



Agenda Date: 10/9/24
Agenda Item: IVA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE
TELEVISION AND
TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF) ORDER
WINDSTREAM PARENT, INC.; WINDSTREAM HOLDINGS)
II, LLC; AND UNITI GROUP INC. FOR APPROVAL OF THE)
INDIRECT TRANSFER OF CONTROL OF AUTHORIZED)
TELECOMMUNICATIONS PROVIDERS) DOCKET NO. TM24060411

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
James Laskey, Esq., Norris McLaughlin, P.A., on behalf of Petitioners

BY THE BOARD:

On June 14, 2024, Windstream Holdings II, LLC ("Windstream"), on behalf of its subsidiaries holding New Jersey authorizations (collectively, "Windstream Licensees"), Uniti Group Inc. ("Uniti"), on behalf of its subsidiaries holding New Jersey authorizations ("Uniti Licensees"), and Windstream Parent, Inc. ("Parent") (together with Windstream and Uniti, "Petitioners"), filed a petition with the New Jersey Board of Public Utilities ("Board") pursuant to relevant provisions of New Jersey law, including without limitation N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14, requesting a grant of authority to complete a transaction that will result in the acquisition of indirect control of the Windstream Licensees and Uniti Licensees by Parent ("Transaction") ("Petition"). Following the closing of the Transaction, Parent, as the new parent of both Uniti and Windstream, would become the indirect owner of the Windstream Licensees and the Uniti Licensees. The Board considers the Petition herein.

BACKGROUND

Windstream is a Delaware limited liability company, which, through operating subsidiaries, provides fiber-based broadband to residential and small business customers in eighteen (18) states, managed cloud communications, networking and security services for mid-to-large enterprises and government entities across the United States.

Windstream's incumbent local exchange carrier ("ILEC") operating subsidiaries offer services to residential, small 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 in all fifty (50) states and the District of Columbia offer services primarily to enterprise business and government customers. There are currently eleven (11) authorized Windstream Licensees that offer business and enterprise services in New Jersey: Broadview Networks, Inc.,¹ Business Telecom, LLC,² Cavalier Telephone Mid-Atlantic, LLC,³ Conversent Communications of New Jersey, LLC,⁴ CTC Communications Corp.,⁵ Intellifiber Networks, LLC,⁶ Lightship Telecom, LLC,⁷ PAETEC Communications, LLC,⁸ Talk America, LLC,⁹ US LEC of Pennsylvania, LLC,¹⁰ and Windstream New Edge, LLC.¹¹

¹ In re the Petition for an Order Authorizing Broadview Networks, Inc. to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, BPU Docket No. TE99120912, Order dated August 22, 2000.

² In re the Petition for an Order Authorizing Business Telecom, Inc. d/b/a BTI to Provide Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE01070416, Order dated February 6, 2002.

³ In re the Petition for an Order Authorizing Cavalier Telephone Mid-Atlantic, LLC to Provide Local Exchange and Interexchange and Exchange Access Telecommunications Services throughout New Jersey, BPU Docket No. TE01060370, Order dated September 27, 2001.

⁴ In re the Petition for an Order Authorizing Conversent Communications of New Jersey, LLC to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services, BPU Docket No. TE00020073, Order dated September 12, 2000.

⁵ In re the Petition For an Order Authorizing CTC Communications Corp. d/b/a CT Communications Corp. to Provide Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, BPU Docket No. TE99199808, Order dated May 10, 2000.

⁶ Intellifiber Networks, Inc. (f/k/a Elantic) operates in New Jersey pursuant to Board authority originally granted to Dominion Telecom, Inc. In re the Petition for an Order Authorizing Dominion Telecom, Inc. to Provide Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE01090594, Order dated October 31, 2002. This authority was later transferred to Elantic on May 12, 2004. In re the Joint Petition of Dominion Telecom, Inc., Dominion Fiber Ventures, LLC and Elantic Networks, Inc. for Approval of a Change of Control, BPU Docket No. TM0403019, Order dated May 12, 2004.

⁷ In re the Petition for an Order Authorizing Lightship Telecom, LLC to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE00010014, Order dated August 17, 2000.

⁸ In re the Petition for an Order Authorizing PAETEC Communications, Inc. to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, BPU Docket No. TE02060319, Order dated February 5, 2003.

⁹ In re 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, BPU Docket No. TE00100767, Order dated January 10, 2002.

¹⁰ In re the Petition of US LEC Pennsylvania Inc. for Authorization to Provide Resold and Facilities-Based, Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE99030180, Order dated August 18, 1999.

¹¹ Windstream New Edge, LLC (f/k/a New Edge Network, Inc.) obtained authorization to provide facilities based local exchange and interexchange telecommunications services when it assumed the operating authority of New Edge Network, Inc. In re the 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, BPU Docket No. TE99100774, Order dated March 27, 2000.

Parent is a newly formed Delaware corporation and currently a subsidiary of Windstream. As a result of the proposed Transaction, it will become the ultimate parent company of the Windstream Licensees and the Uniti Licensees.

Uniti is an internally managed real estate investment trust, organized under the laws of the State of Maryland. It operates two (2) primary businesses: Uniti Leasing and Uniti Fiber. Uniti Leasing owns, acquires, and leases mission-critical communications assets nationwide to wholesale customers on both exclusive and shared-tenant bases. Its largest customer is Windstream. Uniti Fiber is a provider of lit and dark fiber solutions for wireless operators, carriers, enterprises, schools, and governments. Its business includes cell-site backhaul, small cells, internet services, and wavelengths. Uniti Fiber's primary service area is in the southeastern United States. The Uniti Licensees include PEG Bandwidth NJ, LLC and Uniti National LLC, both of which have facilities-based CLEC authority in New Jersey.¹²

Petitioners stated that on May 3, 2024, Windstream and Uniti entered into an Agreement and Plan of Merger under which Uniti and Windstream will become subsidiaries of Parent. Parent, as the new parent of both Uniti and Windstream, will become the indirect owner of the Windstream Licensees and the Uniti Licensees. According to the Petition, the Transaction involves multiple steps, including (1) Windstream merging into Parent, with Parent surviving, followed by (2) Uniti merging into a newly formed subsidiary of Parent, with Uniti surviving. As a result, both the Windstream Licensees and the Uniti Licensees will become indirect subsidiaries of Parent.

Petitioners stated that no assignment of licenses, certificates, assets, or customers by the Windstream Licensees, the immediate parent entities of the Windstream Licensees, the Uniti Licensees, or the immediate parent entities of the Uniti Licensees will occur as a result of the proposed Transaction, which will occur at the parent holding company level. The Petition stated that both Uniti's pre-closing shareholders and Windstream's pre-closing equity holders will receive common equity in Parent, with Windstream's equity holders also receiving consideration in the form of cash and preferred equity and warrants for common stock in Parent.

After the proposed Transaction, Uniti's pre-closing shareholders will hold, in aggregate, approximately sixty-two percent (62%), and Windstream's pre-closing equity holders approximately thirty-eight percent (38%), of the common equity in Parent. The Petitioners expect that funds managed by Elliott Investment Management L.P. and its advisory affiliates ("Elliott Funds"), will ultimately hold up to approximately twenty-seven percent (27%) of Parent's common stock and certain funds and accounts managed, advised, or sub-advised by Pacific Investment Management Company LLC ("PIMCO Funds"), will hold up to approximately twelve percent (12%).¹³ No other investor is currently expected to hold ten percent (10%) or more of Parent's common stock at closing. The Petition noted that exact figures will depend upon Windstream's ownership immediately prior to the Transaction and may vary slightly depending upon participation in an upcoming Windstream rights offering.

¹² In re the Petition of PEG Bandwidth NJ, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, BPU Docket No. TE12040317, Order dated August 15, 2012; In re the Verified Petition of Uniti National LLC for Authorization to Provide Competitive Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, BPU Docket No. TE20100663, Order dated January 27, 2021.

¹³ Both the Elliott Funds and the PIMCO Funds will also have warrants that are exercisable for common stock after three years, but, even if exercised, neither the Elliott Funds nor the PIMCO Funds will acquire majority ownership or control over Parent.

The Petitioners asserted that the proposed Transaction would generate substantial benefits by creating a more dynamic and competitive provider throughout Windstream's and Uniti's footprints and across their respective business sectors. Petitioners also stated that the Transaction is consistent with the public policy criteria delineated in N.J.S.A. 48:2-51.1. Further, Petitioners stated that combining Uniti's and Windstream's respective network assets, experience, and competencies will help both companies realize efficiencies, leverage each other's resources, realize economies of scale in procurement, and better position Parent to invest in continued fiber and broadband expansion than either Windstream or Uniti could do alone.

Regarding competition, Petitioners stated that Uniti's and Windstream's core competencies are complementary, with Windstream's focus on mass-market, last-mile services and Uniti's core competency in dark fiber, wholesale, and middle-mile connectivity allowing each company to leverage the other's resources.

Petitioners state that the proposed Transaction will have no adverse impact on either company's current customers. In the immediate term, both Windstream and Uniti customers will continue to receive substantially the same services and the same rates, terms, and conditions of service without any disruptions of any customer-facing operations.

Regarding employees, Petitioners stated that they have not engaged in any material integration planning, and there are no current plans with regards to New Jersey employees. The Petition additionally stated that Parent will be able to fulfill and satisfy the pension benefits of Windstream's employees and that Uniti does not have a pension plan for employees.

On August 5, 2024, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments on the Petition. Rate Counsel stated that it did not oppose Board approval of the Petition and suggested that the Board require Parent to submit a report one (1) year from the date of the Transaction listing how many New Jersey employees there were at the date of the Transaction and one (1) year later, since Petitioners state that they currently do not have plans for New Jersey employees.

DISCUSSION AND FINDINGS

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. The Board must be satisfied that positive benefit 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 benefits obligations to any of its employees.

After investigation, and having considered the record in this proceeding, the Board **FINDS** that the Transaction is consistent with applicable law and is not contrary to the public interest. The Board also **FINDS** that the Transaction will have no material adverse impact on the provision of safe, adequate and proper service at just and reasonable rates, and is likely to provide benefits to customers. The Board also **FINDS** that the Transaction will have no material impact on the Windstream Licensees or Uniti Licensees' employees, or their pensions. The Board **HEREBY ORDERS** that, one (1) year after the date of the Transaction, Parent must submit to the Board a report listing, for each of the Windstream Licensees and Uniti Licensees, the number of New

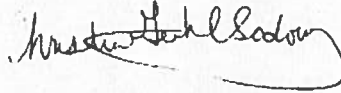
Jersey employees there were at the date of the Transaction, and additionally submit an updated report one (1) year after the initial report. The Board further **FINDS** that the Transaction will have no material adverse impact on competition or rates. Therefore, the Board **HEREBY AUTHORIZES** Petitioners to complete the Transaction.

The Board also **FINDS** that, in accordance with N.J.S.A. 48:2-59 and 48:2-60, following consummation of the Transaction, each Licensee is responsible for the filing of its annual report with the Board and for the payment of any outstanding assessment liabilities to the Board and to Rate Counsel.

This Order shall be effective on October 16, 2024.

DATED: October 9, 2024

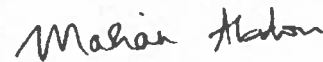
BOARD OF PUBLIC UTILITIES
BY:



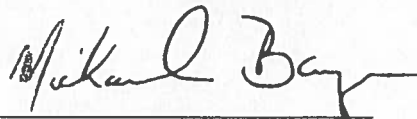
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DR. ZENON CHRISTODOULOU
COMMISSIONER



MARIAN ABDOU
COMMISSIONER



MICHAEL BANGE
COMMISSIONER



ATTEST:

SHERRI L. GOLDEN
SECRETARY

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

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INDIRECT TRANSFER OF CONTROL OF AUTHORIZED TELECOMMUNICATIONS
PROVIDERS

DOCKET NO. TM24060411

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