



STATE OF DELAWARE

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January 21, 2015

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Kevin Neilson, Regulatory Policy Administrator

SUBJECT: IN THE MATTER OF THE APPLICATION OF CAVALIER TELEPHONE MID-ATLANTIC, LLC, INTELLIFIBER NETWORKS INC., MCLEODUSA TELECOMMUNICATIONS SERVICES, LLC, PAETEC COMMUNICATIONS, INC., TALK AMERICA, INC., US LEC OF PENNSYLVANIA, LLC, WINDSTREAM COMMUNICATION, INC. AND WINSTREAM KDL, INC. FOR THE APPROVAL OF THE TRANSFER OF CUSTOMERS TO TALK AMERICA SERVICES, LLC (FILED JANUARY 9, 2015) - PSC DOCKET NO. 15-0643

Application

Cavalier Telephone Mid-Atlantic, LLC (“Cavalier”), Intellifiber Networks, Inc. (“Intellifiber”), McLeodUSA Telecommunications Services, LLC (“McLeod”), Paetec Communications, Inc. (“Paetec”), Talk America, Inc., (“TA”), US LEC of Pennsylvania, LLC (“US LEC”), Windstream Communications, Inc. (“Windstream Communications”), and Windstream KDL, Inc. (“KDL” and together with Cavalier, Intellifiber, McLeod, Paetec, TA, US LEC and Windstream Communications, collectively, the “CLEC Licensees” or the Windstream Companies”) and Talk America Services, LLC (“TAS” and together with the CLEC Licensees, collectively, the “Applicants”) have filed an application with the Delaware Public Service Commission (“Commission”) seeking approval of the transfer of the residential local and long distance customers of the CLEC Licensees to TAS.

Applicants

Windstream Holdings, Inc.

Windstream Holdings, Inc. (“Windstream”), a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212, is a publicly traded S&P 500 diversified communications and entertainment company. Windstream’s subsidiaries, including the CLEC Licensees, provide local and long distance telephone services, data hosting services, broadband and high-speed data services, and video services to customers throughout the United States. Windstream does not provide telecommunications service directly. It owns and operates a number of licensed telecommunications providers in all states and the District of Columbia, except Alaska. In Delaware, the CLEC Licensees hold the following certifications to provide competitive local exchange and long distance services:

- A. Cavalier Telephone Mid-Atlantic, LLC , is authorized to provide local exchange and long distance services pursuant to Order 5768.
- B. Intellifiber Networks, Inc., is authorized to provide local exchange service pursuant to Order No. 6131 and long distance service pursuant to Order no. 7766.
- C. McLeodUSA Telecommunications Services, LLC, is authorized to provide long distance service pursuant to Order No. 4418.
- D. Paetec Communications, Inc., is authorized to provide local exchange service pursuant to Order No. 5355 and interexchange service pursuant to Order No. 4914.
- E. Talk America, Inc., is authorized to provide interexchange service pursuant to Order No. 4617.
- F. US LEC of Pennsylvania, LLC, is authorized to provide local exchange and interexchange services pursuant to Order No. 5179.
- G. Windstream Communications, Inc., is authorized to provide interexchange services as of September 22, 2013.
- H. Windstream KDL, Inc., is authorized to provide local exchange and interexchange services pursuant to Order No. 7758.

TAS, a Delaware limited liability company, is a recently created subsidiary of Communications Sales and Leasing, Inc. (“CSL”). TAS possesses a certificate of public convenience and necessity to provide local exchange and interexchange service within the State of Delaware. Its immediate parent, CSL, is currently a Windstream subsidiary.

Transaction

Windstream is planning an intra-corporate transaction (the “Transaction”) in which its business will be divided into two independent units: an operating unit that will continue to provide telecommunications and related services, and a real estate investment trust unit that will

hold title to certain distribution plant assets (the “Subject Assets”) and will lease those assets exclusively to the Windstream Companies on a long term basis. Under the Transaction, the Subject Assets of the Windstream Companies will be transferred to CSL, and CSL will lease them back to Windstream. CSL will be spun-off to become a separate, publicly traded company. Upon notice, the residential customers of the CLEC Licensees will be assigned to TAS, which will provide its telecommunications services pursuant to its new certificate. The Applicant’s state that the Windstream Companies’ operations and provision of service will not change as a result of the Transaction and the CLEC Licensees will continue to provide the same services to their business customers, at the same rates, and pursuant to the same tariffs and under the same names, as they do now. Upon the certification of TAS and the assignment of the residential customers to it, TAS will provide the same high quality service that the CLEC Licenses do today.

The Applicants assert that aside from a change in the name of their telecommunications provider, the residential customer base transfer will be virtually invisible to the customers transferred to TAS, and the rates, terms, and conditions of service provided to the transferred residential customers will not change as a result of the transfer. TAS will assume the residential customer contracts and relationships that the CLEC Licensees have with their residential customers. TAS will adopt the tariffs of the Licensee or file tariffs that incorporate such rates, terms, and conditions of service. Where services are provided on a non-tariffed basis, TAS will continue to provide service to the customers pursuant to the relevant service contracts or price lists.

The Applicants included a sample notice that would be provided to the CLEC Licensees’ customers at least 30 days prior to the transfer to TAS. The assignment of customers to TAS will not take place until after the consummation of CSL being spun-off from Windstream and CSL is operating as a separate publicly-traded entity.

Public Interest

The Applicants assert that the customer assignment, which is part of a larger corporate restructuring, is consistent with the public interest. Although the Applicants do not request approval for the corporate restructuring and divestiture of the Subject Assets, Staff believes that Commission approval for those transactions are required as well and has deemed the application as a request for the complete Transaction as described in the application and has reviewed the application as if such request were made. The Windstream Companies operate in an industry that has been and continues to be subject to rapid technological advances, evolving consumer preferences, and dynamic change. The Transaction will allow the Applicants to increase their efficiencies and lower their costs so that they can continue to provide the full range of advanced high quality services to residential and business customers. The CLEC Licensee customers will

receive the same high quality local exchange and long distance service as they do today, subject to the same rules, regulations, and applicable tariffs.

Staff Recommendation

Applications seeking approval of transfer of assets and transfer of control by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 *Del. C.* §215 because the companies are deemed to be public utilities. The Applicants have represented that the Transaction is in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by statutory approval without Commission action. The result seems appropriate under the circumstances. Staff, therefore, recommends that the Commission not act on this application. Under 26 *Del. C.* §215(d), the effect will be that the application is deemed to be approved by the Commission. However, Staff notes that Commission Order No. 8685 granting TAS a CPCN includes two conditions that TAS must meet prior to providing telephone service that it has not completed. Those conditions are that ten (10) days prior to the date TAS intends to offer and implement local exchange telecommunications services, TAS shall file with the Commission an initial tariff with rules, regulations, terms, and conditions of service specifically adopted for Delaware and, before filing an initial tariff, TAS shall either (i) have in place a Commission-approved interconnection agreement or (ii) file the resale agreement between TAS and another competitive local exchange carrier. TAS must comply with Order No. 8685 prior to any transfer of customers. Staff will also acquire verification from the Applicant that the proposed Transaction has been completed.