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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

Arizona Corporation Commission

DOCKETED

NOV 17 2011

DOCKETED BY	NR
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IN THE MATTER OF THE JOINT
APPLICATION OF WINDSTREAM
CORPORATION AND MCLEODUSA
TELECOMMUNICATIONS SERVICES,
L.L.C. d/b/a PAETEC BUSINESS SERVICES
FOR APPROVAL TO TRANSFER OF
INDIRECT CONTROL OF MCLEODUSA
TELECOMMUNICATIONS SERVICES,
L.L.C. d/b/a PAETEC BUSINESS SERVICES
TO WINDSTREAM CORPORATION

DOCKET NO. T-03267A-11-0314
DECISION NO. 72670
ORDER

Open Meeting
November 8 and November 9, 2011
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On August 8, 2011, Windstream Corporation (“Windstream”) and McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services (“PAETEC Business”) filed an application with the Arizona Corporation Commission (“Commission”) pursuant to the Commission’s Public Utility Holding Companies and Affiliated Interests Rules (the “Affiliated Interests Rules”). Specifically, the Applicants request a waiver of the requirements of A.A.C. R14-2-803 pursuant to A.A.C. R14-2-806 or, alternatively, expedited approval under A.A.C. R14-2-803, to the extent necessary, as well as any other applicable statutes or rules, for the transfer of indirect control of PAETEC Business to Windstream.

...

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1 2. McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business
2 Services is certificated to provide intrastate telecommunications service as a public service
3 corporation in the State of Arizona.

4 Background

5 **Windstream Corporation**

6 3. Windstream Corporation is a publicly traded Delaware corporation headquartered at
7 4001 Rodney Parham Road, Little Rock, Arkansas 72212. Windstream's subsidiaries provide local
8 and long distance telephone services, data hosting services, broadband and high-speed data
9 services and video services to customers throughout the United States. Windstream's operations
10 currently have approximately 3.3 million access lines and approximately \$4 billion in annual
11 revenues.

12 4. Windstream does not itself provide telecommunications services or hold any
13 telecommunications licenses. In Arizona, Windstream has one subsidiary¹ currently authorized to
14 provide telecommunications services and is seeking authority to provide telecommunications
15 services with a second subsidiary.²

16 **PAETEC Business and Affiliates**

17 5. PAETEC Business is an Iowa limited liability company and a wholly-owned
18 indirect subsidiary of PAETEC Holding Corp. ("PAETEC"), a publicly traded Delaware
19 corporation. PAETEC and PAETEC Business have principal offices located at One PAETEC
20 Plaza, 600 Willow Brook Office Park, Fairport, New York 14450. Through PAETEC, PAETEC
21 Business is affiliated with two entities that are authorized to provide telecommunications services
22 in Arizona - PaeTec Communications, Inc. ("PCI") and Talk America, Inc. ("TA") (PAETEC
23 Business, PCI and TA collectively, the "PAETEC Regulated Entities").

24 6. PAETEC Business is authorized to provide resold and facilities-based local
25 exchange and exchange access services pursuant to Decision No. 62627, dated June 9, 2000 and to
26 _____

27 ¹ Windstream Communications, Inc. ("WCI") is authorized to provide resold long distance services pursuant to a
certificate granted by Decision No. 68965 (Docket No. T-20436A-05-0909) on September 21, 2006.

28 ² Windstream NuVox, Inc. ("WIN-NuVox") has an application pending for a certificate to provide resold local
exchange telecommunications services in Docket No. T-20786A-11-0088.

1 resell interexchange telecommunications services pursuant to Decision No. 61001, dated July 16,
2 1998. PCI is authorized to provide resold intrastate interexchange services in Arizona pursuant to
3 Decision No. 62458, dated April 14, 2000. TA is authorized to provide resold interexchange
4 telecommunications services pursuant to Decision No. 64084, dated October 4, 2001. This
5 authorization was confirmed and TA's voluntarily relinquishment of its authority to provide local
6 exchange service was approved in Decision No. 71266, dated September. 3, 2009. PCI and TA
7 have no physical presence in Arizona and are not Class A investor-owned utilities subject to the
8 Affiliated Interest Rules.

9 The Applicants' Transaction

10 7. On July 31, 2011, Windstream and PAETEC entered into a merger agreement
11 whereby PAETEC will become a direct, wholly-owned subsidiary of Windstream. The change in
12 ultimate control will not involve a transfer of the operating authority, assets or customers of
13 PAETEC Business (or the other PAETEC Regulated Entities). The PAETEC Regulated Entities
14 will be ultimately owned by Windstream as a result of the proposed transaction; therefore,
15 PAETEC Business and the other PAETEC Regulated Entities may in the future change their
16 names to reflect the "Windstream" brand.

17 Staff's Analysis and Conclusions

18 8. The Windstream and PAETEC Business application provided the information
19 required by A.A.C. R14-2-803.A.1-11. The Applicants also provided additional information
20 requested by Staff during an August 31, 2011 conference call and subsequent discussions and
21 emails. Staff confirmed that TA and PCI are not Class A investor-owned utilities subject to the
22 Commission's Affiliated Interests Rules by reviewing the corresponding 2010 Utility Annual
23 Reports.

24 9. Applications seeking approval of the proposed transaction have been filed in
25 California, Colorado, Delaware, Georgia, Hawaii, Indiana, Louisiana, Maryland, Minnesota,
26 Mississippi, New Jersey, New York, Ohio, Pennsylvania, Utah, Virginia and West Virginia. All
27 applications requested that approval be granted by early to mid-November, 2011. Staff's review of
28 the merger agreement disclosed that the termination date is January 31, 2012 – March 30, 2012.

1 However, the Applicants plan to close as soon as possible to minimize disruptions for employees,
2 customers and business partners.

3 10. If the proposed transaction does not close by the termination dates and under the
4 terms stated in the merger agreement, PAETEC must pay Windstream a termination fee of \$40
5 million and may pay an amount not to exceed \$15 million under the limited circumstances
6 prescribed by the merger agreement for significant expenses incurred by Windstream.

7 11. The proposed merger seeks to combine the resources of companies jointly
8 employing nearly 15,000 and serving 700 markets in the contiguous United States.³ The
9 Applicants state that the proposed merger would create a nationwide network of approximately
10 100,000 fiber route miles supported by 20 data centers offering services nationwide.⁴

11 12. Upon closure of the proposed transaction, PAETEC will become a direct subsidiary
12 of Windstream. At the outset, the ownership of the 100% stock-based transaction will be 87%
13 Windstream shareholders and 13% PAETEC shareholders. The top Officers and Board of
14 Directors of the post merger company will be 100% comprised of Windstream members with the
15 corporate headquarters in Little Rock, Arkansas. Given the lengthy history of Windstream in
16 telecommunications, Staff does not believe the change of management presents a potential risk for
17 the economic viability of PAETEC or service provision to Arizona customers.⁵

18 13. Windstream's pre-transaction revenues of \$4.1 billion will increase to \$6.2 billion
19 with the acquisition of PAETEC.⁶ The increased business customer focus that is gained by
20 Windstream with its PAETEC acquisition is evidenced by business revenues increasing from 49%
21 to 63%, as a per cent of total revenues. In response to Staff's request for an explanation of the
22 proposed merger's synergies applicable to Arizona, Windstream stated that a discrete financial
23 analysis for the synergies to be realized for Arizona had not been developed. The synergy impact
24 of the corporate transaction, however, is calculated currently at approximately \$100 million
25

26 ³ Windstream does not have employees located in Arizona. PAETEC has less than 100 employees in Arizona.

27 ⁴ Windstream Investor Call, Announcement of Acquisition of PAETEC, August 1, 2011.

28 ⁵ Windstream traces its history to 1943 when Allied Telephone Company was founded. Major expansion began with the formation of Alltel in 1983 and continued with significant acquisitions and reorganizations from 1999 through 2010; http://news.windstream.com/section_display.cfm?section_id=10

⁶ Revenues are for the last twelve months as of March 31, 2011.

1 annually. Corresponding tax benefits are estimated to reach a net present value of approximately
2 \$250 million.

3 14. At closing, Windstream will assume responsibility for PAETEC's net debt of
4 approximately \$1.4 Billion. Windstream's investor presentation states that the leverage ratio⁷
5 remains approximately the same – 3.6 pre-merger versus 3.5 post-merger. In response to Staff's
6 inquiry regarding a potential need for refinancing of PAETEC's debt, Windstream stated the
7 following:

8 “Since the announcement of the transaction on August 1, 2011, the following
9 actions have been taken to eliminate the need for Windstream to refinance the
10 referenced \$1.4 billion in PAETEC debt. First, on August 9, 2011, Windstream
11 obtained an amendment to its existing senior secured credit facilities to permit
12 Windstream to leave the following \$1.4 billion in PAETEC senior notes (the
13 “PAETEC Notes”) outstanding following the completion of the merger:

- 14 • \$300 million in 9.5% Senior Notes due 2015,
- 15 • \$650 million in 8.875% Senior Secured Notes due 2017, and
- 16 • \$450 million 9.875% Senior Notes due 2018.

17 Second, PAETEC solicited and, on August 16, 2011, received consents from the
18 requisite holders of PAETEC's Notes to proposed amendments to the indentures
19 governing the PAETEC Notes. The amendments provide that PAETEC's obligation
20 under each indenture to make an offer to purchase all outstanding PAETEC Notes
21 upon a change of control of PAETEC will not apply as a result of the Transaction.
22 As a result of these actions, the potential refinancing of the \$1.4 billion in PAETEC
23 Notes as a result of the Transaction mentioned in the press release is no longer
24 necessary, and the financing commitments under the \$1.1 billion in bridge
25 commitment facilities have terminated.

26 As a result, at the closing of the Transaction, the PAETEC Notes will remain
27 outstanding and will be guaranteed by Windstream, and the participation by
28 PAETEC Regulated Entities in the PAETEC Notes will not change. In addition,
pursuant to the amendment to Windstream's credit facility noted above, at the
closing of the Transaction the PAETEC Regulated Entities will not be required to
guarantee, or pledge assets as security for, indebtedness of Windstream under such
credit facilities or under Windstream's outstanding senior notes.”

15 15. The Applicants have indicated to Staff that no merger-related plans exist at this
16 time to reduce the Arizona employee-base or company assets of the joint Applicants' operations.

17 _____
18 ⁷ (Long-Term Debt including current maturities less cash and cash equivalents) ÷ Pro Forma Adjusted Operating
19 Income Before Depreciation and Amortization (“OIBDA”); Windstream Investor Presentation, August 8, 2011.

1 Additionally, Staff is not aware of any parties that have raised concerns or filed objections to the
2 proposed transaction. The potential approval of the Windstream NuVox application⁸ for local
3 exchange authority presents an opportunity for Windstream to increase its operations in Arizona.

4 16. The Applicants have stated that no customers will be switched to another carrier as
5 a result of the transaction. All existing contracts will be honored consistent with the terms of those
6 contracts. McLeodUSA tariffs will not be changed as a result of the proposed transaction.

7 17. Staff concludes that the transaction would not impair the financial status of the
8 Applicants, would not impair its ability to attract capital, nor would it impair the ability of the
9 Applicants to provide safe, reasonable, and adequate service. Additionally, as the proposed
10 transaction does not involve the merger of Arizona CLECs, Staff does not believe Arizona's
11 competitive situation will be negatively impacted.

12 18. On August 24, 2011, the Applicants filed an affidavit of publication verifying
13 public notice of its proposed transaction with the Commission's Docket Control. The Company
14 published notice of its application in the Arizona Republic on August 19, 2011.

15 19. The Applicants have requested that the Commission approve the proposed transfer
16 of indirect control no later than the Commission's November 8 and 9, 2011 Open Meeting so that
17 the Transaction can close as soon as practicable. The Applicants have also requested that the
18 Commission waive the A.A.C. R14-2-803(A) requirement that the notice of intent be filed 120
19 days prior to completion of the Reorganization. If the application is approved at the November
20 Open Meeting, the Notice of Intent will have been filed 92 days rather than 120 days in advance.

21 Staff's Recommendations

22 Staff has recommended that the application filed by Windstream Corporation and
23 McLeodUSA Telecommunications Services seeking approval for the transfer of indirect control of
24 McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services to
25 Windstream Corporation pursuant to A.A.C. R14-2-803, including the requested waiver of A.A.C.
26 R14-2-803(A) 120 day notice requirement, be approved with the following conditions:

27 _____
28 ⁸ In the matter of the application of Windstream NuVox, Inc. for approval of a Certificate of Convenience and
Necessity to provide Resold Local Exchange Telecommunications Services; T-20786A-11-0088.

- 1 A. That Windstream Corporation and McLeodUSA Telecommunications Services
2 shall for the first two complete years following merger closing submit an
3 Arizona Merger Benefits report to Docket Control. The report shall at
4 minimum detail (1) any cost, capital and synergy savings and (2) any service
5 improvements that have resulted from the proposed transaction and have been
6 passed on to or made available to Arizona customers.
- 7 B. That for one year following the closing of the proposed transaction or until
8 Windstream Corporation and McLeodUSA Telecommunications Services
9 inform the Commission by filing an affidavit with Docket Control that
10 transaction-related activities are completed, whichever occurs last, Windstream
11 Corporation and McLeodUSA Telecommunications Services provide written
12 notification to the Director of the Utilities Division and to the individual
13 members of the Commission, at least 60 days in advance, of any planned
14 acquisition-related Arizona workforce layoffs; any planned acquisition-related
15 Arizona plant closings; and any planned acquisition-related Arizona facility
16 closings.
- 17 C. That Windstream Corporation and McLeodUSA Telecommunications Services
18 file updates in Docket Control by April 15, 2012 and April 15, 2013 on the
19 status of plans related to the proposed transaction to increase employees and
20 investment in Arizona.
- 21 D. That Windstream Corporation and McLeodUSA Telecommunications Services
22 file updates in Docket Control by April 15, 2012 and April 15, 2013 of any
23 changes in the status of debt financing plans.

24 CONCLUSIONS OF LAW

25 1. McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business
26 Services is a public service corporation within the meaning of Article XV of the Arizona
27 Constitution.

28 2. The Commission has jurisdiction over McLeodUSA Telecommunications Services,
LLC d/b/a PAETEC Business Services and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated
October 25, 2011, concludes that it is in the public interest to grant approval as proposed and
discussed herein.

31 ORDER

32 IT IS THEREFORE ORDERED that the application of Windstream Corporation and
33 McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services seeking

1 approval for the transfer of indirect control to Windstream Corporation as described herein, and
2 the requested waiver of A.A.C. R14-2-803(A) 120 day notice requirement, be and hereby are
3 approved.

4 IT IS FURTHER ORDERED that Windstream Corporation and McLeodUSA
5 Telecommunications Services, LLC d/b/a PAETEC Business Services be authorized to engage in
6 any transactions and to execute any documents necessary to effectuate the authorizations granted.

7 IT IS FURTHER ORDERED that Windstream Corporation and McLeodUSA
8 Telecommunications Services, LLC d/b/a PAETEC Business Services shall for the first two
9 complete years following merger closing submit an Arizona Merger Benefits report to Docket
10 Control. The report shall at minimum detail (1) any cost, capital and synergy savings and (2) any
11 service improvements that have resulted from the proposed transaction and have been passed on to
12 or made available to Arizona customers.

13 IT IS FURTHER ORDERED that for one year following the closing of the proposed
14 transaction or until Windstream Corporation and McLeodUSA Telecommunications Services,
15 LLC d/b/a PAETEC Business Services inform the Commission by filing an affidavit with Docket
16 Control that transaction-related activities are completed, whichever occurs last, Windstream
17 Corporation and McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business
18 Services shall provide written notification to the Director of the Utilities Division and to the
19 individual members of the Commission, at least 60 days in advance, of any planned acquisition-
20 related Arizona workforce layoffs; any planned acquisition-related Arizona plant closings; and any
21 planned acquisition-related Arizona facility closings.

22 IT IS FURTHER ORDERED that Windstream Corporation and McLeodUSA
23 Telecommunications Services, LLC d/b/a PAETEC Business Services file updates in Docket
24 Control, as a compliance item in this docket, by April 15, 2012 and April 15, 2013 on the status of
25 plans related to the proposed transaction to increase employees and investment in Arizona.

26 ...

27 ...

28 ...

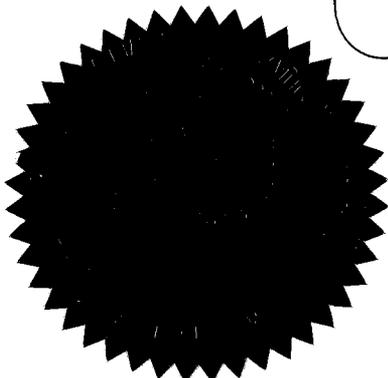
1 IT IS FURTHER ORDERED that Windstream Corporation and McLeodUSA
 2 Telecommunications Services, LLC d/b/a PAETEC Business Services file updates in Docket
 3 Control, as a compliance item in this docket, by April 15, 2012 and April 15, 2013 of any changes
 4 in the status of debt financing plans.

5 IT IS FURTHER ORDERED that this decision shall become effective immediately.

6
 7 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

8
 9  CHAIRMAN  COMMISSIONER
 10
 11  COMMISSIONER  COMMISSIONER  COMMISSIONER
 12

13
 14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
 15 Executive Director of the Arizona Corporation Commission,
 16 have hereunto, set my hand and caused the official seal of this
 17 Commission to be affixed at the Capitol, in the City of Phoenix,
 18 this 17th day of November, 2011.



18 
 19 ERNEST G. JOHNSON
 20 EXECUTIVE DIRECTOR

21 DISSENT: _____

22
 23 DISSENT: _____

24 SMO:AFF:sms\BH

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 28

1 SERVICE LIST FOR: Windstream Corporation and McLeodUSA Telecommunications
Services, LLC d/b/a PAETEC Business Services

2 DOCKET NO. T-03267A-11-0314

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