



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

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**DA 10-1669**

**Released: September 1, 2010**

## **APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF Q-COMM CORPORATION TO WINDSTREAM CORPORATION**

### **PLEADING CYCLE ESTABLISHED**

**WC Docket No. 10-169**

**Comments Due: September 15, 2010**

**Reply Comments Due: September 22, 2010**

Q-Comm Corporation (Q-Comm) and Windstream Corporation (Windstream) (together, Applicants) filed a series of applications pursuant to section 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d), seeking approval for various assignments and transfers of control of licenses and authorizations from Q-Comm to Windstream.

Q-Comm, a privately held Nevada corporation, provides competitive telecommunications services through its wholly owned operating subsidiaries, Kentucky Data Link, Inc. (KDL), Norlight Telecommunications, Inc. (NTI), and Norlight, Inc. (Norlight).<sup>1</sup> KDL is a regional wholesale provider of long-haul fiber infrastructure in 26 states.<sup>2</sup> NTI provides high-speed data services to large enterprise customers and school districts primarily in the areas served by KDL. It also provides transport services to carrier customers, including KDL. Norlight provides competitive local exchange carrier (LEC) and long distance services to medium-sized businesses and residential customers primarily in Indiana, Kentucky, Tennessee, and Wisconsin. NTI and Norlight also provide international services and hold various wireless licenses. Applicants state that neither Q-Comm nor its subsidiaries provide incumbent LEC services in any state.

Windstream, a publicly-traded Delaware corporation with no 10 percent or greater interest holders, provides, through its subsidiaries, incumbent and competitive LEC and long distance services

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<sup>1</sup> KDL and Norlight are Kentucky corporations, and NTI is a Wisconsin corporation. Applicants state that Q-Comm's wholly-owned subsidiary, Cinergy MetroNet, Inc., is not being transferred to Windstream as part of the proposed transaction. They state that the following U.S. citizens and U.S.-based entities own 10 percent or more of the total outstanding stock of Q-Comm: Al Cinelli (50.1 percent), John P. Cinelli (11.66 percent), and Duke Energy Corporation (32.59 percent through its wholly owned subsidiaries).

<sup>2</sup> Applicants state that, in the following states, KDL has existing operations or expects to have existing operations in the near future: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

primarily in rural areas in 23 states.<sup>3</sup> Applicants state that there are certain geographic areas in Kentucky in which Norlight's competitive LEC service overlaps with Windstream's incumbent LEC service. They further state that a geographic overlap exists between the service area of KDL and Windstream's incumbent LEC service territory, and that KDL maintains collocations in certain Windstream central offices in Georgia, Kentucky, and Ohio from which KDL's customers can connect their own facilities or facilities leased from the incumbent LEC to KDL's fiber network. NTI also overlaps with the Windstream incumbent LEC service territory in the same markets as KDL.

Pursuant to the terms of the proposed transaction, Q-Comm will merge with Derby Merger Sub, Inc., a wholly owned subsidiary of Windstream created for purposed of the merger, with Q-Comm continuing as the surviving corporation. As a result, Windstream will be the ultimate parent company of Q-Comm and its subsidiaries.

The Applicants state that the proposed transaction is in the public interest. They assert that the transaction will be seamless to customers and that the combination of Windstream's last mile facilities with Q-Comm's long haul fiber network will enable Windstream to provide a broader range of telecommunications services and become a more viable competitor. They state that Windstream's continuing focus will be on expanding services in rural areas and smaller cities, and that the transaction will not harm competition in any relevant market. They assert that there are a *de minimis* number of overlaps between Windstream's incumbent LEC and Q-Comm's competitive LEC operations, and that there are other competitors in each area. They further assert that Q-Comm's transport services do not directly compete with Windstream's services.

## SECTION 214 AUTHORIZATIONS

### A. International

The application for consent to the transfer of control of certain international section 214 authorizations from Q-Comm to Windstream has been assigned the file number listed below.

| <u>File Number</u>     | <u>Authorization Holder</u> | <u>Authorization Number</u>  |
|------------------------|-----------------------------|--|
| ITC-T/C-20100818-00336 | Norlight, Inc.              | ITC-214-19940224-00080<br>ITC-214-19960826-00406<br>ITC-214-19960826-00407 |

### B. Domestic

The Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction.<sup>4</sup> They do not seek streamlined treatment for this application under section 63.03(b) of the Commission's rules.<sup>5</sup> In light of the multiple applications pending before

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<sup>3</sup> Applicants state that Windstream's subsidiaries provide service in the following states: Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Texas. Windstream serves approximately 3.4 million access lines, 1.3 million high speed Internet customers, and 409,000 digital television customers.

<sup>4</sup> Q-Comm Corporation and Windstream Corporation, Applications for Consent to Transfer of Control Under Section 214 of the Communications Act, as Amended, WC Docket No. 10-169 (filed Aug. 19, 2010).

<sup>5</sup> 47 C.F.R. § 63.03(b).

the Commission with respect to this transaction and the public interest review associated with them, the domestic transfer of control application is not subject to streamlined treatment.<sup>6</sup>

#### **SECTION 310(d) APPLICATION**

The application for consent to the assignment of licenses under section 310(d) has been assigned the file numbers listed below.

| <b>File No.</b> | <b>Licensee</b>               | <b>Lead Call Sign</b> |
|-----------------|-------------------------------|-----------------------|
| 0004354631      | Norlight Communications, Inc. | WLN878                |
| 0004354633      | Norlight, Inc.                | WQLN535               |
| 0004354637      | Kentucky Data Link, Inc.      | WLV233                |

#### **EX PARTE STATUS OF THIS PROCEEDING**

Pursuant to section 1.1200(a) of the Commission's rules,<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>10</sup> Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.<sup>11</sup> 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

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<sup>6</sup> See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5535, para. 34 (2002).

<sup>7</sup> 47 C.F.R. § 1.1200(a).

<sup>8</sup> *Id.* § 1.1206.

<sup>9</sup> See *Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, 15 FCC Rcd 19945 (2000).

<sup>10</sup> See 47 C.F.R. § 1.1206(b)(2).

<sup>11</sup> *Id.* § 1.1206(b).

on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.<sup>12</sup>

Interested parties must file comments or petitions to deny no later than **September 15, 2010**. Persons and entities that timely file comments or petitions to deny may participate fully in the proceeding. Replies or oppositions to comments and petitions must be filed no later than **September 22, 2010**. All filings concerning matters referenced in this Public Notice should refer to **DA 10-1669** and **WC Docket No. 10-169**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. 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 must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

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

- 1) Jodie May, Competition Policy Division, Wireline Competition Bureau, at [jodie.may@fcc.gov](mailto:jodie.may@fcc.gov) or (202) 418-1413 (facsimile);
- 2) Linda Ray, Broadband Division, Wireless Telecommunications Bureau, at [linda.ray@fcc.gov](mailto:linda.ray@fcc.gov) or (202) 418-7224 (facsimile);
- 3) David Krech, Policy Division, International Bureau, at [david.krech@fcc.gov](mailto:david.krech@fcc.gov) or (202) 418-2824 (facsimile); and
- 4) Neil Dellar, Office of General Counsel, at [neil.dellar@fcc.gov](mailto:neil.dellar@fcc.gov) or (202) 418-1234 (facsimile).

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

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<sup>12</sup> See 47 U.S.C. § 309(b).

For further information, contact Jodie May, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0913; Linda Ray, Broadband Division, Wireless Telecommunications Bureau, at (202) 418-0257; or David Krech, Policy Division, International Bureau, at (202) 418-7443.

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