



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 09-1289

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

Released: June 5, 2009

APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF D&E COMMUNICATIONS, INC. TO WINDSTREAM CORPORATION

WC Docket No. 09-79

PLEADING CYCLE ESTABLISHED

Comments/Petitions to Deny Due: July 6, 2009
Reponses/Oppositions Due: July 21, 2009

D&E Communications, Inc. (D&E) and Windstream Corporation (Windstream) (together, Applicants) filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d).¹ The Applicants seek Commission approval of the transfer of control of D&E and its subsidiaries to Windstream.

D&E, a publicly traded Pennsylvania corporation, offers its customers high-speed Internet services, local and long distance telephone services, and in two markets, cable television services. D&E subsidiaries have approximately 165,000 total access lines and 44,000 broadband customers, all in Pennsylvania. D&E's wholly owned subsidiaries, Denver and Ephrata Telephone and Telegraph Company, Buffalo Valley Telephone Company, and Conestoga Telephone and Telegraph Company, are all incumbent local exchange carriers (incumbent LECs) and Pennsylvania corporations.² D&E's wholly owned subsidiary, D&E Systems, Inc. (D&E Systems), a Delaware corporation, is authorized to provide domestic and international interexchange services, as well as intrastate and long distance service and competitive access (CAP) services throughout Pennsylvania. D&E Systems currently provides competitive local exchange carrier (competitive LEC) and long distance services in counties throughout Pennsylvania.³ D&E's subsidiary, D&E Investments, Inc., holds 700 MHz licenses.

Windstream, a Delaware corporation, provides local and long distance services to approximately

¹ See D&E Communications, Inc., Transferor, and Windstream Corporation, Transferee, Application for Transfer of Control of Domestic and International Authorizations Under Section 214 of the Communications Act, as Amended, WC Docket No. 09-79 (filed May. 21, 2009) (D&E/Windstream Application).

² D&E's incumbent LEC subsidiaries provide service in the following areas: Denver and Ephrata Telephone and Telegraph Company provides service in portions of Berks, Lancaster and Lebanon Counties; Buffalo Valley Telephone Company provides service in portions of Union, Northumberland and Snyder Counties; and Conestoga Telephone and Telegraph Company provides service in portions of Berks, Chester, Lancaster, Lehigh, and Montgomery Counties. See D&E/Windstream Application at 3.

³ See D&E/Windstream Application at 4, n.6 for a list of D&E competitive LEC service areas.

three million residential and business access lines, and broadband and high-speed data services to more than one million customers, as well as video services through a partnership with DISH. Windstream's markets are primarily located in rural areas in 16 states.⁴ In Pennsylvania, Windstream Pennsylvania, LLC provides service as an incumbent LEC to approximately 195,000 access lines in 85 exchanges. Windstream Communications, Inc. provides long distance services throughout Pennsylvania as well as competitive local exchange service in Verizon's incumbent LEC Clarion exchange. Windstream is a publicly-traded company with no 10 percent or greater interest holders.

On May 10, 2009, D&E, Windstream, and Delta Merger Sub, Inc. (Delta), a Delaware corporation and wholly owned subsidiary of Windstream, signed an Agreement and Plan of Merger. Pursuant to the agreement's terms, D&E will merge with and into Delta, with Delta to be the surviving corporation following the closing of the merger and re-named D&E Communications, Inc. As a result, D&E will become a wholly owned subsidiary of Windstream. Applicants state that, post-consummation, Windstream will remain a publicly traded corporation with no 10 percent or greater interest holders.

SECTION 214 AUTHORIZATIONS

The following applications for consent to the transfer of control of section 214 authorizations to CenturyTel have been assigned the file numbers listed below.

A. International

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20090521-00234	D&E Systems, Inc.	ITC-214-19970707-00382

B. Domestic

Applicants filed an application for consent to transfer control of D&E to Windstream. Applicants state that this transaction is entitled to non-streamlined processing.

SECTION 310(d) APPLICATIONS

The following applications for consent to the transfer of control of licenses from D&E to Windstream have been assigned the file numbers listed below.

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0003846515	Conestoga Telephone and Telegraph Company	KD46646
0003846517	D&E Systems, Inc.	WPFS316
0003846518	D&E Investments, Inc.	WPWV360
0003846520	Buffalo Telephone Company	WYX575
0003846870 ⁵	Denver and Ephrata Telephone Company d/b/a D&E Telephone Company	KGH859
0003847304	D&E Systems, Inc.	WQJH937

⁴ See D&E/Windstream Application at 2, n.4 for a complete list of states.

⁵ ULS File No. 0003846870 has been designated the lead application for the wireless radio services.

EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,⁶ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.⁷

We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁸ More than a one- or two-sentence description of the views and arguments presented is generally required.⁹ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.¹⁰ We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.¹¹

Interested parties must file comments or petitions to deny no later than **July 6, 2009**. Persons and entities that timely file comments or petitions to deny may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order (subject to the restrictions contained in the protective order) and seeking reconsideration of decisions. Responses or oppositions to comments and petitions must be filed no later than **July 21, 2009**. All filings concerning matters referenced in this Public Notice should refer to DA 09-1289 and WC Docket No. 09-79, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's procedures for the submission of filings and other documents,¹²

⁶ 47 C.F.R. § 1.1200(a).

⁷ *Id.* § 1.1206.

⁸ *See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, 15 FCC Rcd 19945 (2000).

⁹ *See* 47 C.F.R. § 1.1206(b)(2).

¹⁰ *Id.* § 1.1206(b).

¹¹ *See* 47 U.S.C. § 309(b).

¹² *See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); *see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, 18 FCC Rcd 16705 (2003).

submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **Electronic Filers:**¹³ Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com or 202 / 488-5563 (facsimile).

Additionally, filers must deliver courtesy copies by email or facsimile to the following Commission staff:

- David Krech, Policy Division, International Bureau, at David.Krech@fcc.gov or 202 / 418-2824 (facsimile);
- Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, at dennis.johnson@fcc.gov or 202 / 418-1413 (facsimile);

¹³ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Red 11322 (1998).

- Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, at Kathy.Harris@fcc.gov or 202 / 418-7224 (facsimile); and
- Jim Bird, Office of General Counsel, at jim.bird@fcc.gov or 202 / 418-2822 (facsimile).

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at 202 / 488-5300, via facsimile at 202 / 488-5563, or via e-mail at fcc@bcpiweb.com. The Applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202 / 418-0530 (voice), 202 / 418-0432 (tty).

For further information, contact Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, at 202 / 418-0809; David Krech, Policy Division, International Bureau, at 202 / 418-7443; or Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, at 202 / 418-0609.

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