



PUBLIC NOTICE

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DOMESTIC AND INTERNATIONAL SECTION 214 APPLICATIONS GRANTED FOR THE TRANSFER OF CONTROL OF EARTHLINK HOLDINGS CORP. TO WINDSTREAM HOLDINGS, INC.

WC Docket No. 16-393

Windstream Holdings, Inc. (Windstream) and EarthLink Holdings Corp. (EarthLink) (together, Applicants) filed applications, pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.04, 63.18, and 63.24 of the Commission's rules,¹ seeking approval to transfer control of various licenses and authorizations held by EarthLink's wholly owned subsidiaries to Windstream through a transaction resulting in EarthLink becoming a wholly owned, indirect subsidiary of Windstream.²

EarthLink, a publicly traded Delaware corporation, is authorized to provide telecommunications services in all 50 states.³ Applicants state that EarthLink's subsidiaries offer telecommunications services to small and medium-sized business, enterprise, and wholesale customers.⁴ Windstream, a publicly traded Delaware corporation, provides telecommunications services and broadband services as an incumbent LEC to approximately 1.4 million residential customers primarily located in rural areas of Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas.⁵ Windstream's competitive LEC subsidiaries offer services in portions of all states except Alaska.⁶

¹ 47 U.S.C. §§ 214, 310(d); 47 CFR §§ 63.04, 63.18, 63.24. Consolidated Applications for Transfer of Control of International and Domestic Section 214 Authority, WC Docket No. 16-393 (filed Nov. 17, 2016) (Application). Applicants filed supplements to their application on December 1, 2016, January 4, 2017, and January 13, 2017. Letter from Julie A. Veach, Counsel to Windstream Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-393 (filed Dec. 1, 2016); Letter from Julie A. Veach, Counsel to Windstream Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-393 (filed Jan. 4, 2017); Letter from Julie A. Veach, Counsel to Windstream Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-393 (filed Jan. 13, 2017) (Applicants' Jan. 13 *Ex Parte* Letter). Applicants also filed reply comments. Applicants' Reply Comments in Support of Consolidated Applications for Transfer of Control of International and Domestic Section 214 Authority, WC Docket No. 16-393 (filed Dec. 23, 2016).

² Application Exh. 1, Public Interest Statement (Public Interest Statement) at 4.

³ Application at 11; Public Interest Statement at 3.

⁴ Application at 11; Public Interest Statement at 3. EarthLink also offers Internet access services to approximately 400,000 residential customers over a mix of facilities leased from incumbent local exchange carriers (LECs) and cable operators. Application at 11; Public Interest Statement at 3.

⁵ Application at 11; Public Interest Statement at 2, n.2. According to Applicants, Windstream currently has only one 10 percent or greater interest holder, The Vanguard Group, Inc. (Vanguard Group) (15.9 percent), a U.S.-based investment management company. Applicants state that Vanguard Group also holds a 13.9 percent interest of

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On December 2, 2016, the Wireline Competition Bureau and the International Bureau (the Bureaus) released a Public Notice requesting comment on the applications.⁷ No comments were filed in opposition to a grant of the proposed transaction. The Bureaus find, upon consideration of the record, that grant of the applications will serve the public interest, convenience, and necessity.⁸ We find that the proposed transaction presents no significant competitive harms⁹ and should likely result in some public interest benefits related to network efficiencies and the increased ability of the combined company to serve customers on its own facilities.¹⁰ Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.51, 0.91, 0.261, and 0.291 of the Commission's rules, 47 CFR §§ 0.51, 0.91, 0.261, 0.291, the Bureaus hereby grant the applications listed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding listed in this Public Notice shall be terminated, and the docket will be closed. For further information, please contact Dennis Johnson, Wireline Competition Bureau, (202) 418-0809, or David Krech, International Bureau, at (202) 418-7443.

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EarthLink common stock. Applicants state that, if at the time of closing, Vanguard's holdings remain at those levels, Vanguard Group would hold, post-consummation, approximately a 14.9 percent interest of the combined entity. Applicants' Jan. 13 *Ex Parte* Letter at 1.

⁶ Public Interest Statement at 2, n.2.

⁷ *Domestic Section 214 Applications Filed for the Transfer of Control of EarthLink Holdings Corp. to Windstream Holdings, Inc.*, WC Docket No. 16-393, Public Notice, DA 16-1341 (WCB 2016).

⁸ 47 U.S.C. § 214(a); 47 CFR § 63.03(b); *see, e.g., Applications Filed for the Transfer of Control of tw telecom inc. to Level 3 Communications, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 12842, 12847, para. 14 (WCB/IB 2014) (finding that the combination of two smaller LECs with largely complimentary networks could be a stronger competitor to large national providers, thereby resulting in benefits for consumers).

⁹ *See* Public Interest Statement at 10-15 (EarthLink has no dedicated last mile facilities within Windstream's incumbent LEC service area or to buildings or other locations that Windstream serves as a competitive LEC over its own last mile facilities; the majority of EarthLink's fiber network does not overlap with Windstream's network; and there are a only a small number of EarthLink residential broadband customers within Windstream's incumbent LEC territory that EarthLink serves over leased cable facilities).

¹⁰ *Id.* at 6-9 (asserting that the proposed transaction will expand service offerings, increase network efficiencies by bringing customers on-net and combining fiber connections and equipment, and by expanding the companies' fiber networks). *See Applications of XO Holdings and Verizon Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, DA 16-1281, para. 61 (WCB/IB/WTB 2016) (*Verizon/XO Order*) (finding that Verizon's acquisition of XO's fiber network would deepen and expand Verizon's fiber facilities to better serve customers). While we ascribe some weight to Applicants' claimed benefits, the Applicants did not provide quantifiable evidence to determine the full extent of the benefits. Consistent with the Commission's "sliding scale" approach to evaluating the public benefits of a transaction, *see Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6480, para. 319 (2016); *Verizon/XO Order* at para. 65, we accept this lesser showing where we have found no material public interest harms.

SECTION 214 AUTHORIZATIONS

A. International

The applications for consent to the transfer of control of the international section 214 authorizations from EarthLink to Windstream are granted.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20161117-00328	EarthLink Carrier, LLC	ITC-214-20070427-00165
ITC-T/C-20161117-00329	Business Telecom, LLC	ITC-214-20040708-00260
ITC-T/C-20161117-00330	DeltaComm, LLC	ITC-214-20050325-00139
ITC-T/C-20161117-00331	EarthLink Business, LLC	ITC-214-20050514-00229

B. Domestic

The Wireline Competition Bureau grants the application to transfer control of domestic section 214 authority in connection with the proposed transaction.