



STATE OF NEW JERSEY
Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION) ORDER
OF BUSINESS TELECOM, LLC, CONVERSENT)
COMMUNICATIONS OF NEW JERSEY, LLC, CTC)
COMMUNICATIONS CORP., EARTHLINK BUSINESS,)
LLC, LIGHTSHIP TELECOM, LLC AND EARTHLINK)
HOLDINGS CORP. AND WINDSTREAM HOLDINGS,)
INC. FOR APPROVAL TO TRANSFER CONTROL OF)
AUTHORIZED TELECOMMUNICATIONS PROVIDERS) DOCKET NO. TM16111085

Parties of Record:

James H. Laskey, Esq., Norris, McLaughlin & Marcus, P.A., on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On November 16, 2016, Business Telecom, LLC ("BT"), Conversent Communications of New Jersey, LLC ("Conversent"), CTC Communications Corp. ("CTC"), Earthlink Business, LLC ("EarthLink Business"), and Lightship Telecom, LLC (collectively, the "EarthLink Licensees"), EarthLink Holdings Corp. ("EarthLink Parent"), and Windstream Holdings, Inc. ("Windstream Parent") (collectively, "Petitioners"), submitted a Joint Verified Petition (the "petition") to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10, requesting approval to complete a transaction between EarthLink Parent and Windstream Parent allowing Windstream Parent to acquire indirect control of the EarthLink Licensees from EarthLink Parent. The petition also seeks approval allowing EarthLink Business to transfer its equity interests in the EarthLink Licensees to a to-be-formed intermediate holding company with no effect upon the existing entity operations of the EarthLink Licensees. The pro forma transfer of control of BT, Conversent, CTC, DeltaCom and Lightship, and the indirect transfer of control of EarthLink Licensees to Windstream Parent are referred to as the proposed "Transaction". Following the Transaction, the EarthLink Licensees' will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

BACKGROUND

Windstream Parent is a publicly traded Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas. It is a provider of advanced network communications and technology solutions for consumers, businesses, enterprise organizations and wholesale customers. Windstream Parent functions as a holding company and does not provide telecommunications services or hold any telecommunications licenses in its own right. Through its wholly owned subsidiary, Windstream Services, a Delaware limited liability company with offices at the same location as Windstream Parent, it owns and operates licensed telecommunications providers in all states and the District of Columbia, except Alaska.

Windstream has five operating subsidiaries that provide service in New Jersey: Paetec Communications, Inc., Talk America, Inc., Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc. and US LEC of Pennsylvania, Inc. I/M/O the Petition For an Order Authorizing PAETEC Communications, Inc. to Provide Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE02060319, Order dated February 5, 2003, I/M/O the Petition of US LEC Pennsylvania Inc. for Authorization to Provide Resold and Facilities Based, Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE99030180, Order dated August 18, 1999, In the Matter of the Petition for an Order Authorizing Talk.com Holding Corp., d/b/a The Phone Company to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00100767, Order dated January 10, 2002. CavTel-MA is authorized to provide facilities based intrastate telecommunications service. I/M/O the Petition for An Order Authorizing Cavalier Telephone Mid-Atlantic, LLC to Provide Local Exchange Telecommunications Services throughout New Jersey, Docket No. TE01060370, Order dated September 27, 2001. Also, Intellifiber Networks, Inc. (f/k/a Elantic) operates in New Jersey pursuant to Board authority originally granted to Dominion Telecom, Inc. on October 6, 2002, I/M/O the Petition for an Order Authorizing Dominion Telecom, Inc. to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE01090594, Order dated October 31, 2002, which was later transferred to Elantic on May 12, 2004, I/M/O the Joint Petition of Dominion Telecom, Inc., Dominion Fiber Ventures, LLC and Elantic Networks, Inc. for Approval of a Change of Control, Docket No. TM0403019, Order dated May 12, 2004.

According to the petition, the combined operations of Windstream currently has approximately 2.1 million access lines and approximately \$5.7 billion in annual revenues nationwide at year end FY2015. Collectively, Windstream Parent and its subsidiaries have 98 employees working in New Jersey.

EarthLink Holdings Corp. is a publicly traded Delaware corporation with principal offices located at 1170 Peachtree Street, Suite 900, Atlanta, GA 30309. EarthLink Parent functions as a holding company and as such, does not provide telecommunications services or hold any telecommunications licenses in its own right. It owns and operates numerous telecommunications providers in all states and the District of Columbia. The Petition states that Earthlink Parent together with its subsidiaries (collectively "Earthlink"), provides a broad range of data, voice and managed network services to business customers in the United States. In New Jersey, the EarthLink Licensees hold the following New Jersey authorizations: EarthLink Business, LLC, Business Telecom, LLC, (f/k/a Business Telecom, Inc.) CTC Communications Corp., Conversent Communications of New Jersey, LLC, and Lightship Telecom, LLC.

EarthLink Business, LLC (formerly known as New Edge Network, Inc.) obtained its authorization to provide facilities switched and dedicated resold and facilities-based,

interexchange and local exchange telecommunications services when it assumed the operating authority of New Edge Network, Inc. I/M/O the Joint Petition for an Order Authorizing New Edge Network, Inc. d/b/a New Edge Networks to Provide Switched and Dedicated Resold and Facilities-Based, Interexchange and Local Exchange Telecommunications Services Throughout New Jersey, Order dated March 27, 2000. Business Telecom, LLC, (f/k/a Business Telecom, Inc. is authorized to provide facilities-based local exchange and interexchange telecommunications services. I/M/O the Petition for an Order Authorizing Business Telecom, Inc. d/b/a BTI to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE01070416, Order dated February 6, 2002. Conversent Communications of New Jersey, LLC is authorized to provide facilities-based local and interexchange telecommunications service. I/M/O the Petition For an Order Authorizing Conversent Communications of New Jersey, LLC to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Throughout New Jersey, Docket No. TE00020073, Order dated September 12, 2000. Lightship Telecom, LLC, a Delaware limited liability company, is authorized to provide facilities-based local and interexchange telecommunications service. I/M/O the Petition For an Order Authorizing Lightship Telecom, LLC to Provide Local Exchange and Interexchange Telecommunications Throughout New Jersey, Docket No. TE00010014, Order dated August 17, 2000. In addition, DeltaCom, LLC, an Alabama limited liability company, operates solely as a reseller in New Jersey and does not have facilities-based authority. The petition notes that EarthLink Parent and its subsidiaries have 5 employees located in New Jersey.

The Petition states that on November 5, 2016, Windstream Parent, EarthLink Parent, Europa Merger Sub, Inc. ("Merger Sub 1"), a Delaware corporation and an indirect, wholly-owned subsidiary of Windstream Services, LLC,¹ and Europa Merger Sub, LLC ("Merger Sub 2"), a Delaware limited liability company and an indirect, wholly-owned subsidiary of Windstream Services, LLC, entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which among other things: (i) Merger Sub 1 will be merged with and into EarthLink Parent (the "Initial Merger") with EarthLink Parent continuing as the surviving corporation (the "Surviving Corporation"); and (ii) immediately following the Initial Merger, the Surviving Corporation will be merged with and into Merger Sub 2 (the "Subsequent Merger" and, together with the Initial Merger, the EarthLink Transaction"), with Merger Sub 2 continuing as the surviving company known as EarthLink Holdings, LLC (the "Surviving Company"), an indirect, wholly-owned subsidiary of Windstream Parent, in each case subject to the terms and conditions of the Merger Agreement. As part of the EarthLink Transaction, EarthLink Parent stock will be exchanged for Windstream Parent stock. As a result of the EarthLink Transaction, Windstream Parent will be the new ultimate parent company of the EarthLink Licensees.

According to the petition, this change in ultimate control does not involve a transfer of operating authority, assets or customers, and the EarthLink Transaction is expected to be virtually seamless to end user customers. The current customers of the EarthLink Licensees will remain customers of those entities following the EarthLink Transaction. Accordingly, customers will continue to receive services under the same rates, terms and conditions. As a result, the EarthLink Transaction will be virtually transparent to customers. The only change resulting from the EarthLink Transaction will be that these certificated entities will ultimately be indirectly owned by Windstream Parent, and according to petitioners, subsequently may change their names to reflect the "Windstream" brand in their names.

¹ Windstream Services, LLC does not provide telecommunications services in its own right, but rather is a holding company within the Windstream group of companies.

Additionally with this petition, Petitioners, request authority for EarthLink Business to transfer its equity interests in the other EarthLink Licensees (currently subsidiaries of EarthLink Business) to a to-be-formed subsidiary company.² This change would constitute a *pro forma* transfer of control of BT, Conversent, CTC, DeltaCom and Lightship. Petitioners state that they believe that adding an intermediate holding company could provide the companies more flexibility with respect to future credit arrangements with their lenders.

Petitioners assert that the proposed Transaction will serve the public interest by promoting competition among telecommunications providers. Petitioners state that Windstream will help ensure and improve the continuation of the EarthLink Licensees' ability to deploy innovative and advanced telecommunications offerings, benefiting New Jersey consumers and serving the public interest, convenience and necessity. The Transaction will improve the combined enterprises' ability to compete by enhancing its economic position and thus its ability to attract financing to invest in and offer new and innovative services. Petitioners also state that upon completion of the proposed Transaction, EarthLink's customers will not experience any immediate changes in services, or rates, terms and conditions of service. Further, Petitioners state that EarthLink Parent and its subsidiaries do not have an employee pension plan. Employees' existing rights in any other retirement plan offered by EarthLink Parent and its subsidiaries will be retained upon completion of the Transaction.

By letter dated December 23, 2016, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments stating the transfer of indirect control of EarthLink Licensees to Windstream Parent will not negatively affect the Licensees' customers and no post transactional negative impact upon New Jersey employees or pension obligations is expected. Therefore, Rate Counsel does not object to Board approval of the petition.

DISCUSSION

Pursuant to N.J.S.A. 48:2-51.1(a), the Board shall evaluate the impact of an acquisition of control of a public utility on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. In evaluating this petition, the Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1 as set forth above. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

Under the Merger Agreement, as noted by Rate Counsel, Windstream Parent, EarthLink Parent and Europa Merger Sub, Inc. will merge with EarthLink Parent, the surviving entity. Thereafter, EarthLink Parent will merge with and into Europa Merger Sub LLC, the surviving company known as EarthLink Holdings, LLC, a subsidiary of Windstream Parent. As a result of this transaction, Windstream Parent will become the ultimate parent company of the EarthLink Licensees. Thus, by this petition, Petitioners request authority to transfer equity interests in the other EarthLink Licensees to a to-be-formed subsidiary company effectuating a *pro forma* transfer of control of BT, Conversent, CTC, DeltaCom and Lightship. Petitioners state that there will be no immediate changes in services, or rates terms and conditions of service,

² Following the closing of the EarthLink Transaction, Petitioners will notify the Board of the final structure, including the identity and corporate form of the subsidiary company with their consummation notice.

therefore the transaction will be seamless and transparent to customers. Petitioners further state that an employee pension plan does not exist for affected employees but their existing rights in other retirement plans offered will be retained post-transaction.

FINDINGS AND CONCLUSIONS

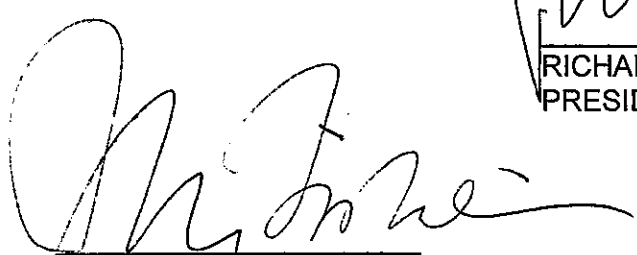
The Board, after a thorough review of the petition and all related documents, concludes that there will be no negative impact on rates or service quality since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions. Also, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the transaction will strengthen Petitioners' competitive posture in the telecommunications market due to their access to additional resources.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed Transaction.

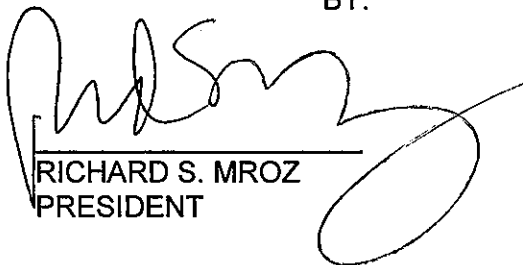
This Order shall be effective February 4, 2017.

DATED: 1/25/17


BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
COMMISSIONER



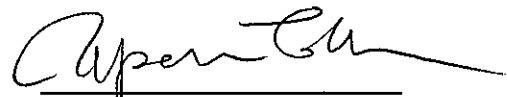
RICHARD S. MROZ
PRESIDENT



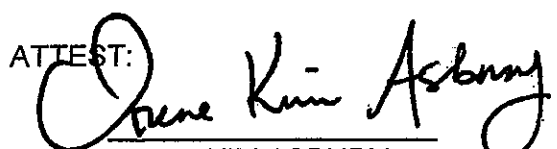
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COMMISSIONER

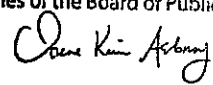


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.



**IN THE MATTER OF THE VERIFIED JOINT PETITION OF BUSINESS TELECOM, LLC,
CONVERSENT COMMUNICATIONS OF NEW JERSEY, LLC, CTC COMMUNICATIONS
CORP., EARTHLINK BUSINESS, LLC, LIGHTSHIP TELECOM, LLC AND EARTHLINK
HOLDINGS CORP. AND WINDSTREAM HOLDINGS, INC. FOR APPROVAL TO TRANSFER
CONTROL OF AUTHORIZED TELECOMMUNICATIONS PROVIDERS
DOCKET NO. TM16111085**

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