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**FILED**

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A2406002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Windstream Holdings II, LLC, Uniti Group Inc., and Windstream Parent, Inc. for Approval Pursuant to Public Utilities Code Section 854 of the Indirect Transfer of Control of American Telephone Company LLC (U7082C); Broadview Networks, Inc. (U6363C); Business Telecom, LLC (U5560C); CTC Communications Corp. (U5532C); DeltaCom, LLC (U5760C); LDMI Telecommunications, LLC (U5837C); MassComm, LLC (U7176C); McLeodUSA Telecommunications Services, LLC (U5712C); PAETEC Communications, LLC (U6097C); Talk America, LLC (U5535C); Windstream Communications, LLC (U6985C, U1559C); Windstream New Edge, LLC (U6226C); Windstream Norlight, LLC (U7079C); and Windstream NuVox, LLC (U7214C).

Application 24-06-002

**ASSIGNED COMMISSIONER'S SCOPING  
MEMO AND RULING**

This Scoping Memo and Ruling (Scoping Memo) sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1001 and Article 7 of the California Pub. Util. Commission's (Commission) Rules of Practice and Procedure (Rules).

## 1. Procedural Background

Application (A.) 24-06-002, with its accompanying Exhibits A through E, was filed on June 5, 2024 by seventeen (17) Joint Applicants including:

### Non-Licensees<sup>1</sup>

1. Uniti Group Inc., a Maryland corporation;
2. Windstream Holdings II, LLC, a Delaware limited liability company;
3. Windstream Parent, Inc., a Delaware corporation;

### Commission Licensees<sup>2</sup>

4. American Telephone Company LLC (U7082C), a New York limited liability company;
5. Broadview Networks, Inc. (U6363C), a New York corporation;
6. Business Telecom, LLC (U5560C), a North Carolina limited liability company;
7. CTC Communications Corp. (U5532C), a Massachusetts limited liability company;
8. DeltaCom, LLC (U5760C), an Alabama limited liability company;
9. LDMI Telecommunications, LLC (U5837C), a Michigan limited liability company;
10. MassComm, LLC (U7176C), a New York limited liability company;
11. McLeodUSA Telecommunications Services, LLC (U5712C), an Iowa limited liability company;
12. PAETEC Communications, LLC (U6097C), a Delaware limited liability company;

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<sup>1</sup> Application at 3-5, and 8.

<sup>2</sup> Application at 6-8.

13. Talk America, LLC (U5535C), a Delaware limited liability company;
14. Windstream Communications, LLC (U6985C, U1559C), a Delaware limited liability company;
15. Windstream New Edge, LLC (U6226C), a Delaware limited liability company;
16. Windstream Norlight, LLC (U7079C), a Kentucky limited liability company; and
17. Windstream NuVox, LLC (U7214C), a Delaware limited liability company (collectively the Windstream Licensees).

The Application indicates that the Windstream Licensees are currently held by Non-Licensee Applicant Windstream Holdings II, LLC.<sup>3</sup> Non-Licensee Applicants Uniti Group Inc. and Windstream Holdings II, LLC seek to enter into a merger agreement which provides, in part, for the merger of Applicants Uniti Group, Inc. and Windstream Holdings, II, LLC into newly formed Applicant Windstream Parent, Inc.<sup>4</sup> When the merger is fully consummated, Windstream Holdings II, LLC, and Uniti Group, Inc., would become subsidiaries of Windstream Parent, Inc. and Windstream Parent, Inc. would acquire indirect control of the 14 Windstream Licensees (Application).<sup>5</sup>

Pursuant to Pub. Util. Code Section 854, Commission authorization is required for the transfer of indirect ownership of the Windstream Licensees proposed in A.24-06-002.

No party filed a protest or response to the Application.

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<sup>3</sup> See *Reporter's Transcript* of August 2, 2024 Prehearing Conference Virtual Proceeding at 11:15-19 (August 12, 2024).

<sup>4</sup> Application at 2 and footnote 3.

<sup>5</sup> Application at 1-2.

On July 22, 2024, *Administrative Law Judge's Ruling Setting Remote Prehearing Conference & Prehearing Conference Statement Deadline* was issued, setting a prehearing conference (PHC) for August 2, 2024 and requesting Applicants provide supplemental corporate financial ability information for Applicants Uniti Group Inc., Windstream Holdings II, LLC, and Windstream Parent, Inc. (July 22nd Ruling). The July 22<sup>nd</sup> Ruling also requested Applicants supplement and clarify Exhibit D (*Organizational and Qualification Documentation*) to A.24-06-002. Joint Applicants responsive supplemental information was filed on July 30, 2024.<sup>6</sup>

A PHC was held on August 2, 2024 before Administrative Law Judge (ALJ) Andrea D. McGary, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and to address other matters as necessary. During the PHC, ALJ McGary ordered Applicants to provide supplemental information to clarify the record as to: (1) the name of the current direct parent of the Windstream Licensees, (2) the name of the post-merger proposed direct parent of the Windstream Licensees, and (3) and the name of the post-merger indirect parent of the Windstream Licensees if the Commission grants the authorization requested in A.24-06-002.<sup>7, 8</sup> Applicants response is pending.

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<sup>6</sup> See *Prehearing Conference Statement of Joint Applicants* and its Attachment 1 (*Financial Documentation of Uniti Group, Inc.*), Attachment 2 (*Financial Documentation of Windstream Holdings II, LLC*), Attachment 3 (*Proforma Financial Information of the Combined Company*), Updated Exhibit A (*Pre-Closing Organization Structure Charts*), Updated Exhibit B (*Post-Closing Organization Chart*), and Supplement to Exhibit D (*Organization and Qualification Documents for Windstream Parent, Inc.*) ( July 30, 2024).

<sup>7</sup> See *Reporter's Transcript* of August 2, 2024 Prehearing Conference Virtual Proceeding at 14:17-16:17(August 12, 2024).

<sup>8</sup> As discussed above, the application indicates that the pre-merger indirect parent is Windstream Holdings II, LLC.

No environmental and social justice issues have been raised at this time. The issues and initial schedule of this proceeding are set forth herein below.

**2. Issues**

The issues to be determined or otherwise considered are:

1. Whether Joint Applicants' request for Windstream Parent, Inc. to acquire indirect control of the 14 Windstream Licensees is in compliance with all Commission and statutory requirements, including but not limited to compliance with Pub. Util. Code Section 854.

**3. Need for Evidentiary Hearing**

There are no issues of material disputed fact. Accordingly, no evidentiary hearing is needed.

**4. Schedule**

This matter will be submitted upon review of the record and a determination that no further information or evidence is needed to evaluate the issues in this proceeding.

The proposed decision is expected to be filed no later than 90 days from the date the proceeding is submitted, for public review and comment pursuant to Pub. Util. Code Section 311(d) except that, if it grants the uncontested requested relief, public review and comment shall be waived pursuant to Rule 14.6(c)(2).

**5. Category of Proceeding and Ex Parte Restrictions**

This ruling confirms the Commission's preliminary determination<sup>9</sup> that this is a ratesetting proceeding. Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Rules.

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<sup>9</sup> Resolution ALJ 176-3547 at 3.

## **6. Public Outreach**

Pursuant to Public Utilities Code Section 1711(a), where feasible and appropriate, before determining the scope of the proceeding, the Commission sought the participation of those likely to be affected, including those likely to derive benefit from, and those potentially subject to, a decision in this proceeding. This matter was noticed on the Commission's daily calendar. Where feasible and appropriate, this matter was incorporated into engagements conducted by the Commission's External Affairs Division with local governments and other interested parties.

## **7. Response to Public Comments**

Parties may, but are not required, to respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for the proceeding.

## **8. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 1-866-849-8390 or 1-866-836-7825 (TTY), or send an email to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **9. Filing, Service, and Service List**

The official Service List has been created and is on the Commission's website. Parties should confirm that their information on the Service List is

correct and serve notice of any errors on the Commission's Process Office, the Service List, and the ALJ. Persons may become a party pursuant to Rule 1.4.<sup>10</sup>

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f). The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

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<sup>10</sup> The form to request additions and changes to the Service list may be found at <https://www.cpsc.ca.gov/-/media/cpsc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

**10. Receiving Electronic Service from the Commission**

Parties and other persons on the Service List are advised that it is the responsibility of each person or entity on the Service List for Commission proceedings to ensure their ability to receive e-mails from the Commission. Please add “@cpuc.ca.gov” to your email safe Service List and update your e-mail screening practices, settings, and filters to ensure receipt of e-mails from the Commission.

**11. Assignment of the Proceeding**

Matthew Baker is the assigned Commissioner and Andrea D. McGary is the assigned Administrative Law Judge for the proceeding.

**IT IS RULED that:**

1. The scope of the proceeding is described above and is adopted.
2. The schedule of the proceeding is set forth above and is adopted.
3. Evidentiary hearing is not needed.
4. The category of the proceeding is ratesetting.

This order is effective today.

Dated September 17, 2024, at San Francisco, California.

/s/ MATTHEW BAKER

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Matthew Baker  
Assigned Commissioner