**V. CONCLUSION**

For the foregoing reasons, and for the reasons set forth in the individual applications filed herewith, the proposed transaction complies with all applicable Commission rules, and will result in public interest benefits without causing any public interest harms. The Applicants thus request that the Commission expeditiously grant its consent to the proposed transaction by granting the associated transfer of control applications and the waivers requested herein.

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<sup>47</sup> See 47 C.F.R. §§ 1.1307, 1.923(e).

<sup>48</sup> 47 C.F.R. §§ 1.1200-1.1216.



## EXHIBIT A

### FRNs OF REAL PARTIES IN INTEREST

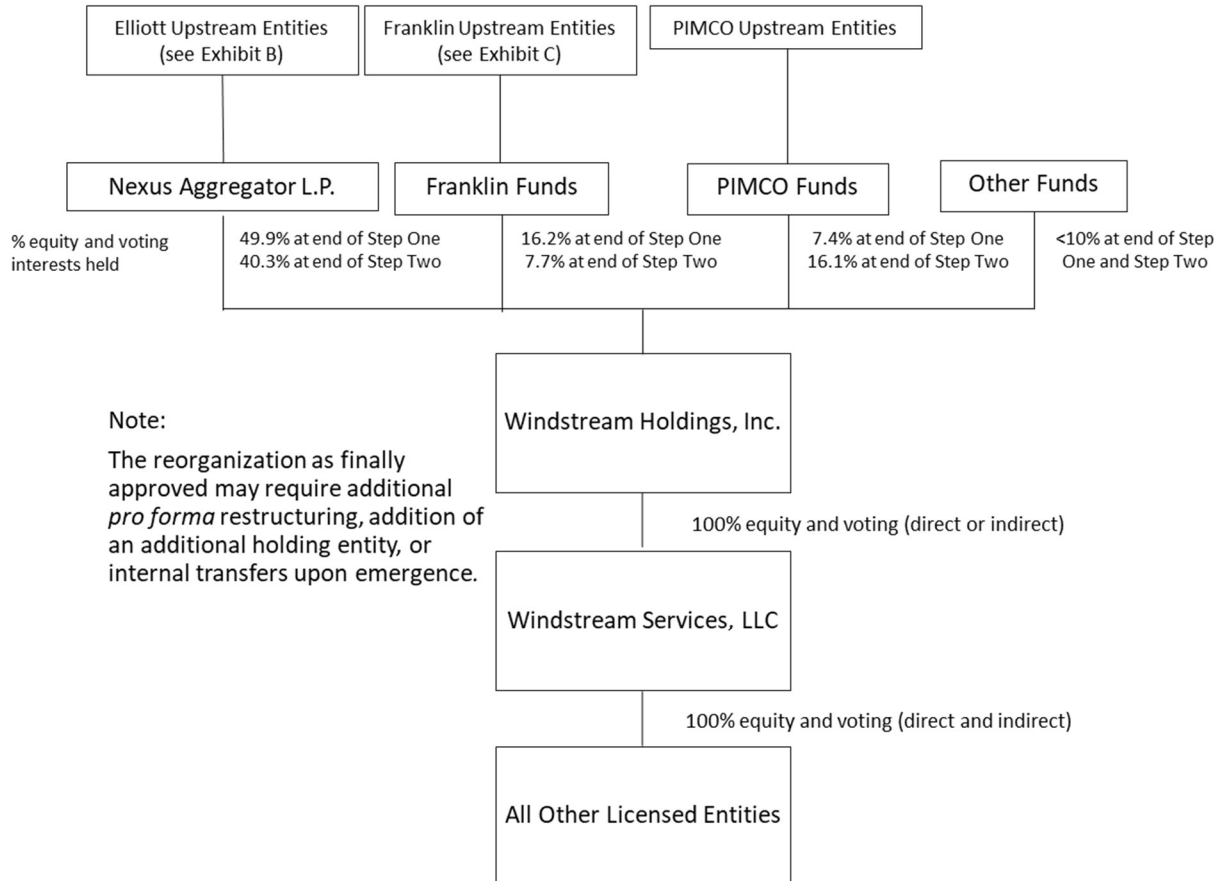
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Windstream Holdings, Inc.	0022732218
Windstream Services, LLC	0014400220
Nexus Aggregator LP	0029572849
Nexus Aggregator GP LLC	0029572922
Elliott Associates, L.P.	0029544921
Elliott Special GP, LLC	0029544962
Elliott Capital Advisors, L.P.	0029544996
Elliott Asset Management LLC	0029545019
Braxton Associates, Inc.	0029545027
Elliott Advisors GP LLC	0029544954
Paul E. Singer	0029555372
Franklin Resources, Inc.	0018738054
Franklin/Templeton Distributors, Inc.	0029596541
Franklin Mutual Advisers LLC	0029596566
Franklin Mutual Quest Fund	0029596574
Franklin Mutual Shares Fund	0029596582
Franklin Mutual Shares VIP Fund	0029596590

## EXHIBIT B

### POST TRANSACTION OWNERSHIP STRUCTURE

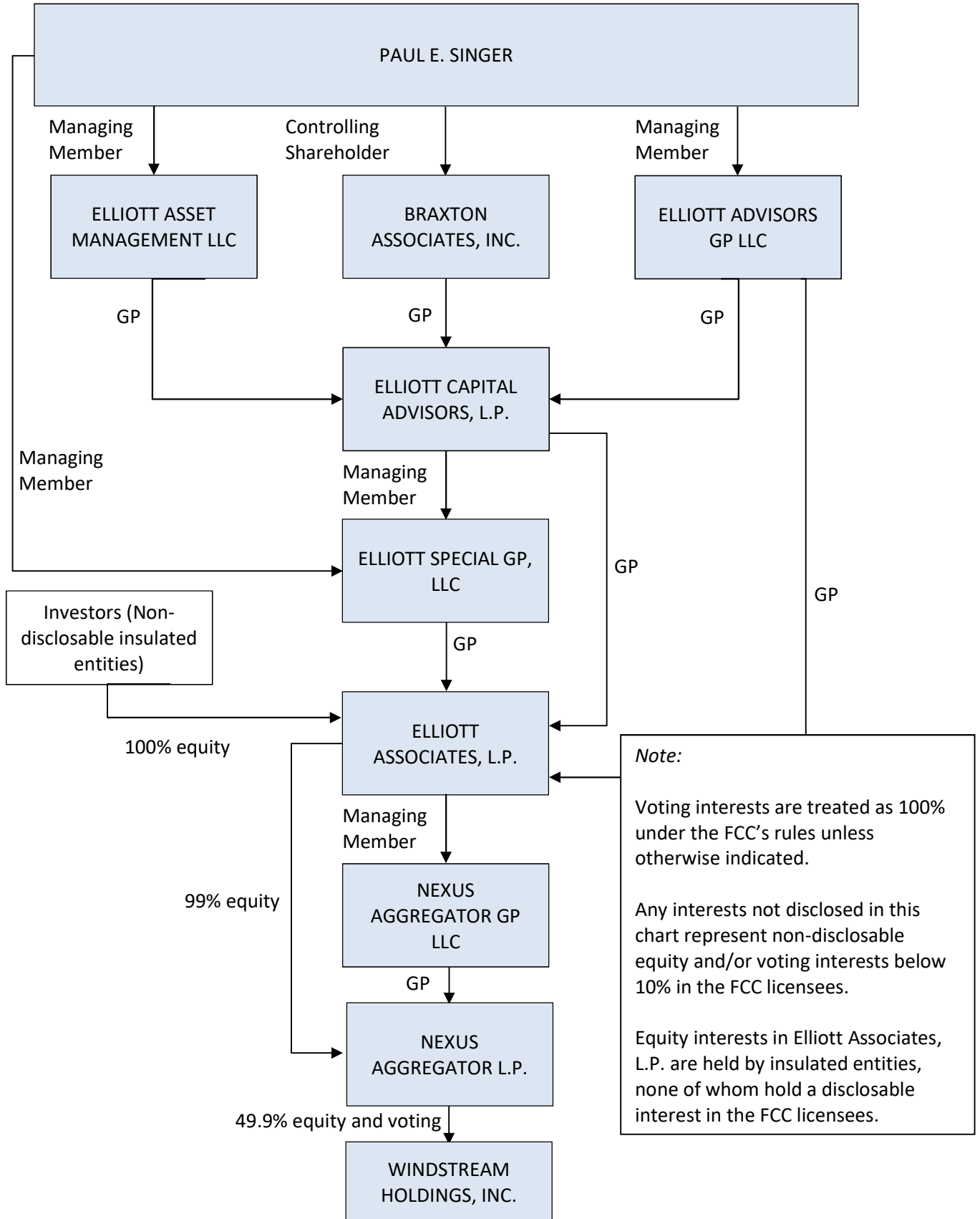
# Windstream Post-Transaction Structure

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



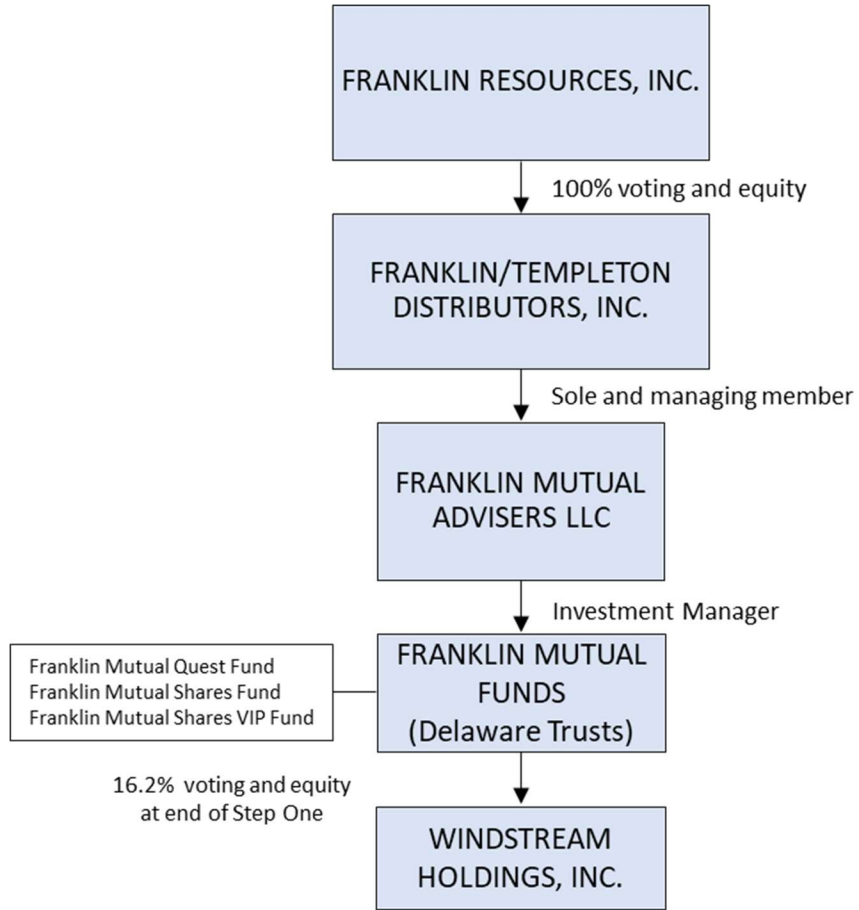
# EXHIBIT C

## ELLIOTT OWNERSHIP STRUCTURE



# EXHIBIT D

## FRANKLIN OWNERSHIP STRUCTURE



## EXHIBIT E

### CERTAIN UNCONSTRUCTED AUCTION 101, 102 AND 103 WIRELESS LICENSES

<b>Auction 101 Licenses 27.500 – 27.925 GHz</b>				
<b>Callsign</b>	<b>Radio Service</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>
WREU275	UU	C05003	ASHLEY, AR	L1
WREU276	UU	C05009	BOONE, AR	L1
WREU277	UU	C05013	CALHOUN, AR	L1
WREU278	UU	C05015	CARROLL, AR	L1
WREU279	UU	C05025	CLEVELAND, AR	L2
WREU280	UU	C05039	DALLAS, AR	L2
WREU281	UU	C05045	FAULKNER, AR	L1
WREU282	UU	C05053	GRANT, AR	L2
WREU283	UU	C05061	HOWARD, AR	L1
WREU284	UU	C05091	MILLER, AR	L2
WREU285	UU	C05097	MONTGOMERY, AR	L1
WREU286	UU	C05105	PERRY, AR	L1
WREU287	UU	C05109	PIKE, AR	L1
WREU288	UU	C05129	SEARCY, AR	L1
WREU289	UU	C05133	SEVIER, AR	L1
WREU290	UU	C05141	VAN BUREN, AR	L1
WREU291	UU	C05149	YELL, AR	L1
WREU292	UU	C13011	BANKS, GA	L1
WREU293	UU	C13085	DAWSON, GA	L1
WREU294	UU	C13119	FRANKLIN, GA	L2
WREU295	UU	C13137	HABERSHAM, GA	L1
WREU296	UU	C13187	LUMPKIN, GA	L1
WREU297	UU	C13213	MURRAY, GA	L1
WREU298	UU	C13257	STEPHENS, GA	L2
WREU299	UU	C13311	WHITE, GA	L2
WREU300	UU	C13313	WHITFIELD, GA	L1
WREU301	UU	C19007	APPANOOSE, IA	L2
WREU302	UU	C19025	CALHOUN, IA	L1
WREU303	UU	C19031	CEDAR, IA	L2
WREU304	UU	C19037	CHICKASAW, IA	L2
WREU305	UU	C19063	EMMET, IA	L2
WREU306	UU	C19075	GRUNDY, IA	L1
WREU307	UU	C19079	HAMILTON, IA	L1
WREU308	UU	C19087	HENRY, IA	L2
WREU309	UU	C19089	HOWARD, IA	L2
WREU310	UU	C19095	IOWA, IA	L1

<b>Auction 101 Licenses 27.500 – 27.925 GHz</b>				
<b>Callsign</b>	<b>Radio Service</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>
WREU311	UU	C19101	JEFFERSON, IA	L2
WREU312	UU	C19107	KEOKUK, IA	L2
WREU313	UU	C19115	LOUISA, IA	L1
WREU314	UU	C19131	MITCHELL, IA	L2
WREU315	UU	C19135	MONROE, IA	L2
WREU316	UU	C19147	PALO ALTO, IA	L1
WREU317	UU	C19183	WASHINGTON, IA	L2
WREU318	UU	C19197	WRIGHT, IA	L1
WREU319	UU	C21019	BOYD, KY	L2
WREU320	UU	C21039	CARLISLE, KY	L1
WREU321	UU	C21043	CARTER, KY	L2
WREU322	UU	C21051	CLAY, KY	L2
WREU323	UU	C21089	GREENUP, KY	L1
WREU324	UU	C21121	KNOX, KY	L2
WREU325	UU	C21125	LAUREL, KY	L2
WREU326	UU	C21133	LETCHER, KY	L1
WREU327	UU	C21135	LEWIS, KY	L1
WREU328	UU	C21139	LIVINGSTON, KY	L1
WREU329	UU	C27141	SHERBURNE, MN	L1
WREU330	UU	C29023	BUTLER, MO	L1
WREU331	UU	C29039	CEDAR, MO	L1
WREU332	UU	C29061	DAVISS, MO	L1
WREU333	UU	C29167	POLK, MO	L1
WREU334	UU	C29211	SULLIVAN, MO	L2
WREU335	UU	C29227	WORTH, MO	L1
WREU336	UU	C31001	ADAMS, NE	L2
WREU337	UU	C31035	CLAY, NE	L1
WREU338	UU	C31059	FILLMORE, NE	L2
WREU339	UU	C31067	GAGE, NE	L2
WREU340	UU	C31095	JEFFERSON, NE	L2
WREU341	UU	C31097	JOHNSON, NE	L2
WREU342	UU	C31129	NUCKOLLS, NE	L1
WREU343	UU	C31133	PAWNEE, NE	L2
WREU344	UU	C31151	SALINE, NE	L2
WREU345	UU	C31159	SEWARD, NE	L2
WREU346	UU	C31169	THAYER, NE	L2
WREU347	UU	C31185	YORK, NE	L2
WREU348	UU	C35025	LEA, NM	L2
WREU349	UU	C36013	CHAUTAUQUA, NY	L2
WREU350	UU	C39105	MEIGS, OH	L1

<b>Auction 101 Licenses 27.500 – 27.925 GHz</b>				
<b>Callsign</b>	<b>Radio Service</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>
WREU351	UU	C42023	CAMERON, PA	L2
WREU352	UU	C42025	CARBON, PA	L1
WREU353	UU	C42031	CLARION, PA	L1
WREU354	UU	C42039	CRAWFORD, PA	L1
WREU355	UU	C42047	ELK, PA	L1
WREU356	UU	C42053	FOREST, PA	L2
WREU357	UU	C42065	JEFFERSON, PA	L2
WREU358	UU	C42119	UNION, PA	L1
WREU359	UU	C45017	CALHOUN, SC	L1
WREU360	UU	C48003	ANDREWS, TX	L2
WREU361	UU	C48035	BOSQUE, TX	L2
WREU362	UU	C48037	BOWIE, TX	L1
WREU363	UU	C48059	CALLAHAN, TX	L2
WREU364	UU	C48067	CASS, TX	L2
WREU365	UU	C48133	EASTLAND, TX	L2
WREU366	UU	C48145	FALLS, TX	L2
WREU367	UU	C48207	HASKELL, TX	L1
WREU368	UU	C48217	HILL, TX	L2
WREU369	UU	C48275	KNOX, TX	L1
WREU370	UU	C48335	MITCHELL, TX	L2
WREU371	UU	C48343	MORRIS, TX	L1
WREU372	UU	C48365	PANOLA, TX	L1
WREU373	UU	C48387	RED RIVER, TX	L1
WREU374	UU	C48389	REEVES, TX	L2
WREU375	UU	C48405	SAN AUGUSTINE, TX	L1
WREU376	UU	C48417	SHACKELFORD, TX	L1
WREU377	UU	C48419	SHELBY, TX	L1
WREU378	UU	C48433	STONEWALL, TX	L2
WREU379	UU	C48447	THROCKMORTON, TX	L2
WREU380	UU	C48455	TRINITY, TX	L1

**Auction 102 Licenses 24.25 – 24.45 & 24.75 – 25.25 GHz**

<b>Callsign</b>	<b>Radio Service</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>
WREV930	UU	PEA086	Frankfort, KY	A
WREV982	UU	PEA086	Frankfort, KY	C
WREW219	UU	PEA086	Frankfort, KY	D
WREV931	UU	PEA117	La Grange, GA	A
WREV983	UU	PEA117	La Grange, GA	C
WREW220	UU	PEA117	La Grange, GA	D
WREV932	UU	PEA128	Macon, GA	A
WREV984	UU	PEA128	Macon, GA	C
WREW221	UU	PEA128	Macon, GA	D
WREV933	UU	PEA133	Nacogdoches, TX	A
WREV969	UU	PEA133	Nacogdoches, TX	B
WREV985	UU	PEA133	Nacogdoches, TX	C
WREW222	UU	PEA133	Nacogdoches, TX	D
WREV934	UU	PEA134	Newark, OH	A
WREV986	UU	PEA134	Newark, OH	C
WREW223	UU	PEA134	Newark, OH	D
WREV935	UU	PEA139	Hot Springs, AR	A
WREV970	UU	PEA139	Hot Springs, AR	B
WREV987	UU	PEA139	Hot Springs, AR	C
WREV936	UU	PEA141	Brainerd, MN	A
WREV988	UU	PEA141	Brainerd, MN	C
WREW224	UU	PEA141	Brainerd, MN	D
WREV937	UU	PEA151	Winston-Salem, NC	A
WREV989	UU	PEA151	Winston-Salem, NC	C
WREW225	UU	PEA151	Winston-Salem, NC	D
WREV938	UU	PEA159	Valdosta, GA	A
WREV990	UU	PEA159	Valdosta, GA	C
WREW226	UU	PEA159	Valdosta, GA	D
WREV939	UU	PEA165	Rome, GA	A
WREV991	UU	PEA165	Rome, GA	C
WREW227	UU	PEA165	Rome, GA	D
WREV971	UU	PEA171	Fort Smith, AR	B
WREV940	UU	PEA177	Savannah, GA	A
WREV992	UU	PEA177	Savannah, GA	C
WREW228	UU	PEA177	Savannah, GA	D
WREV941	UU	PEA199	Dalton, GA	A
WREV993	UU	PEA199	Dalton, GA	C
WREW229	UU	PEA199	Dalton, GA	D
WREV942	UU	PEA201	Eagle Pass, TX	A
WREV972	UU	PEA201	Eagle Pass, TX	B



**Auction 102 Licenses 24.25 – 24.45 & 24.75 – 25.25 GHz**

<b>Callsign</b>	<b>Radio Service</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>
WREV994	UU	PEA201	Eagle Pass, TX	C
WREV943	UU	PEA202	Columbus, GA	A
WREV973	UU	PEA202	Columbus, GA	B
WREV995	UU	PEA202	Columbus, GA	C
WREV944	UU	PEA207	Brunswick, GA	A
WREV996	UU	PEA207	Brunswick, GA	C
WREW230	UU	PEA207	Brunswick, GA	D
WREV945	UU	PEA208	Salisbury, NC	A
WREV997	UU	PEA208	Salisbury, NC	C
WREW231	UU	PEA208	Salisbury, NC	D
WREV946	UU	PEA214	Lincoln, NE	A
WREV998	UU	PEA214	Lincoln, NE	C
WREW232	UU	PEA214	Lincoln, NE	D
WREV947	UU	PEA231	Fremont, NE	A
WREV999	UU	PEA231	Fremont, NE	C
WREW233	UU	PEA231	Fremont, NE	D
WREV948	UU	PEA234	Lexington, NC	A
WREW200	UU	PEA234	Lexington, NC	C
WREW234	UU	PEA234	Lexington, NC	D
WREV949	UU	PEA237	Hinesville, GA	A
WREW201	UU	PEA237	Hinesville, GA	C
WREW235	UU	PEA237	Hinesville, GA	D
WREV950	UU	PEA239	Kannapolis, NC	A
WREW202	UU	PEA239	Kannapolis, NC	C
WREW236	UU	PEA239	Kannapolis, NC	D
WREV951	UU	PEA241	Dublin, GA	A
WREV974	UU	PEA241	Dublin, GA	B
WREW203	UU	PEA241	Dublin, GA	C
WREV952	UU	PEA250	Las Cruces, NM	A
WREV953	UU	PEA272	Brownwood, TX	A
WREW204	UU	PEA272	Brownwood, TX	C
WREW237	UU	PEA272	Brownwood, TX	D
WREV954	UU	PEA275	Corsicana, TX	A
WREW205	UU	PEA275	Corsicana, TX	C
WREW238	UU	PEA275	Corsicana, TX	D
WREV955	UU	PEA308	Americus, GA	A
WREV975	UU	PEA308	Americus, GA	B
WREW206	UU	PEA308	Americus, GA	C
WREV956	UU	PEA331	Plainview, TX	A
WREV976	UU	PEA331	Plainview, TX	B

<b>Auction 102 Licenses 24.25 – 24.45 &amp; 24.75 – 25.25 GHz</b>				
<b>Callsign</b>	<b>Radio Service</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>
WREW207	UU	PEA331	Plainview, TX	C
WREV957	UU	PEA332	Bennettsville, SC	A
WREV977	UU	PEA332	Bennettsville, SC	B
WREW208	UU	PEA332	Bennettsville, SC	C
WREW239	UU	PEA332	Bennettsville, SC	D
WREV958	UU	PEA334	Pampa, TX	A
WREV978	UU	PEA334	Pampa, TX	B
WREW209	UU	PEA334	Pampa, TX	C
WREV959	UU	PEA337	Mineral Wells, TX	A
WREV979	UU	PEA337	Mineral Wells, TX	B
WREW210	UU	PEA337	Mineral Wells, TX	C
WREV960	UU	PEA341	Alamogordo, NM	A
WREW211	UU	PEA341	Alamogordo, NM	C
WREW240	UU	PEA341	Alamogordo, NM	D
WREV961	UU	PEA357	Espanola, NM	A
WREW212	UU	PEA357	Espanola, NM	C
WREW241	UU	PEA357	Espanola, NM	D
WREV962	UU	PEA363	Big Spring, TX	A
WREV963	UU	PEA376	Hereford, TX	A
WREW213	UU	PEA376	Hereford, TX	C
WREW242	UU	PEA376	Hereford, TX	D
WREV964	UU	PEA383	Creston, IA	A
WREW214	UU	PEA383	Creston, IA	C
WREW243	UU	PEA383	Creston, IA	D
WREV965	UU	PEA388	Atlantic, IA	A
WREW215	UU	PEA388	Atlantic, IA	C
WREW244	UU	PEA388	Atlantic, IA	D
WREV966	UU	PEA400	Muleshoe, TX	A
WREW216	UU	PEA400	Muleshoe, TX	C
WREW245	UU	PEA400	Muleshoe, TX	D
WREV967	UU	PEA401	Floydada, TX	A
WREV980	UU	PEA401	Floydada, TX	B
WREW217	UU	PEA401	Floydada, TX	C
WREV968	UU	PEA411	Van Horn, TX	A
WREV981	UU	PEA411	Van Horn, TX	B
WREW218	UU	PEA411	Van Horn, TX	C

<b>Auction 103 Licenses 37.6-38.6 &amp; 38.6-40 GHz</b>				
<b>License Number</b>	<b>Radio Service</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>
UU-PEA043-M10	UU	PEA043	Charlotte, NC	M10
UU-PEA043-M9	UU	PEA043	Charlotte, NC	M9
UU-PEA043-N1	UU	PEA043	Charlotte, NC	N1
UU-PEA043-N2	UU	PEA043	Charlotte, NC	N2
UU-PEA131-N11	UU	PEA131	Sanford, NC	N11
UU-PEA131-N12	UU	PEA131	Sanford, NC	N12
UU-PEA131-N13	UU	PEA131	Sanford, NC	N13
UU-PEA131-N14	UU	PEA131	Sanford, NC	N14
UU-PEA162-M10	UU	PEA162	Elizabethtown, KY	M10
UU-PEA162-M9	UU	PEA162	Elizabethtown, KY	M9
UU-PEA162-N1	UU	PEA162	Elizabethtown, KY	N1
UU-PEA162-N2	UU	PEA162	Elizabethtown, KY	N2
UU-PEA176-N1	UU	PEA176	Ames, IA	N1
UU-PEA176-N2	UU	PEA176	Ames, IA	N2
UU-PEA176-N3	UU	PEA176	Ames, IA	N3
UU-PEA176-N4	UU	PEA176	Ames, IA	N4
UU-PEA179-N1	UU	PEA179	Burlington, IA	N1
UU-PEA179-N2	UU	PEA179	Burlington, IA	N2
UU-PEA179-N3	UU	PEA179	Burlington, IA	N3
UU-PEA179-N4	UU	PEA179	Burlington, IA	N4
UU-PEA196-N10	UU	PEA196	Cape Girardeau, MO	N10
UU-PEA196-N11	UU	PEA196	Cape Girardeau, MO	N11
UU-PEA196-N12	UU	PEA196	Cape Girardeau, MO	N12
UU-PEA196-N9	UU	PEA196	Cape Girardeau, MO	N9
UU-PEA369-N11	UU	PEA369	Red Oak, IA	N11
UU-PEA369-N12	UU	PEA369	Red Oak, IA	N12
UU-PEA369-N13	UU	PEA369	Red Oak, IA	N13
UU-PEA369-N14	UU	PEA369	Red Oak, IA	N14
UU-PEA396-M10	UU	PEA396	Winterset, IA	M10
UU-PEA396-M9	UU	PEA396	Winterset, IA	M9
UU-PEA396-N1	UU	PEA396	Winterset, IA	N1
UU-PEA396-N2	UU	PEA396	Winterset, IA	N2