



# PUBLIC NOTICE

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## APPLICATIONS GRANTED FOR THE TRANSFER OF CONTROL OF WINDSTREAM HOLDINGS, INC., DEBTOR-IN-POSSESSION, AND SUBSIDIARIES

WC Docket No. 20-151  
AU Docket No. 19-244

By this Public Notice, the Wireline Competition Bureau, International Bureau, and Wireless Telecommunications Bureau (Bureaus) grant the unopposed applications filed by Windstream Holdings, Inc., Debtor-in Possession (Holdings), its subsidiary Windstream Services, LLC (Windstream), and post-bankruptcy Windstream Holdings, Inc., reorganized as Windstream Holdings LLC (New Windstream, and together with Holdings, Applicants), for consent to transfer control and assign licenses and authorizations held by Windstream and its subsidiaries to New Windstream.<sup>1</sup> In addition, the Bureaus grant the Applicants' unopposed request for a temporary and limited waiver of sections 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Federal Communications Commission's (Commission) rules,<sup>2</sup> subject to the conditions herein. Grant of the applications, pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act), and sections 1.948, 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, will enable the Applicants to emerge from federal bankruptcy protection and is subject to certain conditions described herein.<sup>3</sup>

In addition, the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB), in order to help achieve the public interest benefit of facilitating Windstream's prompt emergence from the bankruptcy process, grant a conditional waiver of sections 1.2105(b)(2), 1.2107(c), or 1.927(h) of the Commission's rules, as needed to permit it to complete a transaction that amounts to a

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<sup>1</sup> See Application of Windstream Holdings, Inc., Debtor-in-Possession, Transferor, and Windstream Holdings, Inc., Transferee, for Consent to Transfer of Licenses and Authorizations, WC Docket No. 20-151 (filed May 21, 2020) (Lead Application). The applications, Commission licenses, and authorizations subject to the applications are listed in Attachment A hereto and include existing domestic and international section 214 authorizations, millimeter wave licenses, common carrier fixed-microwave licenses, microwave industrial/business pool licenses, and additional miscellaneous wireless licenses. The Bureaus accepted the applications for filing on June 25, 2020. See *Applications Filed For The Transfer Of Control Of Windstream Holdings, Inc., Debtor-In-Possession, To Windstream Holdings, Inc.*, Public Notice, 35 FCC Rcd 6545 (IB, WCB, WTB 2020).

<sup>2</sup> 47 CFR §§ 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, 63.24; Application of Windstream Holdings, Inc., Debtor-in-Possession, Transferor, and Windstream Holdings, Inc., Transferee, for Consent to Transfer of Licenses and Authorizations, Petition for Temporary and Limited Waiver, WC Docket No. 20-151, File Nos. ISP-WAV-20200611-00004, ITC-WAV-20200611-00091, *et al.* (filed June 11, 2020) (Waiver Request). Applicants also sought a waiver of 47 CFR § 1.2112 in the Waiver Request, which is unnecessary, as noted below. The Bureaus did not receive comments or petitions in opposition to the applications or the Waiver Request.

<sup>3</sup> 47 U.S.C. §§ 214, 310(d); 47 CFR §§ 1.948, 63.03, 63.04, 63.18, 63.24.

transfer of control prior to filing a long-form license application and/or prior to the grant of such licenses to the winning bidder.<sup>4</sup>

### The Applicants

Windstream, a Delaware limited liability company, is a wholly owned, direct subsidiary of Holdings, a Delaware corporation.<sup>5</sup> Windstream's operating subsidiaries provide voice, data, and transport services on a local and long-haul fiber network currently spanning approximately 150,000 route miles.<sup>6</sup> The Applicants state that Windstream's consumer and small business segment includes approximately 1.4 million residential and small business customers.<sup>7</sup> In addition, Windstream provides 100 Gbps bandwidth and transport services to wholesale customers, including telecommunications companies, content providers, and cable and other network operators.<sup>8</sup> Windstream's incumbent local exchange carrier subsidiaries (LEC) serve customers in 18 states, while Windstream's competitive LEC subsidiaries serve primarily enterprise and government customers in all 50 states and the District of Columbia.<sup>9</sup>

### Description of Transaction and Waiver Requests

On February 25, 2019, Holdings filed voluntary petitions for relief for itself, Windstream, and Windstream's subsidiaries under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.<sup>10</sup> On April 1, 2020, Holdings filed a plan of reorganization proposing a restructuring, through a two-step transaction, that would allow Holdings, Windstream, and Windstream's subsidiaries to emerge from bankruptcy with a deleveraged capital structure and sufficient liquidity to fund the post-emergence business plan.<sup>11</sup> The Bankruptcy Court approved the plan of reorganization on June 26, 2020.<sup>12</sup>

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<sup>4</sup> 47 CFR §§ 1.2105(b), 1.2107(c), 1.927(h); Petition of Windstream Services LLC, Debtor-In-Possession for Waiver of Section 1.2105(b)(2) of the Commission's Rules, AU Docket No. 19-244 (July 22, 2020) (*Auction 105 Major Modification Waiver Petition*); Amendment to Pending Waiver Petition (filed August 27, 2020).

<sup>5</sup> See Lead Application at Attach. 1, Description of Proposed Transaction and Public Interest Statement, at 2 (Public Interest Statement). Pursuant to the transaction, Windstream Holdings, Inc. will be reorganized as a limited liability company organized under the laws of Delaware. As New Windstream, it will become the ultimate parent company of Windstream's operating subsidiaries and will indirectly hold its licenses and authorizations. See Letter from Christopher W. Savage and Danielle Frappier, Counsel to Windstream Holdings, Inc. and Windstream Services, LLC, Samuel L. Feder *et al.*, Counsel to Nexus Aggregator L.P., and Meredith S. Senter, Jr. *et al.*, Counsel to the First Lien Debtholders Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-151, at 1, 3 (filed July 28, 2020) (July 28 Supplement Letter).

<sup>6</sup> Public Interest Statement at 3.

<sup>7</sup> *Id.*

<sup>8</sup> Lead Application at Attach. 2, Domestic 214 Addendum, at 1 (Domestic Addendum).

<sup>9</sup> *Id.* Windstream's incumbent LEC operating subsidiaries provide services in Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas. *Id.* at 2.

<sup>10</sup> Public Interest Statement at 7. See also *Windstream Holdings, Inc., Debtors*, Chapter 11, Case No. 19-22312 (Bankr. S.D.N.Y. 2019).

<sup>11</sup> Public Interest Statement at 7.

<sup>12</sup> See Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (Bankr. S.D.N.Y. entered June 26, 2020).

According to the Applicants, in “Step One” of the transaction, the interests held by the existing stockholders of Holdings will be canceled, and the company will be reorganized as a Delaware limited liability company.<sup>13</sup> The creditors who hold the first lien debt of Windstream will equitize a portion of their debt claims against Holdings and Windstream and receive repayment or replacement loans for the remaining portion.<sup>14</sup> The Applicants state that as a result of converting their debt to equity and exercising subscription rights and equity commitments in connection with the reorganization plan, the existing holders of first lien debt of Windstream, as a group, will acquire 100% of the equity of New Windstream.<sup>15</sup> The Applicants do not anticipate that any entity will obtain either *de jure* or *de facto* control of New Windstream.<sup>16</sup>

The Applicants state that the following entities will hold a 10% or greater equity or voting interest in New Windstream after the completion of Step One: Nexus Aggregator, L.P. (estimated 49.9% voting and equity interest) and Franklin Resources, Inc. (estimated 30.3% voting and equity interest).<sup>17</sup> Nexus Aggregator, L.P. is an investment fund affiliated with Elliott Management Corporation and its affiliates (collectively Elliott).<sup>18</sup> Applicants list the nine Elliott entities that will have a 10% or greater direct or indirect equity and voting interest in New Windstream following consummation of Step One.<sup>19</sup> Although Elliott does not provide communications services, it has an interest in LogMeIn, Inc., which has wholly-owned subsidiaries that hold telecommunications authorizations.<sup>20</sup> Funds wholly owned by U.S. citizens, Oaktree Capital Group Holdings GP, LLC (Oaktree) and Brigade Capital Management, LP. (Brigade), combined, will hold an estimated 19.8% of the equity and voting interests of New Windstream following consummation of Step One of the transaction.<sup>21</sup>

The Applicants request that the Commission approve the present transfer of control applications as part of Step One to permit Windstream to promptly emerge from bankruptcy.<sup>22</sup> Applicants assert that they will emerge with aggregate foreign ownership below the 25% statutory benchmark set forth in section 310(b)(4) of the Act and with no foreign investor holding 10% or more of New Windstream’s stock.<sup>23</sup> According to the Applicants, upon closing of Step One, certain foreign entities will hold Special Warrants entitling them to obtain indirect equity interests in New Windstream, but the foreign special

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<sup>13</sup> Public Interest Statement at 10-11; July 28 Supplement Letter at 1.

<sup>14</sup> Lead Application at 7-8; Public Interest Statement at 10-11, 18.

<sup>15</sup> Lead Application at 8.

<sup>16</sup> *Id.*

<sup>17</sup> Lead Application at 5; July 28 Supplement Letter at 2 and New Exh. B (Post Transaction Ownership Structure).

<sup>18</sup> *Id.*

<sup>19</sup> Lead Application at 5-7.

<sup>20</sup> *Id.* at Domestic 214 Addendum, at 2-3; Letter from Christopher W. Savage and Danielle Frappier, Counsel to Windstream Holdings, Inc. and Windstream Services, LLC, Samuel L. Feder *et al.*, Counsel to Nexus Aggregator L.P., and Meredith S. Senter, Jr. *et al.*, Counsel to the First Lien Debtholders Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-151 *et al.*, at 2-4 (filed June 12, 2020) (“The fiber networks and businesses of Windstream and the CLEC operations of LogMeIn are generally complementary and adjacent with minimal overlap” in Atlanta, Dallas, and Houston). *See also Domestic Section 214 Application Granted for the Transfer of Control of LogMeIn, Inc. to Logan Parent, LLC*, WC Docket No. 19-396, Public Notice, DA 20-752 (WCB 2020).

<sup>21</sup> July 28 Supplement Letter at 2.

<sup>22</sup> Public Interest Statement at 10-12.

<sup>23</sup> *Id.* (citing 47 U.S.C. § 310(b)(4)).

warrant holders cannot exercise such Special Warrants until the Commission approves a higher level of foreign investment and any required requests for specific approval in New Windstream in “Step Two” of the transaction.<sup>24</sup> Applicants note that some investors will own Special Warrants in Windstream Holdings LLC and some investors, including foreign affiliates of Elliott and Brigade, will own warrants in their own U.S. affiliates.<sup>25</sup> Each of the Special Warrant agreements state, with respect to distributions, that if a Declaratory Ruling has not been received within 18 months, distributions could be issued if permitted under the Communications Act and Commission rules.<sup>26</sup> The Windstream Holdings LLC Agreement provides for insulation of any foreign interest holder, including a foreign holder of Special Warrants, that would require specific approval under section 1.5001(i) of the rules.<sup>27</sup>

In Step Two, Applicants, within 30 days of Windstream’s emergence from bankruptcy, will file a petition for declaratory ruling requesting Commission approval to permit the exercise of the Special Warrants by foreign entities for indirect interests in New Windstream at levels that would require disclosure or specific Commission approval.<sup>28</sup> Applicants state that the petition also will seek advance approval for New Windstream to be up to 100% foreign owned in the aggregate, consistent with the Commission’s rules governing such requests.<sup>29</sup>

The Applicants seek a temporary and limited waiver of sections 1.948, 1.2112, 1.5000(a)(1),

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<sup>24</sup> *Id.* at 11; Waiver Request at 8. The Applicants provided a copy of three separate draft special warrants for the record. Letter from Meredith S. Senter, Jr. *et al.*, Counsel to the First Lien Debtholders Group, Samuel L. Feder *et al.*, Counsel to Nexus Aggregator L.P., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-151 *et al.*, at 2-4 (filed July 21, 2020) (July 21 Letter).

<sup>25</sup> Waiver Request at 1-2; July 21 Letter.

<sup>26</sup> July 21 Letter, Attached Brigade Warrant at 10, Attached Nexus Warrant at 12, and Attached Windstream Holdings LLC Warrant at 13. The three Special Warrant agreements also state the intent, “to place the Holders of Special Warrants in the same economic position the Holders would have been in if the Special Warrants had been exercised immediately prior to the applicable Company distribution.” See July 21 Letter, Attached Brigade Warrant at 10, Attached Nexus Warrant at 12, and Attached Windstream Holdings LLC Warrant at 13. In granting the waiver requested by the Applicants with the associated conditions, we need not and do not make any determination as to whether the terms of the Special Warrants are such as to constitute “capital stock” for purposes of 47 U.S.C. § 310(b).

<sup>27</sup> See Letter from Meredith S. Senter, Jr. *et al.*, Counsel to the First Lien Debtholders Group, Samuel L. Feder *et al.*, Counsel to Nexus Aggregator L.P., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-151 *et al.* and attached Windstream Holdings LLC Agreement at Sections 11.1 and 20.19 (filed Aug. 28, 2020).

<sup>28</sup> Public Interest Statement at 11; Waiver Request at 2, 7-8. As noted above, upon completion of Step One, up to 19.8% of the equity in New Windstream will be held by investment vehicles managed, advised or sub-advised by subsidiaries or affiliates of Oaktree and Brigade. See July 28 Supplement Letter at 2. The Applicants state that upon completion of Step One, the 19.8% equity in New Windstream will be held by U.S.-organized investment vehicles, which certify that they have no foreign voting interests and that, when aggregated with other ownership interests, these interests will result in New Windstream being no more than 25% foreign owned. *Id.* (stating that “Oaktree and Brigade are each wholly owned by U.S. citizens, and their investment vehicles’ voting rights in New Windstream will be voted by U.S. citizens. . . . Accordingly, the membership interests in New Windstream held by Oaktree and Brigade investment vehicles at the completion of the first step will be entirely voted by U.S. citizens. Neither of these investment companies will individually have a disclosable interest upon completion of the first step.”).

<sup>29</sup> Waiver Request at 2.

63.03, 63.04, 63.18, and 63.24 of the Commission's rules "to the extent required to expedite initial review of their applications and permit the two-step approval process"<sup>30</sup> proposed in the transfer applications.<sup>31</sup> Applicants state that similar waivers previously have been granted allowing companies to emerge from bankruptcy using a two-step review and approval process.<sup>32</sup>

According to the Applicants, grant of the applications and waiver request of sections 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules are in the public interest because following consummation of the transaction, Windstream will (1) emerge from bankruptcy with substantially less debt and without service disruption to its customers; (2) have improved operational and leasing arrangements with Uniti Group, Inc.;<sup>33</sup> (3) allow compensation for the company's creditors; and (4) generate increased competition due to a more stable and stronger capital structure, thus enabling Windstream to invest in broadband and other service offerings.<sup>34</sup> The reorganization plan contemplates that the Applicants will secure \$3.25 billion in exit financing and aims to reduce the company's overall debt by approximately 50%, thus deleveraging the company and placing it on a sound financial footing.<sup>35</sup> Applicants state that the two-step process will allow Holdings, Windstream, and their subsidiaries to emerge expeditiously from bankruptcy protection and to avoid the adverse consequences that could result from a delay in implementing the reorganization plan.<sup>36</sup> According to Applicants, operating as a debtor-in-possession imposes significant financial and operational burdens on Windstream, such as a potential need to incur additional indebtedness to maintain liquidity.<sup>37</sup>

Windstream also requests a waiver of section 1.2105(b)(2), 1.2107(c), or 1.927(h), which together would prohibit Windstream from engaging in a transaction that amounts to a transfer of control prior to filing a long-form license application and/or prior to grant of such licenses to the winning bidder.<sup>38</sup> Absent the requested waiver, Windstream would be disqualified from any further participation in Auction 105 or from completing the long-form application process for any licenses for which it may be a winning bidder, and therefore may be subject to default liabilities, or would need to delay consummation of the approved transaction until the restriction no longer applies.<sup>39</sup>

#### Grant of the Waiver Requests

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<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.*

<sup>32</sup> Waiver Request at 4 (citing *Applications Granted for the Transfer of Control of Fusion Connect, Inc., Debtor-in-Possession, and Subsidiaries*, WC Docket No. 19-262, Public Notice, 35 FCC Rcd 409, 413 (WCB/IB 2020) (*Fusion Connect Grant*); *Lieberman Television of Dallas License LLC, Debtor-in-Possession et al.*, Order, 34 FCC Rcd 8543, 8551, para. 15 (MB 2019) (*Lieberman Order*)).

<sup>33</sup> As part of the bankruptcy proceeding, the Applicants renegotiated their agreement with Uniti Group, Inc. for Windstream's continued lease of Uniti's network assets, the settlement of certain claims, the sale of certain assets, and Uniti's investment of \$1.75 billion in its network to support 1 Gigabit broadband speeds for consumers and small and medium businesses in Windstream's service areas. *Domestic Section 214 Application Filed for Acquisition of Certain Assets of Windstream Holdings, Inc. by Uniti Group Finance and Uniti National LLC*, WC Docket No. 20-161 Public Notice, DA 20-729 (WCB 2020).

<sup>34</sup> Public Interest Statement at 13-17.

<sup>35</sup> *Id.* at 8-9.

<sup>36</sup> *Id.* at 18.

<sup>37</sup> *Id.*

<sup>38</sup> 47 CFR §§ 1.2105(b), 1.2107(c), 1.927(h); *Auction 105 Major Modification Waiver Petition*.

<sup>39</sup> See 47 CFR § 1.2105(b)(2).

The Commission's rules may be waived for good cause shown.<sup>40</sup> Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the rule and such deviation will serve the public interest.<sup>41</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>42</sup> It may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>43</sup>

We grant the Applicants' request to waive sections 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules in the circumstances of this transaction with the conditions specified below.<sup>44</sup> We find that the request to waive these rules is well supported and consistent with existing policy and practice.<sup>45</sup> Grant of the waiver request, with the associated conditions specified below, will facilitate Windstream's prompt emergence from the bankruptcy process consistent with the Commission's longstanding practice to accommodate federal bankruptcy law when doing so will not unduly interfere with the Commission's public interest obligations under the Act.<sup>46</sup> We agree with the Applicants that facilitating successful and timely emergence from bankruptcy advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors.<sup>47</sup> Moreover, waiver of section 1.5000(a)(1) effectively provides interim section 310(b)(4) authority only, in order to enable Windstream's prompt emergence from bankruptcy while preserving the Commission's ability to review and rule on its proposed foreign ownership upon emergence from bankruptcy.<sup>48</sup> Accordingly, in consideration of the specific circumstances before us, we grant the request to waive sections 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules.

OEA and WTB also grant a waiver of sections 1.2105(c)(2), 1.2107(c), or 1.927(h)<sup>49</sup> as needed to facilitate the participation of New Windstream in the post-auction application process for any Priority

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<sup>40</sup> 47 CFR § 1.3.

<sup>41</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008).

<sup>42</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>43</sup> *WAIT Radio v. FCC*, 418 F.2d at 1157.

<sup>44</sup> Waiver Request at 7. We conclude that waiver of section 1.2112, as requested by Applicants, is unnecessary in these circumstances. See 47 CFR § 1.2112 (ownership disclosure requirements for spectrum auction applications).

<sup>45</sup> See, e.g., *Lieberman Order*, 34 FCC Rcd at 8550-51, para. 14.

<sup>46</sup> *Id.*; see also *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession et al.*, WT Docket No. 13-85 *et al.*, 31 FCC Rcd 13729, 13737-38, para. 17 (2016); *LaRose v. FCC*, 494 F.2d 1145, 1146-48 & n.2 (D.C. Cir. 1974).

<sup>47</sup> Waiver Request at 6 (citing *Fusion Connect Grant*, 35 FCC Rcd at 413, and *LaRose v. FCC*, 494 F.2d at 1146, n.2 (stating that in applying its policies where an application arises from bankruptcy, the Commission should consider "the public interest in the protection of innocent creditors")).

<sup>48</sup> See, e.g., *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications Inc., et al.*, Order and Declaratory Ruling, 23 FCC Rcd 4436, 4444, para. 18 (2008) (granting the petitioners authority to hold on an interim basis up to a non-controlling 49.99% equity and voting interest in SkyTerra Communications subject to and without prejudice to any action the Commission may take on the associated request for permanent authority); *Fusion Connect Grant*, 35 FCC Rcd at 413.

<sup>49</sup> Section 1.2105(c)(2) of the Commission's rules prohibits an auction applicant from making any major modifications to their short-form application. 47 C.F.R. § 1.2105(c)(2). Section 1.2107(c) requires an auction participant to submit a long-form application within ten business days of receiving notification that it is a winning bidder in the auction. 47 C.F.R. § 1.2105(c)(2). Section 1.927 prohibits a winning bidder from making any major modifications to their long-form application after the submission deadline. 47 C.F.R. § 1.927.

Access Licenses won by Windstream in Auction 105, conditioned upon consummation of the transaction and New Windstream's meeting all of Windstream's auction-related obligations and all qualifications to hold any licenses. Specifically, we grant this waiver to allow Windstream to complete Step One without violating whichever of these rules applies at time of consummation and would otherwise prohibit an auction applicant, including any winning bidder, from engaging in a transaction that amounts to a transfer of control prior to filing a long-form license application and/or prior to grant of such licenses to the winning bidder.<sup>50</sup> OEA and WTB conclude that this waiver is appropriate in the particular circumstances of a court-approved bankruptcy proceeding which had commenced long prior to the deadline for filing an application to participate in Auction 105. OEA, along with WTB, previously concluded that Windstream had adequately disclosed its ownership structure and determined that Windstream was eligible to bid in Auction 105.<sup>51</sup> Windstream also disclosed in an attachment to its auction application that it had filed for bankruptcy, citing the Bankruptcy Court docket number for the pending proceeding. We conclude that waiver of the applicable rule will help achieve the public interest benefit of facilitating Windstream's prompt emergence from the bankruptcy process, and promoting Windstream's ability to acquire spectrum to support its ongoing viability and assure that it has the tools to take advantage of technology advances that may improve the services it provides to the public.

Waiver of these rules will also help to ensure that Windstream does not default on its obligations, which would undermine a spectrum management objective of the auctions process by leaving licenses won at auction unassigned. Moreover, in light of the pending bankruptcy proceeding, OEA and WTB find that waiver will not undermine the purposes of the rules prohibiting major modifications and there is a stronger public interest benefit in granting the waivers than in applying the rule. As the Commission has noted, the prohibition on major modifications during the auction and post-auction licensing process promotes transparency, which serves a number of related objectives, including, but not limited to, assuring that: an auction applicant's ownership structure, including its real parties-in-interest, are fully disclosed and can be assessed prior to the auction, and that other applicants have consistent and transparent information about the identity of other applicants, which enhances auction competition by leveling the informational playing field.<sup>52</sup> Section 1.2107(c)'s requirement that the long-form license application is submitted by the same entity that is the winning bidder and section 1.927(h)'s prohibition on transfers of control of a long-form applicant also safeguard against speculative bidding by those that might seek to "shop" winning bids to undisclosed third parties.<sup>53</sup> Granting the requested waiver in these circumstances will not undermine the objectives of these rules because petitioners disclosed their pending bankruptcy proceeding and, through the filings in that proceeding, the potential future real parties-in-interest. In this instance, the alternative of postponing consummation until the major modification restriction no longer applies is not a reasonable alternative because the financial repercussion of such delay might jeopardize Windstream's ability to continue to provide uninterrupted services to its existing wireline consumers across the country. Thus, OEA and WTB conclude that the particular purposes of these rules, ensuring that the applicant for the licenses is the same entity that was the winning bidder, does not require strict application of the major change prohibition in these special circumstances, and that deviation from the general rule is warranted.

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<sup>50</sup> Because New Windstream has not yet sought Commission approval for Step Two of the planned transaction, we need not reach the request to permit it to amend New Windstream's Auction 105 long-form application to reflect the proposed Step Two ownership. See Amendment to Pending Waiver Petition at 1.

<sup>51</sup> *Auction of Priority Access Licenses for the 3550-3650 MHz Band; 271 Applicants Qualified to Bid in Auction 105*, AU Docket No. 19-244, Public Notice, DA 20-695 at 9-11, paras. 47-51 (WTB/OEA Jul. 1, 2020).

<sup>52</sup> See *Connect America Fund, Petition of Hawaii Telecom et al.*, Order, 33 FCC Rcd 6208, 6211 para. 9 (WCB/WTB 2018).

<sup>53</sup> Cf. *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC 2348, 2382, 2383, paras. 192, 199.

### Grant of Applications, Subject to Conditions

We find, upon consideration of the record, that the proposed transfers of control and assignments under sections 214 and 310(d) of the Act will serve the public interest, convenience, and necessity, and we therefore grant the applications and the request for waiver of sections 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, conditioned upon the filing, no later than 30 days after closing the transaction authorized by this grant, of (1) a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act, (2) a supplement providing the information required by sections 1.948, 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, and (3) any necessary transfer applications.

Because all three of the Special Warrant Agreements submitted in this proceeding include provisions for potential distributions prior to issuance of a declaratory ruling,<sup>54</sup> we also condition our grant of the applications and waiver of sections 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules to require prior Commission approval of any distribution in any form that might include Special Warrant holders in our sole and absolute discretion. Given the assumptions underlying this Waiver Request and applications, we clarify that, for purposes of calculating whether an individual or entity is a disclosable interest holder or requires specific approval in the context of filing the petition for declaratory ruling and supplements, Windstream should include any outstanding special warrants in its calculation of the individual's or entity's *pro rata* equity interest (i.e., on a fully diluted basis). Special warrants are considered on a case-by-case, temporary and limited basis in the context of a bankruptcy proceeding until the filing of a petition for declaratory ruling concerning foreign ownership upon closing of the transaction.<sup>55</sup> Furthermore, because Windstream Holdings will be emerging from bankruptcy as a limited liability company,<sup>56</sup> we note that section 1.5002(b)(2)(iii) will apply for purposes of calculating the equity and voting interests held in Windstream Holdings LLC.<sup>57</sup>

Therefore, pursuant to sections 4(i) and (j), 214(a), 214(c), and 310(d) of the Act, 47 U.S.C. §§ 4(i), 4(j), 214(a), 214(c), 310(d), and sections 1.3, 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, 63.24, and pursuant to the authority delegated under sections 0.21(m), 0.51, 0.91, 0.131, 0.261, 0.291, and 0.331 of the Commission's rules, 47 CFR §§ 0.21(m), 0.51, 0.91, 0.131, 0.261, 0.291, and 0.331, we grant the applications and requests for waiver listed in Attachment A to this Public Notice subject to the conditions herein.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the 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.

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<sup>54</sup> See July 21 Letter and attached Special Warrants at section 3.

<sup>55</sup> See, e.g., *Cumulus Media Inc. Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 19-143, Declaratory Ruling, 35 FCC Rcd 5461 (MB 2020).

<sup>56</sup> See July 28 Supplement Letter.

<sup>57</sup> 47 CFR § 1.5002(b)(2)(iii); see also 47 CFR § 1.5003 (Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies).



For further information, please contact Mike Ray, Wireline Competition Bureau, (202) 418-0357, Kimberly Cook, International Bureau, (202) 418-7532, or Linda Ray, Wireless Telecommunications Bureau, (202) 418-0257; William Huber, Office of Economics and Analytics, (202) 418-2109.

**ATTACHMENT A**

**SECTION 214 AUTHORIZATIONS**

**A. International**

<b>File Number</b>	<b>Authorization Holder</b>	<b>Authorization Number</b>
ITC-ASG-20200522-00081	Windstream Services LLC, Debtor-in-Possession <sup>58</sup>	ITC-214-19980925-00658
ITC-ASG-20200522-00082	American Telephone Company (Debtor-in-Possession)	ITC-214-20061201-00539
ITC-ASG-20200522-00083	MassCom Inc., Debtor-in-Possession	ITC-214-20080220-00084

**B. Domestic**

The Wireline Competition Bureau grants the application to transfer control of domestic section 214 authority in connection with the proposed transaction—WC Docket No. 20-151.<sup>59</sup>

**SECTION 310(d) APPLICATIONS**

<b>File Number</b>	<b>Licensee</b>	<b>Lead Call Sign</b>
0009081087	BOB, LLC dba Business Only Broadband	WQCC512
0009082139	Windstream Services, LLC, Debtor-In-Possession	WQNK758
0009082351	D&E Communications, Inc.	WQJH937
0009082392	Windstream D&E Systems Inc. (Debtor-in-Possession)	WPNA263
0009082434	MPX Inc.	WPSQ536
0009082528	Oklahoma Windstream, LLC	KPP33
0009085568	Valor Telecommunications of Texas, LLC d/b/a Windstream Communications Southwest	KKK59
0009085592	Windstream New York Inc (Debtor-In-Possession)	WNWM304
0009085614	Windstream NTI, LLC, Debtor In Possession	WLN878

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<sup>58</sup> A list of those subsidiaries that provide international services under the section 214 authorization held by Windstream Services, LLC are listed in Attachment 2 to the Lead Application.

<sup>59</sup> 47 CFR § 63.03; *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9594, 9605, paras. 26 and 52 (2017) (finding no harm to competition in CenturyLink’s incumbent LEC territory, nor outside of CenturyLink’s incumbent LEC territory, where applicants operate as competitive LECs).

## **WAIVER REQUEST**

The Petition for Temporary and Limited Waiver of sections 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, IBFS file numbers ISP-WAV-20200611-00004 and ITC-WAV-20200611-00091, is granted and is available in the following docket and file numbers:

- IB File Nos. ITC-ASG-20200522-00081, ITC-ASG-20200522-00082, ITC-ASG-20200522-00083, ISP-WAV-20200611-00004; ITC-WAV-20200611-00091;
- ULS File Nos. 0009081087, 0009082139, 0009082351, 0009082392, 0009082434, 0009082528, 0009085568, 0009085592, 0009085614; and
- WC Docket No. 20-151.

Petition of Windstream Services LLC, Debtor-In-Possession for Waiver of Section 1.2105(b)(2) of the Commission's Rules, AU Docket No. 19-244 (filed July 22, 2020); Amendment to Pending Waiver Petition (filed August 27, 2020).