

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE JOINT )  
APPLICATION OF CAVALIER TELEPHONE )  
MID-ATLANTIC, LLC, INTELLIFIBER )  
NETWORKS, INC., MCLEODUSA )  
TELECOMMUNICATIONS SERVICES, LLC, )  
PAETEC COMMUNICATIONS, INC., TALK )  
AMERICA, INC., US LEC OF ) PSC DOCKET NO. 13-192  
PENNSYLVANIA, LLC, WINDSTREAM )  
COMMUNICATIONS, INC., WINDSTREAM KDL, )  
INC., AND WINDSTREAM CORPORATION FOR )  
APPROVAL OF A TRANSACTION THAT WOULD )  
RESULT IN THE TRANSFER OF CONTROL TO )  
WINDSTREAM HOLDINGS, INC. )  
(FILED MAY 10, 2013; AMENDED JUNE 5 )  
AND 28, 2013) )

**ORDER NO. 8420**

**AND NOW**, this 16<sup>th</sup> day of July, 2013, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, Cavalier Telephone Mid-Atlantic, LLC is authorized to provide local exchange and interexchange services pursuant to Order No. 5768 (August 7, 2001) in PSC Docket No. 01-219; and

**WHEREAS**, Intellifiber Networks, Inc. is authorized to provide intrastate telecommunications services service pursuant to Order No. 7766 (May 4, 2010) in PSC Docket No. 10-113; and

**WHEREAS**, McLeodUSA Telecommunications Services, LLC is authorized to provide interexchange service pursuant to Order No. 4418 (February 18, 1997) in PSC Docket No. 96-310;<sup>1</sup> and

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<sup>1</sup> The Commission granted McLeodUSA Telecommunications Services, Inc. a Certificate of Public Convenience and Necessity ("CPCN") via Order No. 4418. On February 26, 2010, McLeodUSA Telecommunications Services, Inc. converted from a corporation to a limited liability company and changed its name to McLeodUSA Telecommunications Services, LLC via Articles of Conversion filed with the State of Iowa.

**WHEREAS**, Paetec Communications, Inc. is authorized to provide local exchange service pursuant to Order No. 5355 (March 14, 2000) in PSC Docket No. 99-544 and to provide interexchange service pursuant to Order No. 4914 (September 29, 1998) in PSC Docket No. 98-336; and

**WHEREAS**, Talk America, Inc. is authorized to provide interexchange service pursuant to PSC Order No. 4617 (October 21, 1997) in Docket No. 97-144;<sup>2</sup> and

**WHEREAS**, US LEC of Pennsylvania, LLC is authorized to provide local exchange and interexchange services pursuant to Order No. 5179 (July 27, 1999) in PSC Docket No. 98-108;<sup>3</sup> and

**WHEREAS**, Windstream KDL, Inc.<sup>4</sup> is authorized to provide local exchange and interexchange services pursuant to Order No. 7758 (April 20, 2010) in Docket No. 10-66;<sup>5</sup> and

**WHEREAS**, Windstream Communications, Inc. ("Windstream") is a successor by name change to Alltel Holdings Corporate Services, Inc., a former affiliate of Alltel Communications, Inc.; and

**WHEREAS**, Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc., McLeodUSA Telecommunications Services, LLC, Paetec

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<sup>2</sup> The Commission granted the CPCN to Tel-Save, Inc. which changed its name to Talk.com Holding Corp. on May 24, 1999, and subsequently to Talk America Inc. on April 11, 2001, by virtue of Articles of Amendment filed with the Commonwealth of Pennsylvania.

<sup>3</sup> The Commission granted US LEC of Pennsylvania Inc. a CPCN via Order No. 5179. On April 1, 2008, US LEC of Pennsylvania Inc. converted from a corporation to a limited liability company and changed its name to US LEC of Pennsylvania LLC via Articles of Conversion filed with the State of North Carolina.

<sup>4</sup> On January 31, 2011, Kentucky Data Link, Inc. filed with the Delaware Secretary of State, Division of Corporations a State of Delaware Foreign Corporation Certificate of Change of Name to reflect that the corporation's name had changed to Windstream KDL, Inc.

<sup>5</sup> The Commission granted Windstream KDL, Inc. a conditional CPCN via Order No. 7758. On March 31, 2011, Windstream KDL, Inc. sent to the Commission its initial tariffs. In addition, on June 2, 2010, an ICA was filed with the Commission in PSC Docket No. 10-201.

Communications, Inc., Talk America, Inc., US LEC of Pennsylvania, LLC, Windstream Communications, Inc., and Windstream KDL, Inc. are all subsidiaries of Windstream (the "Windstream Licensees"); and

**WHEREAS**, on May 10, 2013, Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc., McLeodUSA Telecommunications Services, LLC, Paetec Communications, Inc., Talk America, Inc., US LEC Of Pennsylvania, LLC, Windstream, Windstream KDL, Inc., and Windstream Corporation filed an application ("Application") requesting authority from the Commission, to the extent required, to undertake a corporate reorganization (the "Transaction") that will insert a new holding corporation, Windstream Holdings, Inc. ("WHI"), into the ownership chain above Windstream via a merger and a change in control; and

**WHEREAS**, Staff discovered as part of the review of the Application that the Commission had never granted a CPCN to Windstream. Because of this issue and other issues, Staff requested that the Applicants amend the Application to confirm that Windstream is not currently providing telecommunications services in Delaware and does not have a "license" to provide telecommunications services in this State.<sup>6</sup> In addition, Staff requested that Windstream file an application requesting that the Commission grant such company a CPCN; and

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<sup>6</sup> The applicants asserted in both the original and the amended applications that Windstream has telecom operations, licenses, and assets used to provide telecom services in the State of Delaware. Given that Windstream could have any such telecom operations, licenses, or assets in Delaware because the Commission has never issued such company a CPCN, the Applicants provided confirmation that such language should not have been included in the Application or the amended application.

**WHEREAS**, the Applicants complied with Staff's requests and amended their Applicant on June 5 and 28, 2013. In addition, on July 1, 2013, Windstream filed an application requesting a CPCN from the Commission. Such application is pending in PSC Docket No. 13-278; and

**WHEREAS**, the Applicants have asserted that three steps are required to complete the Transaction: First, Windstream will form WHI, which will be its wholly-owned subsidiary. Next, WHI will form a wholly-owned corporate subsidiary named Mergerco. Finally, Mergerco will merge with and into Windstream, which will result in Windstream being the surviving corporation and a wholly-owned subsidiary of WHI; and

**WHEREAS**, the existing shares of Windstream stock will be converted into shares of WHI stock on a one-for-one basis. Current Windstream shareholders will continue to hold the same level of indirect ownership in the Windstream Licensees as they did before the Transaction, but this ownership will be through a new holding company. Before the Transaction, WHI will own no shares in the Windstream Licensees. After the Transaction, WHI will own 100% of the shares in the Windstream Licensees; and

**WHEREAS**, under 26 Del. C. §215(a)(1), no public utility, without having first obtained the approval of the Commission, may directly or indirectly merge or consolidate with any other person or company or otherwise dispose of or encumber any essential part of its franchises, plant, equipment or other property, necessary or useful in the performance of its duty to the public. However, 26 Del. C. §215(h) provides that notwithstanding any other provision of law, no

Commission approval shall be required for any internal reorganization or merger of public utility companies providing telecommunications services that operate under common ownership; and

**WHEREAS**, the Applicants have asserted that the Transaction is a "pro forma intra-corporate transaction," and have described such Transaction in a way that shows this qualifies as an internal reorganization of a public utility company providing telecommunications services that operate under common ownership. Windstream is currently the top level parent company before the reorganization, is publicly owned, and owns 100% of the Windstream Licensees. After the Transaction, WHI will become the top level parent company which will be publicly-owned. In addition, after the Transaction, WHI will own 100% of the Windstream Licensees. Hence, this Transaction qualifies under 26 Del. C. §215(h); and

**WHEREAS**, although 26 Del. C. §215(h) removes the requirement for Commission approval of the Transaction effective July 6, 2013, Windstream does not currently possess a CPCN for telecommunications services in the State of Delaware but has asserted that it may desire to provide such services in the future in the State of Delaware. Hence, Staff recommends that the Commission require Windstream to obtain a CPCN for telecommunications services before beginning any such service in this state; and

**WHEREAS**, Windstream has filed for such CPCN on July 1, 2013, and such application is pending in PSC Docket No. 13-278;

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, under 26 Del. C. §215(h) which became effective July 6, 2013, the Commission no longer possesses the jurisdiction to require approval of the Application because it involves a pro forma intra-corporate transaction that qualifies as an internal reorganization of a public utility company providing telecommunications services that operate under common ownership.

2. That because Windstream Communications, Inc. ("Windstream") desires to possibly provide in the future telecommunications services in the State of Delaware, but has not yet obtained the authority to do so from the Commission, the Commission orders that Windstream obtain a Certificate of Public Convenience and Necessity, pursuant to 26 Del. C. §203A and 26 Del. Admin. C. §4001, for interexchange telecommunications services in the State of Delaware before providing any such services in Delaware.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

/s/ Dallas Winslow  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

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Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary