Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of PaeTec Communications, Inc. (U6097C), McLeodUSA Telecommunications Services, LLC (U5712C), Talk America, Inc. (U5535C), LDMI Telecommunications, Inc. (U5837C) and Windstream Corporation for Approval of the Indirect Transfer of Control of PaeTec Communications, Inc., McLeodUSA Telecommunications Services, LLC, Talk America, Inc., and LDMI Telecommunications, Inc. to Windstream Corporation.	Application 11-08-012 (Filed August 12, 2011)

DECISION APPROVING INDIRECT TRANSFER OF CONTROL OF PAETEC COMMUNICATIONS, INC., MCLEODUSA TELECOMMUNICATIONS SERVICES, LLC, TALK AMERICA, INC., AND LDMI TELECOMMUNICATIONS, INC. TO WINDSTREAM CORPORATION

Summary

We approve the joint application of PaeTec Communications, Inc., McLeodUSA Telecommunications Services, LLC, Talk America, Inc., and LDMI Telecommunications, Inc. (the PAETEC Regulated Entities) and Windstream Corporation (Windstream) to undertake a transaction that will result in the indirect transfer of control of the PAETEC Regulated Entities to Windstream through the merger of the PAETEC Regulated Entities' ultimate parent, PAETEC Holding Corporation (PAETEC) into a subsidiary of Windstream created for the purpose of this transaction, with PAETEC emerging as the surviving entity and as a subsidiary of Windstream.

We also conclude that the transaction underlying the transfer qualifies for an exemption from the California Environmental Quality Act (CEQA), and accordingly, no additional environmental review is required. We also conclude that the transfer is in the public interest.

Parties to the Transaction

Windstream is a publicly-traded Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas. PAETEC is a publicly-traded Delaware corporation with principal offices located at One PAETEC Plaza, 600 Willowbrook Office Park, Fairport, New York.

Windstream is a diversified communications and entertainment company that has four subsidiaries that are authorized to provide telecommunications services in California. They are:

- Windstream Communications, Inc. (U-6985-C);
- Windstream Nuvox, Inc. U-7214-C);
- Windstream NTI, Inc. (U-5674-C); and
- WIN-Norlight (U-7079-C).

PAETEC is a communications company which delivers communications solutions, through its subsidiaries, primarily to business customers in 49 states and the District of Columbia. Its subsidiaries that are affected by this transaction are:

- PaeTec Communications, Inc. (U-6097-C);
- McLeodUSA Telecommunications Services, LLC (U-5712-C);
- Talk America, Inc. (U-5535-C); and
- LDMI Telecommunications, Inc. (U-5837-C).

The Joint Applicants refer to these entities as the PAETEC Regulated Entities, and we will do so also for purposes of ease of reference and clarity.

Peach Merger Sub, Inc. is a direct, wholly-owned subsidiary of Windstream created for purposes of the merger.

The Transaction

The end result of this indirect transfer of control, via Peach Merger Sub, Inc., is that Windstream will become the ultimate parent company of PAETEC and all of its subsidiaries, with each of the existing PAETEC subsidiaries remaining as wholly-owned subsidiaries of their existing intermediate parent companies.

Applicants assert that they expect that the merger will enable the combined entities to better meet the local, national and global needs of enterprises, wholesale buyers and other customers.

Applicants assert that this change of control will not involve a transfer of the operating authority, assets or customers of the PAETEC Regulated Entities, and that customers will be offered the same services, rates, terms and conditions as are currently offered. Applicants further assert that any post-transaction name changes, or modifications to the services, rates, terms and conditions offered by the PAETEC Regulated Entities will be only be undertaken pursuant to the requirements of applicable law and Commission rules.

Discussion

Pursuant to Pub. Util. Code § 852,[1] no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility organized or existing under the laws of this state, without prior

[1] All code references are to the Public Utilities Code, unless otherwise stated.

Commission authorization. In addition, § 854 requires Commission authorization before a company may "merge, acquire, or control any public utility organized and doing business in this state." The purpose of these and related sections is to enable the Commission, before any transfer of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

Where a company that does not possess a Certificate of Public Convenience and Necessity (CPCN) desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking a CPCN. The Commission has established two major criteria for determining whether a CPCN should be granted, or transferred. An applicant who desires to operate as a provider of facilities-based local exchange and interexchange services must demonstrate that it has a minimum of $100,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. In this case, Windstream, which holds four CPCNs in California, is acquiring PAETEC and all of its subsidiaries, including the four PAETEC Regulated Entities that hold CPCNs in California. Windstream and PAETEC have each demonstrated, through their ownership and operation of these subsidiaries, that they possess the level of technical expertise necessary to qualify for a CPCN in California.

Joint applicants assert that the transaction will join together two companies that have successfully competed in the telecommunications sector, and the

resulting integration of their operations will bring together the respective strengths of each organization. They further assert that, by operating as an integrated company, each of the operating companies will deliver greater value and variety of services to their customers than they do individually. Joint applicants also assert that the transaction "will not result in a change of carrier for customers or any assignment of authorizations, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers," and "without immediate change in rates, terms or conditions."

There is no evidence that the merger sought in this application will reduce competition and harm consumers. The Commission notes, however, that this merger may result in an increase in rates for Joint Applicants' current customers, although Joint Applicants have asserted such will not happen "immediately."

The instant application includes a copy of Windstream's most recent financial statements from its SEC Form 10-K filing for the year ended December 31, 2010 which demonstrates that Windstream has sufficient resources to meet the Commission's financial requirements.

For the above reasons, the transaction is in the public interest and we will grant the application pursuant to §§ 852 and 854.

CEQA Considerations

Public Resources Code Section 21080 requires that we consider the environmental consequences of projects that are subject to our discretionary approval. The nature of the transaction, combined with assertions of the Joint Applicants at 11, assure us that "the transaction does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment." We conclude that under these circumstances, the proposed project qualifies for an exemption from

CEQA pursuant to § 15061(b)(3) of the CEQA guidelines, inasmuch as it can be seen with certainty that the project will have no significant impact upon the environment. Accordingly, the Commission need perform no further environmental review for this application.

Categorization and Need for Hearing

In Resolution ALJ 176-3279, dated August 18, 2011, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Waiver of Comment Period

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure (Rules), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Richard W. Clark is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Windstream is a Delaware corporation.
2. PAETEC Holding Corporation is a Delaware corporation.
3. Peach Merger Sub, Inc. is a direct, wholly-owned subsidiary of Windstream created for purposes of the merger of PAETEC Holding Corporation and Windstream.

4. Windstream is a diversified communications and entertainment company with four subsidiaries that hold valid CPCNs and provide telecommunications services in California.

5. PAETEC Holding Corporation is a communications company with four subsidiaries that hold valid CPCN's and provide telecommunications services in California.

6. Windstream Communications, Inc. (U-6985-C) is a wholly-owned subsidiary of Windstream, authorized to provide resold interexchange services pursuant to Decision (D.) 06-02-038.

7. Windstream NTI, Inc. (U-5674-C) is a wholly-owned subsidiary of Windstream, authorized to provide interexchange carrier services pursuant to D.96-09-062.

8. Windstream Nuvox, Inc. (U-7214-C) is a wholly-owned subsidiary of Windstream, authorized to provide resold local exchange services pursuant to D.11-05-040.

9. Windstream Norlight, Inc. (U-7079-C) is a wholly-owned subsidiary of Windstream, authorized to operate as a switchless reseller of Inter-Local Access and Transport Area (LATA) and Intra-LATA telecommunications services offered by communication common carriers in California pursuant to D.08-04-045.

10. PaeTec Communications, Inc. (U-6097-C) is a wholly-owned subsidiary of PAETEC authorized to provide telecommunications services as a full facilities-based competitive local exchange carrier pursuant to D.98-12-083, as amended by D.99-02-004, and as a non-dominant interexchange carrier pursuant to D.98-09-049.

11. McLeodUSA Telecommunications Services, LLC (U5712C) is a wholly-owned subsidiary of PAETEC authorized to provide resale and limited facilities-based competitive local exchange telecommunications service pursuant to certification granted by the Commission in D.01-05-055, and resold InterLATA and IntraLATA telecommunications services pursuant to certification granted in D.96-12-021.

12. Talk America, Inc. (U5535C) is a wholly-owned subsidiary of PAETEC authorized to provide local exchange and interexchange telecommunications services pursuant to authority granted in D.98-07-020 and D.95-11-037, respectively.

13. LDMI Telecommunications, Inc. (U5837C) is a wholly-owned subsidiary of PAETEC authorized to provide interexchange telecommunications services pursuant to authority granted in D.97-09-021.

14. Peach Merger Sub, Inc. will merge with and into PAETEC and PAETEC will continue to exist as the surviving corporation.

15. As a result of this transaction, PAETEC will become the direct, wholly-owned subsidiary of Windstream.

16. Windstream will become the new ultimate parent company of PAETEC and its subsidiaries.

17. The subsidiaries of PAETEC will continue to be wholly-owned subsidiaries of their existing intermediary parent companies.

18. The change in ultimate control will not involve a transfer of the authority, assets or customers of the subsidiaries of PAETEC.

19. Windstream and PAETEC subsidiaries currently provide telecommunications services in California and there will be sufficient experience and expertise for their continued operations, post transfer of control.

20. Applicants have provided financial statements that demonstrate that both Windstream and PAETEC have access to well over $100,000 in cash or cash equivalent, which is reasonably liquid and available and which is sufficient to cover operating expenses and any deposits third party carriers may require.

21. Pursuant to Rule 11.4, Applicants filed a motion for leave to file confidential materials under seal, including Exhibits C through I to the application.

22. Notice of this application appeared on the Commission's Daily Calendar on August 17, 2011. There were no protests to this application.

23. No hearings are necessary.

Conclusions of Law

1. Where a company that does not possess a CPCN desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply the same requirements, to the acquiring company, as would be applied to an initial applicant seeking a CPCN.

2. Windstream will be the ultimate owner of PAETEC and its subsidiaries, but no transfer of certificates, assets or customers will occur; the management of the companies will remain essentially the same; and each company will have the financial resources required; as a result, this transaction meets the Commission's requirements for approval of this transaction.

3. This transaction is in the public interest.

4. Applicants' motion to file their Exhibits 3 and 4 to the supplement to the application under seal should be granted for two years.

5. Since this matter is uncontested, the decision should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code §§ 852 and 854, the application of Windstream Corporation, PaeTec Communications, Inc., McLeodUSA Telecommunications Services, LLC, Talk America, Inc., and LDMI Telecommunications, Inc. for approval of a transaction in which Windstream Corporation will acquire control of PaeTec Communications, Inc., McLeodUSA Telecommunications Services, LLC, Talk America, Inc., and LDMI Telecommunications, Inc. is approved.

2. Within five days of the closing of the transaction, the surviving entities shall notify the Communications Division, by letter, of the consummation of the transaction.

3. Windstream Corporation's motion to file their Exhibits 3 and 4 to supplement to the application under seal is granted. The information will remain under seal for a period of two years after the date of issuance of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by Windstream Corporation or their successors in interest, or as ordered by a court of competent jurisdiction. If Windstream Corporation, or its successors in interest, believe that it is necessary for this information to remain under seal for longer than two years, Windstream Corporation, or their successors in interest may file a new motion at least 30 days before the expiration of this limited protective order.

4. Application 11-08-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.