

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Windstream Holdings, Inc. et al. to) Case No. 14-1438-TP-ATR
Transfer Assets.)

In the Matter of the Application of Talk)
America Services, LLC to Provide) Case No. 14-1439-TP-ACE
Competitive Local Exchange and)
Competitive Telecommunications Services.)

FINDING AND ORDER

The Commission finds:

- (1) On August 19, 2014, as amended on September 5, September 12, and December 23, 2014, in Case No. 14-1438-TP-ATR (14-1438), Windstream Holdings, Inc. (Windstream), Windstream Ohio, Inc. (ILEC), Windstream Western Reserve, Inc. (ILEC),¹ Intellifiber Networks, Inc. (CLEC/LD), Windstream KDL, Inc. (CLEC/LD), LDMI Telecommunications, Inc. (CLEC), McLeodUSA Telecommunications Services, Inc. (CLEC/LD), Windstream Norlight, Inc. (CLEC/LD), PAETEC Communications, Inc. (CLEC/LD), Talk America, Inc. (CLEC/LD), US LEC Communications LLC (CLEC/LD), Windstream Communications, Inc. (CLEC/LD), Windstream NuVox Ohio, Inc. (CLEC/LD), Windstream NTI, Inc. (LD), (collectively, the WIN Companies), and Communications Sales and Leasing, Inc. (CSL) and Talk America Services, LLC (TAI) (collectively, the Applicants) filed an application requesting approval to transfer certain WIN Companies' assets to CSL, a newly formed Real Estate Investment Trust (REIT).

Through the creation of the REIT and the proposed transaction set forth in 14-1438, Windstream will be able to reduce approximately \$3.2 billion in debt companywide, which will result in incremental strategic investments to strengthen the

¹ Windstream Ohio, Inc. (Windstream Ohio) and Windstream Western Reserve, Inc. (Windstream Western Reserve) are incumbent local exchange carriers (ILECs) in Ohio.

infrastructure and accelerate their shared goal of expanding and enhancing broadband services.

Specifically, under the transaction proposed in 14-1438, the subject assets to be transferred to CSL include all of the WIN Companies' distribution systems consisting of the fiber optic cable, copper cable, conduits and conduit systems, poles, attachment hardware, guy wires, pedestals, concrete pads, central office land and buildings, signal repeaters, and amplifiers, together with all replacements, modifications, alterations, and additions located in Ohio, with the exception of any distribution facilities financed in partnership with the federal government through the American Recovery and Reinvestment Act. The WIN Companies will not transfer other tangible assets, including central office switches, electronics, equipment used for maintenance and repair, and backend systems, such as routing, provisioning and billing systems. With the exception of the residential customers of CLEC/LD Companies discussed infra, the WIN Companies will also not transfer any customer accounts or regulatory certifications to CSL.

Under the terms of the proposed lease agreement, the assets delineated supra, are to be transferred to CSL and leased back to Windstream for the exclusive use and benefit of the WIN Companies. Including renewals at Windstream's option, the potential total term of the lease is 35 years. Under the terms of the exclusive lease, the WIN Companies will be responsible for the operation and maintenance of the leased facilities and will continue to have responsibility for fulfilling service quality standards and all other regulatory obligations. Further, capital improvements made to existing plant will continue to be owned by the REIT whereas new capital plant additions (e.g., to serve new subdivisions) will be owned by the WIN Companies.

The WIN Companies will maintain the same technical and managerial ability to provide reliable service as they have today and will continue to offer the same services under their existing tariffs. Specific to the financial impact of the current application, the Applicants contend that the WIN Companies currently possess the financial ability to provide the certificated services to the public and that such ability will be enhanced by the proposed transaction as discussed infra. The WIN Companies will continue

to maintain ownership over other tangible assets, including central office switches, electronics, equipment used for maintenance and repair, and backend systems, such as routing, provisioning, and billing systems. Additionally, Windstream will transfer beneficial ownership rights in easements and rights-of-way to CSL but CSL will immediately and contemporaneously transfer these beneficial ownership rights and interests in easements and rights-of-way and the subject assets back to Windstream in return for rental payments from Windstream to CSL.

As a result of the proposed arrangement, the WIN Companies will continue to use the subject assets in the same manner as they do now, including the exclusive right to use the distribution systems as well as to access and affix communications, electronics, switching, or other equipment to the distribution systems for the provision, routing, and delivery of voice, data, and other communications services. There will be no change in the nature, scope, or manner of use of poles and distribution plant, and third parties will continue to interact with the WIN Companies regarding these arrangements as they do today. WIN Companies will continue to be responsible for the following: (1) regulatory compliance, (2) receipt of revenue from pole attachment fees, (3) network maintenance and make-ready work associated with pole attachment requests, and (4) inspection and safety requirements. Upon termination of the master lease, CSL will hold the beneficial rights and interests in the easements and rights-of-way and title to the subject assets.

- (2) On August 19, 2014, as amended on September 5, September 11, and December 23, 2014, TAI filed an application in Case No. 14-1439-TP-ACE (14-1439) to provide competitive local exchange and competitive telecommunications services as a result of the asset transfer which is the subject of 14-1438.

Specifically, the Applicants request approval to transfer approximately 2,200 residential local and long distance customers of the CLEC/LD and LD companies to TAI, a newly formed wholly-owned CLEC affiliate of the REIT that will be spun off to existing shareholders of Windstream when the transaction is completed. TAI will operate in the same geographic area as the area served by the Windstream CLEC/LD Companies.

The Applicants contend that TAI will continue to provide the same high quality service that the CLEC/LD companies provide today. In particular, TAI will initially subcontract with the CLEC/LD Companies in order to serve as a reseller of the residential services provided by the CLEC/LD Companies. In the future, TAI may resell the services of other authorized carriers or procure and operate its own facilities. The Applicants assert that, as a result of its parent's (CSL) intended capitalization, TAI will possess the requisite financial capability to fully support its operations.

The Applicants represent that other than the change in the customers' telecommunications provider, there will be no impact on the rates, terms, and conditions of the service provided to the transferred residential customers. Further, TAI states that, in those cases where services are provided pursuant to tariff, TAI will adopt the tariffs of the CLEC/LD Companies or file tariffs that incorporate the identical rates, terms, and conditions of service. Where services are provided on a detariffed basis, TAI will continue to provide service to customers pursuant to the relevant service contracts or price lists and maintain them on a website. As part of its application, TAI filed a tariff for approval. Additionally, TAI filed a customer notice which will be provided to the residential customers of the CLEC/LD Companies to be transferred.

- (3) Pursuant to the attorney examiner Entry of September 17, 2014, these applications were fully suspended for 60 days due to the fact that additional information and investigation was necessary in order to complete a review of the applications. Pursuant to the attorney examiner Entry of November 14, 2014, these applications were suspended from the automatic approval process due to the fact that additional information and investigation was still necessary in order to complete a review of the applications.
- (4) Pursuant to the attorney examiner Entry of November 14, 2014, the Communications Workers of America (CWA) was granted intervention in this matter. On December 1, 2014, CWA filed a letter stating that it was withdrawing its opposition to the pending applications and would no longer be actively participating in these matters.

- (5) Although the proposed restructuring transaction is unique relative to the scale and scope of the facilities being transferred and leased back by Windstream, the Commission notes that leasing, rather than the owning of assets, is not a new practice in the telecommunications industry and most service providers lease rather than own some of the assets that are used to provide services.

Based on a review of the specific record in these cases, the Commission finds that the application related to the proposed restructuring is approved and that it is in the public interest, serves the public convenience and necessity, and will result in the provision of adequate service for a reasonable rate, rental, toll, or charge.

While reaching this determination, the Commission realizes that the master lease between Windstream and CSL is not finalized. Therefore, this approval is conditioned upon the filing and Commission review of the final executed lease between Windstream and CSL in order to ensure that the lease terms are consistent with the representations set forth in these proceedings. If the final executed version of the lease contains material differences from the representations made to the Commission in this proceeding, the Commission may consider revising the conditions under which this transaction is approved. Additionally, the Applicants must continue to keep the Commission apprised of any changes that may occur in their relationship relative to the representations set forth in the applications. The Applicants must seek Commission authorization prior to transferring the subject assets and beneficial ownership interests beyond the transactions outlined in this proceeding.

In approving the restructuring application, the Commission recognizes that the transaction will reduce the Applicants' combined federal corporate income tax liability post-transaction and immediately reduce Windstream's long-term debt by \$3.2 billion, which in turn will increase net cash flow and facilitate reinvestment into the WIN Companies. The Commission notes that specific to the state of Ohio, Windstream expects that the REIT transaction will allow for an annual increase in capital expenditures in its Ohio ILEC markets by approximately \$2 to \$3

million and that Windstream plans to direct these additional investments to the improvement of the performance and capacity of the consumer broadband network in ILEC markets.

Additionally, the Commission finds that based on the representations set forth in the 14-1438 application, with the exception of the proposed substitution of service by TAI in those areas where the CLEC/LD Companies are currently operating, the asset transfer and contemporaneous leaseback will be seamless to the customers of the WIN Companies. While CSL will obtain legal title to fixed assets of the WIN Companies identified supra, they will be leased back to Windstream for the exclusive use and benefit of the WIN Companies in order to ensure that the WIN Companies continue to have long-term access and control over the facilities used to provide regulated services.

Based on the described scenario, CSL will not be engaged in the business of transmitting telephonic messages to, from, through, or in this state and, therefore, does not meet the definition of a telephone company as set forth in R.C. 4905.03(A)(1). Rather, the WIN Companies will be the entities continuing to be engaged in such activities during the term of the lease including any exercised renewals. At the end of the lease arrangement, the owner of the subject assets and beneficial ownership interest must make the appropriate filing, if any, should the subject assets and ownership interests continue to be utilized for the provision of Commission-regulated services.

As a result of the WIN Companies continued involvement in the leased facilities, the spin-off/leaseback does not qualify for sale-leaseback accounting treatment under Generally Accepted Accounting Principles and as such it will not be treated as either a capital or operating lease. Under this accounting treatment, the WIN Companies remain the accounting owner of the assets. Accordingly, the assets subject to the spin-off/leaseback will remain on the balance sheet of the WIN Companies, including Windstream Ohio and Windstream Western Reserve, and will continue to be depreciated as they are currently. Further, there will be no changes to any of the operating companies' accounts except for the recognition of a long-term lease obligation equal to the WIN Companies' proportionate share of the required future

minimum lease payments due to the REIT on a discounted basis with a corresponding reduction in the operating companies' equity accounts. Therefore, the annual reports filed with the Commission by the WIN Companies and the resulting assessments will not change as a result of the transaction and will continue to be filed as they are today.

The WIN Companies shall continue to be responsible for all capital improvements related to operation and maintenance of both the assets to be transferred and the assets that they retain to ensure consistent industry standards sufficient to satisfy all federal, state, and local legal and regulatory requirements. The approval of these applications will have no impact on the Commission's continued pole attachment jurisdiction relative to the Applicants' poles. Additionally, Windstream Ohio and Windstream Western Reserve shall continue to serve as carriers of last resort in their respective service areas. Notwithstanding any disputes between Windstream and CSL, Windstream continues to retain the obligation to provide service to its customers.

- (6) TAI's application to provide competitive local exchange and competitive telecommunications services, the request to transfer the residential local and long distance customers of the CLEC/LD Companies to TAI, and TAI's proposed tariff are reasonable and should be approved. In reaching these determinations, the Commission highlights the fact that while the provider of service will change, the rates, terms, and conditions of the service offerings will remain the same. The CLEC/LD Companies must provide their residential customers with the proposed customer notice at least 30 days prior to any transfer to TAI.

It is, therefore,

ORDERED, That the applications filed in these proceedings be approved subject to the representations stated in the applications and conditions set forth in this Finding and Order. It is, further,

ORDERED, That the Applicants comply with all of the conditions set forth in this Finding and Order. It is, further,

ORDERED, That the Applicants formally notify the Commission when the restructuring transaction is finalized. It is, further,

ORDERED, That upon its execution, the master lease between Windstream and CSL be filed in this docket. It is, further,

ORDERED, That the Applicants formally notify the Commission as to whether the master lease agreement has been renewed at the end of its term. It is, further,

ORDERED, That the Applicants formally notify the Commission if any of the representations set forth in the application are modified. It is, further,

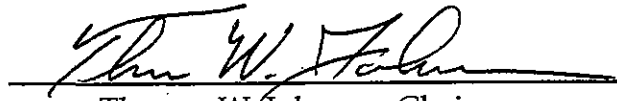
ORDERED, That the proposed customer notice be approved and be provided to the affected residential customers at least 30 days prior to the transfer to TAI. It is, further,

ORDERED, That TAI's proposed tariff is approved. It is, further,

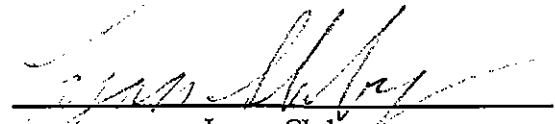
ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of a request to transfer assets to a REIT. It is, further,


ORDERED, That a copy of this Finding and Order be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser


Lynn Slaby

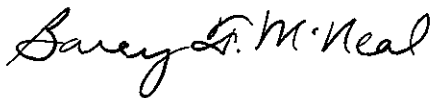

M. Beth Trombold


Asim Z. Haque

JSA/dah

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JAN 14 2015


Barcy F. McNeal
Secretary