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**BEFORE THE ARIZONA CORPORATION COMMISSION**

BOB STUMP  
Chairman  
GARY PIERCE  
Commissioner  
BRENDA BURNS  
Commissioner  
SUSAN BITTER SMITH  
Commissioner  
BOB BURNS  
Commissioner

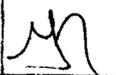
Arizona Corporation Commission

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In the Matter of the Application of Windstream Holdings, Inc., McLeodUSA Telecommunications Services, LLC., PaeTec Communications, Inc., Windstream Communications, Inc., and Talk America, Inc. for a Limited Waiver of the Utility Holding Companies and Affiliated Interest Rules under A.A.C. R14-2-806 or, in the alternative, Approval of Internal Reorganization under A.A.C. R14-2-803 )

T-03267A-14-0344  
T-03342A-14-0344  
T-20436A-14-0344  
T-03663A-14-0344

**APPLICATION FOR LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTEREST RULES (A.A.C. R14-2-801 et seq.)**

Pursuant to A.A.C. R14-2-806, McLeodUSA Telecommunications Services, LLC, PaeTec Communications, Inc., Windstream Communications, Inc., Talk America, Inc. (together "Windstream Certificated Entities"), and Windstream Holdings, Inc. ("Windstream") (all parties collectively "Applicants"), request a limited waiver of the Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 to R14-2-806 (the "Rules") with respect to a transaction in which the Windstream Certificated Entities will transfer ownership of certain of their assets to Communications Sales and Leasing, Inc. ("CSL"), or one of its wholly owned direct or indirect subsidiaries, and CSL will lease those assets back on an exclusive, long-term basis to Windstream for the benefit of the Windstream Certificated Entities (the "Transaction"). The proposed Transaction will involve only intra-company transfers insofar as the ultimate shareholders of the Windstream Certificated Entities and CSL at the time of the Transaction will be the same. The proposed Transaction will not

result in any new equity owners who will hold 10 percent or more indirect ownership in any of the Applicants. There will be no change in the Certificated Operating Entities current Arizona operations, including rates, terms and conditions of service.

The Windstream Certificated Entities are all competitive telecommunications carriers that hold authority to provide intrastate telecommunications services in Arizona. As discussed below, the proposed transactions are in the public interest and will ultimately produce benefits for customers. The Windstream Certificated Entities operate in an industry that has been and continues to be subject to rapid technological advances, evolving consumer preferences, and dynamic change. The public convenience and necessity require that the Applicants increase their efficiencies and lower their costs by means of efforts like the Transaction so that they can continue to provide the full range of advanced high quality services to residential and business customers.

Applicants request that the Commission allow the requested waivers regarding the reorganization to become effect in thirty (30) days pursuant to A.A.C. R14-2-806.C. In the event the Commission declines to grant the waivers under A.A.C. R14-2-806, the Windstream Certificated Entities alternatively request, to the extent necessary, authorization under the A.A.C. R14-2-803 for a reorganization insofar as the Commission interprets the transfer of Windstream Certificated Entities assets to be a Reorganization under the Rules.

## **I. DESCRIPTION OF APPLICANTS**

### **A. Windstream Certificated Entities**

1. **McLeodUSA Telecommunications Services, LLC** is authorized to provide resold inter/intraLATA telecommunications services pursuant to Commission Decision 61001 issued July 16, 1998, and resold and facilities based local exchange and exchange access telecommunications services pursuant to Decision No. 62627 issued June 9, 2000. McLeod is assigned Docket No. T-03267A by the Arizona Corporation Commission.

2. **PaeTec Communications, Inc.** is authorized to provide interLATA/intraLATA resold telecommunications services, except local exchange, pursuant to Decision No. 62458, issued on April 14, 2000. PaeTec is assigned Docket No. T-03663A by the Arizona Corporation Commission.
3. **Talk America, Inc.** is authorized to provide resold interexchange services, except local exchange services, pursuant to Decision No. 64084, issued on October 4, 2001. Talk American, Inc. is assigned Docket No. T-03342A by the Arizona Corporation Commission.
4. **Windstream Communications, Inc.** is authorized to provide resold interexchange services pursuant to Commission Decision No. 68965, issued September 21, 2006. Windstream Communications, Inc. is assigned Docket No. T-20436A by the Arizona Corporation Commission.

**B. Windstream Holdings, Inc.**

Windstream, a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212, is a publicly traded (Nasdaq: WIN) S&P 500 diversified communications and entertainment company. Windstream's subsidiaries, such as the Windstream Certificated Entities, provide local and long distance telephone services, data hosting services, broadband and high-speed data services and video services to customers throughout the United States. Together, Windstream's operations currently have approximately 3.4 million connections (*i.e.*, voice lines, high-speed Internet lines, digital television customers) and approximately \$6 billion in annual revenues. More information about Windstream and its operations can be found at [www.windstream.com/about](http://www.windstream.com/about). Windstream does not provide telecommunications services in its own right. It owns and operates a number of licensed telecommunications providers in all states and the District of Columbia, except Alaska, many of which also hold authority from the FCC to provide domestic interstate and international telecommunications services.

**C. Windstream Non-Certificated Entities**

1. **Communications Sales and Leasing, Inc.** is a newly formed Maryland corporation *and currently a Windstream indirect subsidiary*. Immediately upon the transfer of the Windstream assets to CSL or one of its wholly owned direct or indirect subsidiaries, it will become the owner of the assets and will

lease them back on a long term exclusive basis to Windstream for the benefit of other Windstream subsidiaries. CSL will own the assets but will not operate or manage them, nor will it provide telecommunications service on a retail or wholesale basis. It is, therefore, not seeking authority to become a certificated telecommunications carrier or public utility.

2. **Talk America Services, LLC ("TAS")** is a Delaware limited liability company and a newly created subsidiary of CSL. TAS is separately seeking certification in Arizona to become a provider of local exchange and interexchange service. (See ACC Docket No. T-20918A-14-0342.) Its parent, CSL, will be spun-off to become a separate, publicly traded company (as described below). Upon receipt of a certificate of convenience and necessity and all necessary Commission approvals and notices, the residential customers of the Windstream Certificated Entities will be assigned to TAS. This application does not seek any action on TAS certificate application or customer transfer. These steps will be the subject of future filings.

### CONTACT INFORMATION

For the purposes of this Application, contacts for the Applicants are as follows:

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### II. DESCRIPTION OF TRANSACTION

Windstream is planning an intra-corporate Transaction in which its business will be divided into two independent units: an operating unit that will continue to provide telecommunications and related services, and a real estate investment trust (REIT) entity that will hold title to certain distribution plant assets (the "Subject Assets"), and will lease those assets exclusively to Windstream for the benefit of the Windstream Certificated Entities on a long term basis. The Subject Assets of the Windstream Certificated Entities, including copper, fiber, real estate and other network assets, will be transferred to CSL, a newly established corporation, and CSL will lease them back to Windstream on a long term basis for the exclusive use and benefit of the Windstream subsidiaries. The Transaction will allow Windstream's debt to be reduced

by approximately \$3.2 billion which will result in increased cash flows and permit investment in new service capabilities. Following the Transaction, both CSL and Windstream will thereafter be independent publicly traded companies whose stock will trade independently of the other. The Windstream Certificated Entities will continue to be subject to all regulatory requirements, and the Transaction will not affect any regulatory obligations they currently have in Arizona.

Once TAS has obtained the requisite regulatory commission certifications to operate as a competitive local exchange and interexchange carrier in Arizona and other states and following notice to affected customers, the residential local and long distance customers of the Windstream Certificated Entities will be transferred to TAS. The Windstream Certificated Entities will retain all of their business customers, and will also retain their existing certifications in Arizona and other states in order to continue providing services to those customers.

The Windstream Certificated Entities' operations and provision of service will not change as a result of the Transaction. The Windstream Certificated Entities will continue to provide the same services to their business customers, at the same rates, and pursuant to the same tariffs and under the same names, as they do now. Upon the certification of TAS and the assignment of the residential customers to it, TAS will provide the same high quality service that the Windstream Certificated Entities do today.

### **III. BASIS FOR LIMITED WAIVER**

#### **A. The Commission Should Grant a Waiver Under A.A.C. R14-2-806 for the Transactions Involving Competitive Telecommunications Carriers**

A waiver under A.A.C. R14-2-806 Rules would be appropriate in this instance because the carriers involved in this transaction operate in a competitive telecommunications

environment and the transaction will not impact the rates, terms or conditions of service for current customers of the Windstream Certificated Entities. Allowing a waiver under Rule 806 also would be consistent with the Commission's response to: (i) merger applications filed in Docket T-20872A-13-0281 (In re AT&T Corp., Teleport Communications of America, LLC and Leap Wireless International, Inc. Application for Limited Waiver), Docket No T-04293A-14-0147 (In re Time Warner Cable and Comcast Application for Limited Waiver), Docket T-20872A-14-0186 (In re AT&T Corp., Teleport Communications of America, LLC and DIRECTTV Application for Limited Waiver ), and Docket No. T03654A-14-0252 (Level 3 Communications, Inc., tw telecom arizona llc Application for Limited Waiver); and (ii) the internal corporate reorganization application filed in Docket T-20783A-14-0273 (In the Matter of the Application of Zayo Group, LLC for a Limited Waiver of the Public Utility Holding Companies and Affiliated Interest Rules) and (iii) financing applications filed in Docket Nos. T-20872A-13-0282 et al. (Level 3 entities) and Docket Nos. T-20872A-13-0366 et al. (Level 3 entities).

In addition, following the consummation of the proposed Transaction, Applicants will continue to offer their services with no change in the rates or terms and conditions. Applicants do not anticipate that the Transaction will cause them to increase their maximum rates on file with the Commission for their competitive services.

**B. Applying the Rules to the Proposed Transaction Would Be Inconsistent with the Legislature's Recent Amendment of A.R.S. § 40-282.**

The Rules regulate the formation of public utility holding companies and certain transactions and activities between public service corporations and their affiliated interests. According to the Commission, the Rules are intended to: (i) prevent the commingling of utility and non-utility funds; (ii) prohibit cross-subsidization of non-utility activities by utility

ratepayers; (iii) prevent negative impact of non-utility activities on a utility's financial credit; and (iv) ensure that the utility and its affiliates provide the Commission with the information necessary to "carry out its regulatory responsibilities." See Commission Decision Nos. 56618 and 56844. Windstream is not embarking on any non-utility business activity or business. The assets of the Windstream Certificated Entities will be owned by CLS but will, pursuant to a Master Lease Agreement, be available solely to Windstream Certificated Entities for purposes of providing communications services. Customers will not be impacted by the Transaction, other than perhaps benefiting from increased capital available for new technology research and facility growth.

The telecommunications industry has become increasingly competitive and the Commission has recognized its oversight role is very different when more than one competitive provider is available to meet market demand. Evidence of the evolving role of the Commission with respect to competitive telecommunications may also be found in recent statutory changes in Arizona. Arizona Revised Statute §40-285 provides that a public service corporation "shall not sell, lease, assign . . . plant or system necessary or useful in the performance of its duties to the public . . . without first having secured from the commission an order authorizing it so to do." This Transaction involves the transfer of assets from Windstream Certificated Entities and thus this statute would apply, but for the fact that in 2013, the Arizona legislature amended A.R.S. §40-285 to add section F:

(F) This section does not apply to a telecommunications corporation whose retail telecommunications services are all classified as competitive by the commission, except as may otherwise be determined by a commission order after the effective date of this amendment to this section.

A.R.S. §40-285(F). Windstream Certificated Entities are competitive telecommunications companies. Like the Arizona legislature, the Commission has also recognized the unique

nature of competitive telecommunication and the need for tempered regulation through the expeditious processing of Rule 806 waiver requests (Section III(A) above).

**C. The Proposed Transaction Is Otherwise in the Public Interest**

Applicants submit that the Transaction described herein will serve the public interest. The Windstream Certificated Entities operate in an industry that has been and continues to be subject to rapid technological advances, evolving consumer preferences, and dynamic change. The public convenience and necessity require that the Applicants increase their efficiencies and lower their costs by means of efforts like the Transaction so that they can continue to provide the full range of advanced high quality services to residential and business customers.

Customers of the Windstream Certificated Entities will receive the same high quality local exchange and long distance service as they do today, subject to the same rules, regulations, and applicable tariffs. The Transaction will not affect the Windstream Certificated Entities' service quality obligations or tariffs. Further, any subsequent end user rate changes will continue to be governed by the same rules and procedures as they are today, and the terms and prices for existing wholesale services under applicable tariffs or agreements will remain unchanged as a result of this Transaction.

The public interest will also be served by expeditious consideration and approval of the transaction. For various important business and financial reasons, Applicants require that the transaction be closed as quickly as possible. Delay in the regulatory approval process—and thus in the ability of the Applicants to move forward promptly with the Transaction—risks creating uncertainty and competitive harm. In particular, the competitive telecommunications marketplace continues to be a very challenging business environment. The proposed transaction is aimed at strengthening the competitive position of the Windstream Certificated

Entities, therefore, delay in the regulatory approval process prevents Windstream from realizing the economic benefits of the Transaction.

**D. Verification.**

Under A.A.C. R14-2-806(B), any request for a waiver of the Rules must be made by verified application. Accordingly, attached as Exhibit B is the Affidavit of John P. Fletcher, Executive Vice President, Secretary and General Counsel of Windstream, attesting to the accuracy of the factual statements in this Application.

**IV ALTERNATIVE REQUEST FOR APPROVAL UNDER RULE 803.**

**A. Introduction.**

If the Commission does not grant the limited waivers requested above, Applicants request that the Commission authorize Windstream and the Windstream Certificated Entities to complete the Transaction and resulting Reorganization of a Public Utility Holding Company under A.A.C. R14-2-803(B). As set forth in more detail above, approval of this application will enable Applicants to complete a Transaction that will benefit Windstream and consequently the Windstream Certificated Entities. This will strengthen Applicants, and it will also serve to promote competition in Arizona's telecommunications markets.

**B. Rule 803(A) information.**

The Applicants provide the following information as required by Rule 803(A):

1. *The names and business addresses of the proposed officers and directors of the holding company.* See Windstream 2014 Proxy Statement for the current officers and directors at: <http://abea-43pvyw.client.shareholder.com/investors/sec.cfm>.

2. *The business purposes for establishing or reorganizing the holding company.*

See 'Description of the Transaction' above.

3. *The proposed method of financing the holding company and the resultant capital structure.* The method for financing the holding company will not change as a result of the Transaction although the Windstream debt will be reduced by approximately \$3.2 billion as a result of the Transaction.

4. *The resultant effect on the capital structure of the utility.* The Applicants do not expect the change of control to result in a change to the capital structures of the Applicants.

5. *An organization chart of the holding company that identifies all affiliates and their relationships within the holding company.* See Exhibit A.

6. *The proposed method for allocating federal and state income taxes to the subsidiaries of the holding company.* The Applicants do not expect any change in their current tax allocation methods to occur as a result of the transfer of control.

7. *The anticipated changes in the utility's cost of service and the cost of capital attributable to the reorganization.* The Applicants note that as non-dominant carriers, their rates are not regulated on a cost of service basis, as contemplated by this question. The Applicants do not expect any change to their cost of service or capital structures as a result of the Transaction.

8. *A description of diversification plans of affiliates of the holding company.* For a description of the types of business conducted by the Windstream subsidiaries, see the Windstream Holdings, Inc. Form 10-K, available at: <http://abea-43pvyw.client.shareholder.com/investors/sec.cfm> .

9. *Copies of all relevant documents and filings with the United States Securities and Exchange Commission and other federal and state agencies.* Applicants have provided a

link to the SEC Form 10-K for Windstream Holdings, Inc. Any other necessary SEC filings are publicly available online.

10. *The contemplated annual and cumulative investment in each affiliate for the next five years, in dollars and as a percentage of projected net utility plant, and an explanation of the reasons supporting the level of investment and the reasons this level will not increase the risks of investment in the public utility.* The Applicants note that as non-dominant carriers, their rates are not regulated on a cost of service basis, as contemplated by this question. Specific projections for each subsidiary for each of the next five years are not available. The future levels of investment will be determined in response to market forces and operational needs.

11. *An explanation of the manner in which the utility can assure that adequate capital will be available for the construction of necessary new utility plant and for improvements in existing utility plant at no greater cost than if the utility or its affiliate did not organize or reorganize as a public utility holding company.* The Applicants note that as non-dominant carriers, their rates are not regulated on a cost of service basis, as contemplated by this question. Windstream Holdings, Inc., as the holding company of the Windstream Certificated Entities, has a long track record showing its ability to provide sufficient facilities to ensure an adequate level of service.

#### **RELIEF REQUESTED**

WHEREFORE, Applicants respectfully requests that the Commission:

1. Waive all notice and approval requirements in A.A.C. R14-2-803 pursuant to A.A.C. R14-2-806.

2. In the alternative, grant approval under A.A.C. R14-2-803 of the requested reorganization as described in this Application.

3. Waive any other applicable requirements of the Rules as they may apply to the Transaction described herein.

In light of the many business and financial considerations affected by the timing of the approval process, Applicants respectfully request that the Commission commence its examination of the proposed transaction as quickly as possible. In the event the Commission does not allow for the requested waivers under A.A.C. R14-2-806, Applicants request that the Commission schedule consideration of this Application at no later than the November 5, 2014 Commission Open Meeting.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of September, 2014.

LAW OFFICE OF JOAN S. BURKE



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Attorney for McLeodUSA Telecommunications Services, LLC, PaeTec Communications, Inc., Windstream Communications, Inc., and Talk America, Inc.

ORIGINAL and thirteen (13) copies of the foregoing filed this 22<sup>nd</sup> day of September, 2014 with:

The Arizona Corporation Commission  
Docket Control  
1200 W. Washington Street  
Phoenix, Arizona 85007

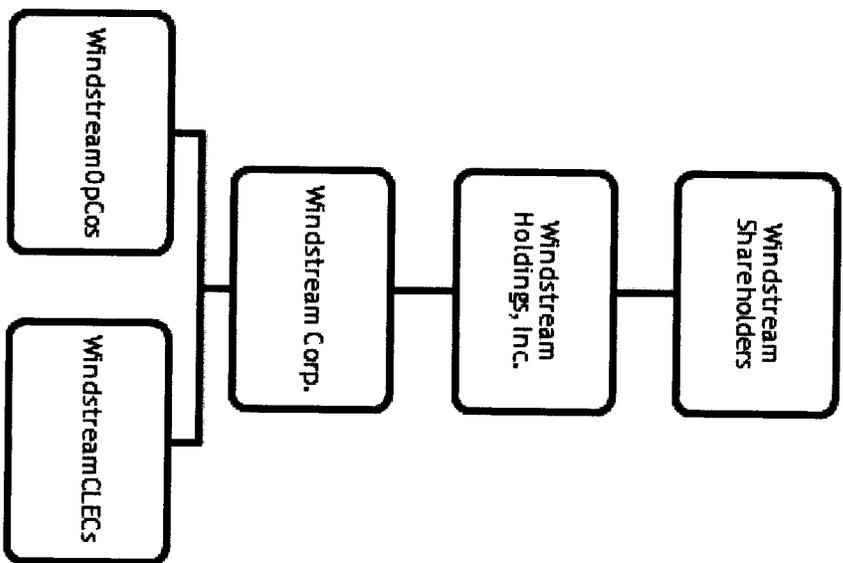


**EXHIBIT A**

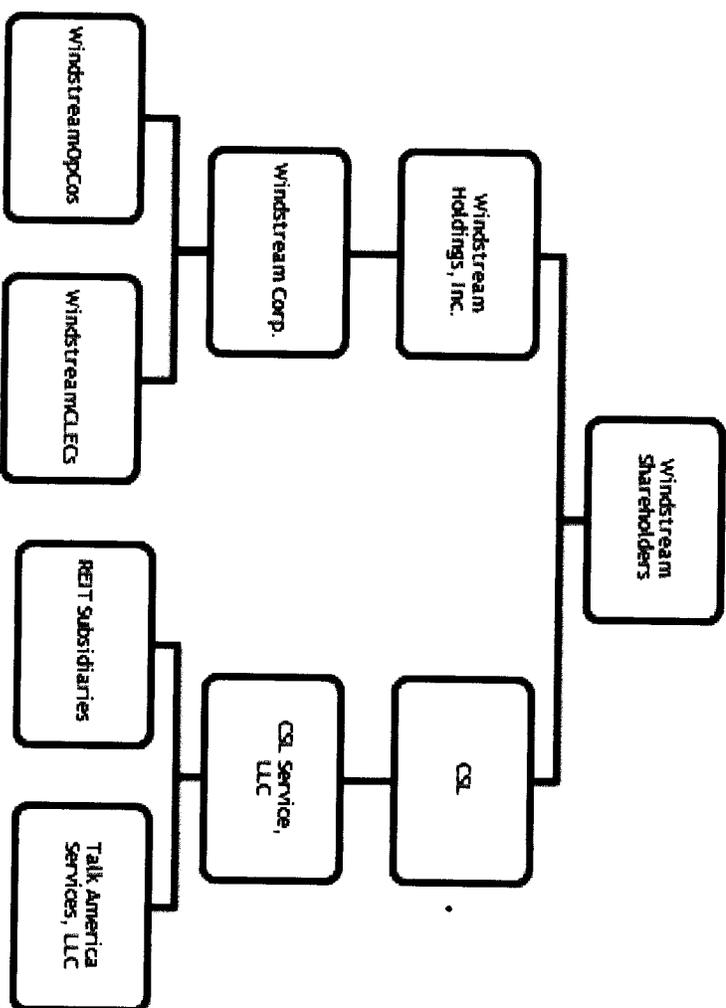
Pre- and Post-Transaction Illustrative Charts

# Windstream Organizational Chart

## Pre-transaction



## Post-transaction



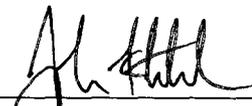
**EXHIBIT B**

Verifications of Application

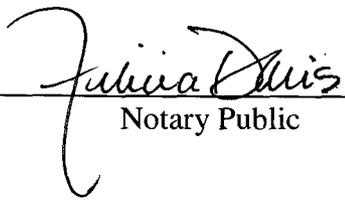
VERIFICATION

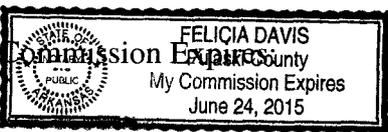
STATE OF ARKANSAS §  
COUNTY OF PULASKI §  
\_\_\_\_\_ §

I, John P. Fletcher, state that I am Executive Vice President, Secretary and General Counsel for Windstream Holdings, Inc that I am authorized to make this Verification on behalf of Windstream Holdings and its subsidiaries (“Windstream”); that the foregoing filing was prepared under by direction and supervision; and that the statement with respect to Windstream in the foregoing documents are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Name: John P. Fletcher  
Title: Executive Vice President,  
Secretary and General Counsel  
Windstream Holdings, Inc.

SUBSCRIBED AND SWORN TO before me this 18 day of September, 2014.

  
\_\_\_\_\_  
Notary Public

My  Commission Expires \_\_\_\_\_