**DA 23-475**

 **June 2, 2023**

**GRANT OF WINDSTREAM HOLDINGS II, LLC**

**PETITION FOR DECLARATORY RULING**

**IB Docket No. 22-129; File Nos. ISP-PDR-20201021-00010; and**

**ISP-AMD-20230330-00005**

By this Public Notice, the Office of International Affairs (OIA) grants, as conditioned, the petition for declaratory ruling (Petition), as amended,[[1]](#footnote-3) filed by Windstream Holdings II, LLC (Windstream), its members, and its common carrier licensee subsidiaries (together, Petitioners) pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the Act), and section 1.5000(a)(1) of the Commission’s rules, to permit foreign ownership of the controlling U.S. parent, Windstream, to exceed the 25% benchmarks specified in section 310(b)(4) of the Act.[[2]](#footnote-4)

On March 18, 2022, the International Bureau[[3]](#footnote-5) released a public notice seeking comment on the Petition, as amended and IB did not receive comments or oppositions.[[4]](#footnote-6) On February 3, 2023, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), submitted a Petition to Adopt Conditions to Authorizations and Licenses (Committee Petition).[[5]](#footnote-7) On April 27, 2023, Windstream filed a letter stating that it commits, for as long as it is structured as a limited liability company, to monitor its ownership and file with the Commission an annual certification that it is in compliance with the Commission’s foreign ownership rules.[[6]](#footnote-8)

 Based on our review of the record, we grant the Committee Petition and condition grant of the Windstream Petition, as amended, on compliance by Windstream, its members, and its common carrier subsidiaries with the commitments and undertakings set out in the Windstream LOA and in the Annual Certification Agreement Letter filed by Windstream on April 27, 2023, as well as the additional conditions set forth below.[[7]](#footnote-9)

**Windstream**

 Windstream, a Delaware limited liability company that is the successor in interest to Windstream Holdings, Inc., Debtor-in-Possession,[[8]](#footnote-10) acting through its operating subsidiaries, provides voice, data, and transport services on a local and long-haul fiber network currently spanning approximately 150,000 route miles.[[9]](#footnote-11) The Petitioners state that Windstream’s consumer and small business segment includes approximately 1.6 million residential and small business customers.[[10]](#footnote-12) In addition, Windstream provides 100 Gbps bandwidth and transport services to wholesale customers, including telecommunications companies, content providers, and cable and other network operators.[[11]](#footnote-13) The Restated Petition states that Windstream’s incumbent local exchange carrier subsidiaries (LECs) 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.[[12]](#footnote-14) On February 25, 2019, Windstream’s predecessor in interest, Windstream Holdings, Inc. (Holdings), filed voluntary petitions for relief for itself and its subsidiaries, and other subsidiaries under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.[[13]](#footnote-15) On April 1, 2020, Holdings filed a plan of reorganization proposing a restructuring, through a two-step transaction, to permit Holdings and its subsidiaries to emerge from bankruptcy “with a deleveraged capital structure and sufficient liquidity to fund the post-emergence business plan.”[[14]](#footnote-16)

 On May 21, 2020, Holdings and its first lien debtholders (together, Applicants) jointly filed applications for consent to transfer and assign licenses and authorizations held by Windstream Services, LLC (Windstream Services) with the Commission,[[15]](#footnote-17) seeking approval for the proposed two-step process.[[16]](#footnote-18) As part of step one of the process (Step One), Applicants requested the Commission to approve the following transactions pursuant to temporary and limited waivers of sections 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission’s rules,[[17]](#footnote-19) and 1.2105(b)(2), 1.2107(c), or 1.927(h) of the Commission’s rules:[[18]](#footnote-20) the interests held by the existing stockholders of Holdings would be canceled; the company would be reorganized as a Delaware limited liability company; and the creditors who held the first lien debt of Windstream Services, which was the subsidiary of Holdings, would equitize a portion of their debt claims against Holdings and Windstream Services, acquiring 100% of the equity of Windstream with non-U.S. entities and U.S. entities with foreign ownership obtaining rights to acquire additional Common Units, which according to the Restated Petition are voting and uninsulated equity interests,[[19]](#footnote-21) at the completion of step two of the process (Step Two).[[20]](#footnote-22)

 The Bankruptcy Court approved the plan of reorganization on June 26, 2020.[[21]](#footnote-23) On August 28, 2020, IB, the Wireline Competition Bureau, and Wireless Telecommunications Bureau granted 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, subject to conditions, to facilitate Windstream Services’ 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 obligation under the Act.[[22]](#footnote-24) More specifically, waiver of section 1.5000(a)(1) as part of Step One of the process was granted to enable Holdings’ prompt emergence from bankruptcy while preserving the Commission’s ability to review and rule on its proposed foreign ownership interests upon emergence from bankruptcy.[[23]](#footnote-25) Therefore, the grants were conditioned upon the filing, no later than 30 days after closing of the transaction authorized by the grant as part of Step One, of a petition for declaratory ruling to exceed the aggregate foreign ownership benchmarks set forth in section 310(b)(4) of the Act.[[24]](#footnote-26) The Office of Economics and Analytics and the Wireless Telecommunications Bureau also granted a waiver of sections 1.2105(c)(2), 1.1207(c), or 1.927(h), as needed, with conditions to facilitate the participation of Windstream Services in the post-auction application process for any Priority Access Licenses won by Windstream Services in Auction 105.[[25]](#footnote-27)

At Step One, Holdings emerged from bankruptcy on September 21, 2020.[[26]](#footnote-28) With the completion of Step One, the former holders of first lien debt of Holdings, as a group, acquired 100% of the equity of Windstream with foreign entities and U.S. entities with foreign ownership obtaining rights to acquire additional Common Units at the completion of Step Two.[[27]](#footnote-29)

Petitioners state that at Step One, Windstream issued Special Warrants to its investors,[[28]](#footnote-30) and pursuant to section 310(b)(4) of the Act and Commission’s rules, Windstream’s aggregate foreign ownership remains below the 25% statutory benchmarks.[[29]](#footnote-31) According to the Restated Petition, foreign holders may not exercise the Special Warrants until the Commission grants the Petition.[[30]](#footnote-32)

Petitioners state that, upon completion of the proposed Step Two of the transaction, Windstream would have an aggregate indirect foreign equity interest of 66.29%.[[31]](#footnote-33) According to the Restated Petition, Nexus Aggregator L.P., a Delaware limited partnership, would hold a 49.27% equity interest in Windstream upon closing.[[32]](#footnote-34) Elliott International, L.P. (Elliott International), a Cayman Islands entity, would hold a 69.57% equity interest, as an insulated limited partner, in Nexus Aggregator L.P.[[33]](#footnote-35) Elliott International Limited, a Cayman Islands entity, holds a 99.90% equity interest in Elliott International,[[34]](#footnote-36) and Elliott International Limited is ultimately held by insulated entities, none of which hold a disclosable interest.[[35]](#footnote-37)

According to the Restated Petition, Pacific Investment Management Company LLC (PIMCO), a Delaware limited liability company,[[36]](#footnote-38) which ultimately is owned and controlled by Allianz SE, a corporation organized in Germany,[[37]](#footnote-39) would exclusively control the voting in Windstream on behalf of a series of U.S. and foreign funds that would collectively hold a 21.17% direct equity interest in Windstream upon closing.[[38]](#footnote-40) In addition, Oaktree WIN Management, LLC, a Delaware entity,[[39]](#footnote-41) would exclusively control the voting interests in Windstream on behalf of a number of U.S. and foreign entities that would collectively hold a 13.78% direct equity interest in Windstream upon closing through four Delaware LLCs: (1) OCM Opps WIN Holdings, LLC; (2) OCM SC WIN Holdings, LLC; (3) OCM GC WIN Holdings, LLC; and (4) Oaktree Senior Loan Fund WIN Holdings, LLC.[[40]](#footnote-42) Petitioners state that the remaining 15.69% of equity interest in Windstream would be held by various U.S. and foreign entities,[[41]](#footnote-43) all of which would hold less than 10% equity interest in Windstream.[[42]](#footnote-44)

The Petitioners filed several supplements to notify the Commission of the changes that occurred in Windstream’s ownership during the pendency of the Petition.[[43]](#footnote-45) The Petitioners state that Windstream has placed limits on post-filing trades by prohibiting foreign investors from acquiring uninsulated Common Units until the investor receives specific approval from the Commission, and requiring new foreign investors that are not already disclosed in the Restated Petition to agree that Special Warrants can be purchased only if they will be exercised in exchange for insulated Limited Rights Common Units.[[44]](#footnote-46)

**Character Qualification of PIMCO**

Pursuant to section 1.65(a) of the Commission’s rules,[[45]](#footnote-47) the Petitioners filed two letters to notify the Commission that Allianz Global Investors U.S., LLC (AGI), a subsidiary of Allianz of America, Inc. (AIA), entered into a settlement with the Securities and Exchange Commission (SEC), establishing that AGI violated various securities laws, and a plea agreement with the Department of Justice (DOJ), pursuant to which AGI pleaded guilty to one count of criminal securities fraud.[[46]](#footnote-48) AGI is an indirect subsidiary of Allianz SE, which is the ultimate owner of both PIMCO and AIA. According to the May 17, 2022 SEC Administrative Proceeding Order that was attached to Petitioners’ May 2022 PIMCO letter, AGI was a registered investment advisor headquartered in New York that managed $148.8 billion in client assets as of December 31, 2020.[[47]](#footnote-49) The portfolio management team for the Structured Alpha Funds at AGI misled investors as to the significant downside risk of the Structured Alpha Funds.[[48]](#footnote-50) Further, while the misconduct was ongoing, the portfolio management team engaged in numerous, but ultimately unsuccessful, efforts to conceal their misconduct from the SEC.[[49]](#footnote-51)

As a result of the violations of the securities laws, AGI’s Structured Alpha Funds lost billions of dollars.[[50]](#footnote-52) Under the settlement with the SEC, AGI was required to pay a civil money penalty of $675 million and approximately $349.2 million in disgorgement and prejudgment interest.[[51]](#footnote-53) Similarly, AGI entered into a plea agreement with the DOJ,[[52]](#footnote-54) in which AGI pleaded guilty to committing securities fraud and admitted that “at least one employee of [AGI] engaged in securities fraud within the scope of his employment and for the benefit of [AGI], and that [AGI] is responsible for the federal criminal violation charged in the Information and set forth in the Statement of Facts as a result of the actions of its employees and agents as described in the Statement of Facts.”[[53]](#footnote-55) As a result of the plea agreement with the DOJ, AGI had to pay a forfeiture of $174.3 million and restitution of $3.2 billion and serve a five-year period of probation.[[54]](#footnote-56) Windstream states that AGI’s total compensation to investors would equal $5 billion.[[55]](#footnote-57)

The Petitioners argue that “AGI’s guilty plea and settlement do not disqualify PIMCO from holding an ownership interest in Windstream” and provide multiple reasons as to why that is the case.[[56]](#footnote-58) Petitioners contend that despite AGI’s misconduct, none of the other entities in the Allianz group of companies were found by the SEC or DOJ to have knowledge or participation in the misconduct.[[57]](#footnote-59) The Petitioners assert that AGI is not a part of PIMCO’s upstream ownership structure. The Petitioners explain that although AIA has an indirect equity ownership interest in PIMCO,[[58]](#footnote-60) AGI is a separate subsidiary of AIA.[[59]](#footnote-61) The Petitioners state that “currently and at the time of AGI’s misconduct, AGI employees are not and were not involved in and do not supervise or oversee the portfolio management of funds managed, advised or sub-advised by PIMCO.”[[60]](#footnote-62) The Petitioners further assert that “AGI and PIMCO do not share any employees, officers or directors.”[[61]](#footnote-63) Further, the Petitioners state that the SEC granted a waiver from section 9(a) of the Investment Company Act of 1940 to allow PIMCO to serve as an investment adviser or sub-adviser to U.S. registered funds.[[62]](#footnote-64) The Petitioners state that the waiver granted by the SEC was “based in part on PIMCO’s representation that the misconduct was entirely limited to AGI and its personnel, and that none of PIMCO’s current or former directors, officers or employees were involved.”[[63]](#footnote-65)

As part of our public interest analysis, we consider whether PIMCO possesses the character qualifications necessary to hold an interest requiring approval. In related contexts, the Commission evaluates character qualifications when the record presents alleged violations of the Communications Act or Commission rules (so-called FCC misconduct) or adjudicated violations of certain other laws (so-called non-FCC misconduct).[[64]](#footnote-66) In determining whether misconduct by a related entity presents character qualification issues, the Commission looks at factors such as the type of misconduct, the roles of employees and managers in the misconduct, the parent-subsidiary relationship, and the relationship with related subsidiaries.[[65]](#footnote-67) The Commission also considers whether mitigating factors lessen or negate any adverse character inference.[[66]](#footnote-68) Based on our evaluation of the facts and relevant considerations under the Commission’s character policy, we find that AGI’s misconduct does not warrant an adverse character inference against PIMCO.

Misconduct by an affiliate of the entity whose character is being evaluated is relevant only if the affiliates share common principals; misconduct by the wrongdoer affiliate’s employees will be considered only if the employee responsible for the misconduct is involved in the activities of the affiliate whose character is at issue and where there is an attributable interest in that affiliate.[[67]](#footnote-69) The Commission has held that there is no basis to impute misconduct by a subsidiary (AGI in this case) to the common parent and then back down to the sister subsidiary (PIMCO) where there is “no connection . . . beyond common ownership” between the subsidiaries.[[68]](#footnote-70)

As noted above, the misconduct at issue was organized and led by three individuals on AGI’s portfolio management team.[[69]](#footnote-71) Although AGI is a sister subsidiary to PIMCO, AGI itself did not and does not hold any ownership interest in PIMCO.[[70]](#footnote-72) Further, both the SEC and DOJ concluded that AGI was the only entity that was responsible for any misconduct,[[71]](#footnote-73) and, despite AGI’s misconduct, the SEC has deemed PIMCO to be qualified to provide investment services to the public.[[72]](#footnote-74)  Pursuant to the temporary and permanent waiver granted by the SEC, PIMCO has agreed not to employ any persons who were involved in the misconduct.[[73]](#footnote-75)  The Petitioners have also made a showing to the Commission that AGI did not at the time of misconduct and does not control, manage, or otherwise participate in the operation of PIMCO.[[74]](#footnote-76)  The record shows that, while AGI and PIMCO have a common parent, they did not at the time of misconduct and do not currently share officers or directors, and there was no integration of operating personnel.[[75]](#footnote-77)  Further, no employees responsible for the misconduct were or are involved in PIMCO’s activities.[[76]](#footnote-78) Finally, AGI has undertaken other remedial measures detailed in the record in order to mitigate the effects of the misconduct.[[77]](#footnote-79) As was the case in *Cowles*,[[78]](#footnote-80) the record shows there is no connection between AGI and PIMCO beyond common ownership, and accordingly there is no basis to impute AGI’s misconduct to PIMCO. Thus, the facts presented do not support an adverse character inference against PIMCO.

**National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns**

When analyzing petitions for declaratory ruling, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.[[79]](#footnote-81) As part of our public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.[[80]](#footnote-82) The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns.[[81]](#footnote-83) The Commission, however, ultimately makes an independent decision on the application based on the record in the proceedings.[[82]](#footnote-84)

Pursuant to Commission practice, the Petition was referred to the relevant Executive Branch agencies (including the Committee agencies) for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Petitioners. On March 24, 2022, the Committee notified the Commission that it was reviewing the Petition for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Petition.[[83]](#footnote-85) We deferred action on the Petition in response to the Committee’s request. On October 11, 2022, the Committee notified the Commission that the Petitioners had provided complete responses to initial questions posed by the Committee and that the Committee was conducting an initial review to assess whether granting the Petition would pose a risk to the national security or law enforcement interests of the United States.[[84]](#footnote-86)

In its petition to adopt conditions filed on February 3, 2023, the Committee advised the Commission that it has no objection to the Commission granting the Petition “provided that the Commission conditions its approval on the assurances of Windstream Holdings II, LLC (“Windstream”), to abide by the commitments and undertakings” set forth in the Windstream LOA.[[85]](#footnote-87)

In accordance with the request of the Committee, and in the absence of any objection from Windstream, we grant the Committee Petition, and condition the grant of the Petition, as amended, on compliance by Windstream, its members, and its common carrier subsidiaries with the commitments and undertakings set out in the Windstream LOA.[[86]](#footnote-88) A failure to comply and/or remain in compliance with any of these conditions shall constitute a failure to meet a condition of this ruling and the underlying authorizations and licenses[[87]](#footnote-89) and thus grounds for declaring the authorizations and licenses terminated without further action on the part of the Commission.[[88]](#footnote-90) A failure to meet a condition of this grant may also result in monetary sanctions or other enforcement action by the Commission.

**Petition for Declaratory Ruling Under Section 310(b)(4)**

Pursuant to section 1.5001(i) of the Commission’s rules,[[89]](#footnote-91) Petitioners request that the Commission specifically approve the equity and/or voting interests that would be held in the controlling U.S. parent, Windstream, upon completion of the proposed transaction by the foreign-organized entities and foreign individuals, categorized below based on their investment management entities, at the percentages specified below.[[90]](#footnote-92) All of the entities and individuals named below, except for Elliott International, L.P. and Elliott International Limited, hold voting Common Units in Windstream and, therefore, hold uninsulated membership interests in Windstream. Although these uninsulated entities and individuals hold minority equity and voting interests in Windstream, their voting interests have been calculated in accordance with section 1.5002(b)(iii)(A) of the rules to be deemed to hold a 100% voting interest in Windstream.[[91]](#footnote-93)

Elliott Investment Management L.P.

 Elliott International, L.P. (33.34% equity, 33.34% voting) (Cayman Islands); and

 Elliott International Limited (34.31% equity, 34.31% voting) (Cayman Islands).

Pacific Investment Management Company, LLC

PIMCO Funds: Global Investors Series plc, Income Fund (2.25% equity, deemed 100% voting) (Ireland);

PIMCO Tactical Opportunities Master Fund Ltd. (0.96% equity, deemed 100% voting) (Cayman Islands);

PIMCO Monthly Income Fund (1.11% equity, deemed 100% voting) (Canada);

PIMCO DISCO Fund III LP (0.39% equity, deemed 100% voting) (Cayman Islands);

PIMCO Global Income Opportunities Fund (0.28% equity, deemed 100% voting) (Canada);

PIMCO Bermuda Trust II: PIMCO Bermuda Income Fund (M) (0.25% equity, deemed 100% voting) (Bermuda);

BMO Global Strategic Bond Fund (0.08% equity, deemed 100% voting) (Canada);

Desjardins Global Tactical Bond Fund (0.07% equity, deemed 100% voting) (Canada);

PIMCO Bermuda Trust II: PIMCO Bermuda Low Duration Income Fund (0.06% equity, deemed 100% voting) (Bermuda);

Desjardins Floating Rate income Fund (0.02% equity, deemed 100% voting) (Canada);

PIMCO Funds: Global Investors Series plc, Strategic Income Fund (<0.01% equity, deemed 100% voting) (Ireland);

PIMCO Funds: Global Investors Series plc, Low Duration Income Fund (<0.01% equity, deemed 100% voting) (Ireland);

PIMCO Tactical Opportunities Offshore Fund, L.P. (0.96% equity, deemed 100% voting) (Cayman Islands);

PIMCO Distressed Senior Credit Opportunities Fund II Offshore Feeder, L.P. (0.24% equity, 0.24% voting) (Cayman Islands);

Allianz Asset Management GmbH (0% equity, deemed 100% voting) (Germany);

Allianz Finanzbeteiligungs GmbH (0% equity, deemed 100% voting) (Germany);

Allianz Europe B.V. (0% equity, deemed 100% voting) (Netherlands); and

Allianz SE (0% equity, deemed 100% voting) (Germany).

Oaktree WIN Management, LLC

LGIAsuper (0.0014% equity, deemed 100% voting) (Australia);

LGIAsuper Trustee (0.0014% equity, deemed 100% voting) (Australia); and

Renaissance investment Holdings Ltd. (0.0012% equity, deemed 100% voting) (Bermuda).

Brigade Capital Management

Mediolanum Best Brands (0.12% equity, deemed 100% voting) (Ireland).

Arena Capital Advisors

HP XIV (0.18% equity, deemed 100% voting) (Germany);

INKA for account of beTurn (0.12% equity, deemed 100% voting) (Germany);

T&D Fund – Arena Short Duration High Yield Fund (0.04% equity, deemed 100% voting) (Luxembourg); and

BUMA-Universal-Fonds CTA (0.01% equity, deemed 100% voting) (Germany).

Deutsche Bank AG

Nomura Global Manager Select Bank Loan Fund (<0.01% equity, deemed 100% voting) (Cayman Islands);

DWS Group GMBH & Co. KGaA (0% equity, deemed 100% voting) (Germany);

DB Beteiligungs-Holding (0% equity, deemed 100% voting) (Germany); and

Deutsche Bank AG (1.11% equity, deemed 100% voting) (Germany).

HSBC Bank

HSBC Bank plc (0.45% equity, deemed 100% voting) (United Kingdom); and

HSBC Holdings plc (0.45% equity, deemed 100% voting) (United Kingdom).

Columbia Management Investment Advisors

Cent CLO 21 Limited (0.08% equity, deemed 100% voting) (Cayman Islands); and

Columbia Cent CLO 28 Limited (0.03% equity, deemed 100% voting) (Cayman Islands).

Siemens Financial Services Inc.

Siemens AG (0.36% equity, deemed 100% voting) (Germany).

Symphony Asset Management LLC

PensionDanmark Pensionsforsikringsaktieselskab (0.02% equity, deemed 100% voting) (Denmark);

BayCity Alternative Investment Funds SICAV-SIF – BayCity US Senior Loan Fund (<0.01% equity, deemed 100% voting) (Luxembourg);

Symphony Floating Rate Senior Loan Fund (<0.01% equity, deemed 100% voting) (Canada); and

Nomura Multi Managers Fund (<0.01% equity, deemed 100% voting) (Cayman Islands).

Millais Limited

Millais Limited (0.11% equity, deemed 100% voting) (Cayman Islands);

Robert Heaselgrave (0% equity, deemed 100% voting) (United Kingdom); and

Andrew Dodd (0% equity, deemed 100% voting) (United Kingdom).

Credit Suisse Securities (USA) LLC

 Credit Suisse AG (0.05% equity, deemed 100% voting) (Switzerland); and

Credit Suisse Group AG (0.05% equity, deemed 100% voting) (Switzerland).

Jackson National Life Insurance Company

 Prudential (US Holdco 1) Limited (<0.01% equity, deemed 100% voting) (United Kingdom);

Prudential Corporation Asia Limited (<0.01% equity, deemed 100% voting) (Hong Kong); and Prudential plc (<0.01% equity, deemed 100% voting) (United Kingdom).

ABRY Advanced Securities Fund III, L.P.

ABRY Advanced Securities Fund III, L.P. (<0.01% equity, deemed 100% voting) (Cayman Islands); and

ABRY ASF Investors III, L.P. (0.00% equity, deemed 100% voting) (Cayman Islands).

Invesco Advisers, Inc.

Invesco Holding Company Limited United (0.00% equity, deemed 100% voting) (United Kingdom); and

Invesco Limited (0.00% equity, deemed 100% voting) (Bermuda).

Bowery Funding ULC

 Bowery Funding ULC (<0.01% equity, deemed 100% voting) (Canada); and

Bank of Nova Scotia (<0.01% equity, deemed 100% voting) (Canada).

Diaz

 Manuel Antonio Rodriguez Diaz (<0.01% equity, deemed 100% voting) (Spain).

The Petitioners also seek advance approval for Windstream to be up to and including 100% foreign-owned in the aggregate.[[92]](#footnote-94) Pursuant to section 1.5001(k) of the Commission’s rules,[[93]](#footnote-95) Petitioners also request advance approval for the foregoing entities and individuals to increase their indirect equity and/or voting interests in Windstream up to a non-controlling 49.99%. Uninsulated individuals and entities that hold minority equity and voting interests in Windstream with a deemed 100% voting interest in Windstream in accordance with section 1.5002(b)(iii)(A) of the Commission’s rules will continue to be deemed to hold a 100% voting interest in Windstream in accordance with section 1.5002(b)(iii)(A) of the Commission’s rules.[[94]](#footnote-96)

The Petitioners assert that the proposed foreign ownership of the controlling U.S. parent, Windstream, would serve the public interest.[[95]](#footnote-97) We received no comments regarding foreign ownership, and, as discussed above, NTIA, on behalf of the Committee, has advised the Commission that the Committee has no objection to the Commission granting the Petition, “provided that the Commission conditions its approval on the assurance of Windstream Holdings II, LLC (‘Windstream’), to abide by the commitments and undertakings set forth in the January 18, 2023, Letter of Agreement (LOA)” attached to the Committee Petition.[[96]](#footnote-98)

Based on our review of the record, under section 310(b)(4) of the Act and the Commission’s foreign ownership rules and policies, we find that public interest would not be served by prohibiting foreign ownership of Windstream, the controlling U.S. parent, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Petition, as amended, subject to the conditions set out herein. This declaratory ruling authorizes 100% aggregate foreign ownership of Windstream, as the controlling U.S. parent of the of the common carrier licensees, subject to the terms and conditions set forth in section 1.5004 of the Commission’s rules,[[97]](#footnote-99) as well as additional conditions set forth herein.

In addition, pursuant to section 1.5001(i) of the Commission’s rules, and subject to the conditions set forth herein, we approve the foreign equity and voting interests that would be held in Windstream by each of the above-listed foreign entities and individuals in the amounts specified. We also approve the Petitioner’s request for advance approval, pursuant to section 1.5001(k), permitting the above-listed foreign entities and individuals to increase their equity and voting interests in Windstream up to the amounts specified above.

Finally, under this declaratory ruling, Petitioners have an affirmative duty to monitor their foreign equity and voting interests, calculate their interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission’s rules,[[98]](#footnote-100) and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.[[99]](#footnote-101) Furthermore, because Windstream Holdings Inc. emerged from bankruptcy as a limited liability company, section 1.5002(b)(2)(iii) will apply for purposes of calculating the voting interests held in Windstream Holdings II, LLC.[[100]](#footnote-102)

A failure to comply and/or remain in compliance with any of the conditions of this declaratory ruling shall constitute a failure to meet a condition of this ruling and the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without further action on the part of the Commission. A failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

**Grant of Petition for Declaratory Ruling, As Amended**

Upon review of the Petition, as amended, and consideration of the record of this proceeding, we find that the public interest would not be served by prohibiting the foreign ownership of Windstream, the controlling U.S. parent, in excess of the 25% benchmarks in section 310(b)(4) of the Act.

Pursuant to sections 4(i)-(j), 5(c), 303(r) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 155(c), 303(r), 310(b), and sections 1.5001-04, and 1.4001-04 of the Commission’s rules, 47 CFR §§ 1.5001-04, 1.4001-04, and pursuant to the authority delegated under sections 0.19 and 0.351of the Commission’s rules, 47 CFR §§ 0.19 and 0.351, we grant the Petition, as amended, as conditioned in this Public Notice.

Grant of the Petition, as amended, is conditioned on compliance with the terms and conditions set forth in section 1.5004 of the Commission’s rules.[[101]](#footnote-103)

Grant of the Petition, as amended, is further conditioned on compliance with the January 18, 2023 Letter of Agreement from Tony Thomas, President & Chief Executive Officer Windstream Holdings II, LLC, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division.[[102]](#footnote-104)

Grant of the Petition, as amended, is further conditioned on compliance with the commitments set forth in the Annual Certification Agreement Letter filed by Windstream on April 27, 2023.[[103]](#footnote-105)

Grant of this Petition is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

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.

For further information, please contact Fara Mohsenikolour, Office of International Affairs, Telecommunications and Analysis Division, at (202) 418-1429.

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1. Windstream Holdings II, LLC, et al., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended, ICFS File No. ISP-PDR-20201021-00010 (filed Oct. 21, 2020) (Petition). Subsequently, Petitioners filed additional information to supplement and amend the Petition. *See* Windstream Holdings II, LLC, et al., Restated Petition for Declaratory Ruling, ICFS File No. ISP-PDR-20201021-00010 (filed Oct. 26, 2021) (Restated Petition); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Jan. 15, 2021) (January 2021 Supplement) (clarifying information regarding insulated and uninsulated voting interests in Exhibits E through AA of the Petition, and providing revised post-closing ownership charts); Letter from Bruce Karsh, Member of Oaktree WIN, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Oct. 26, 2021) (October 2021 Supplement) (responding to staff inquiries and providing certifications requested by the staff regarding interests to be held in Windstream through four investment funds managed by Oaktree WIN Management, LLC, a newly formed entity); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Feb. 10, 2022) (February 2022 Supplement) (notifying the Commission that the equity interest percentages of certain disclosable interest holders shifted due to investors in Windstream trading Common Units and Special Warrants with both existing and new investors); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed May. 13, 2022) (stating “description of the ownership of Franklin Mutual Advisers LLC (“FMA”) in the Restated Petition included an intermediary corporation in FMA’s chain of ownership that was removed in July 2021” and that “[t]he change has no effect on the ultimate ownership and control of FMA. In addition, none of the FMA entities require specific approval from the Commission, and following grant of the Restated Petition FMA will no longer have a disclosable interest in Windstream”); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Dec. 21, 2022) (Brookfield Corporation Letter) (providing information on changes in the upstream structure of the indirect passive equity stake that Brookfield Corporation, formerly known as “Brookfield Asset Management Inc.,” will hold in Windstream); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Jan. 17, 2023) (January 2023 Supplement) (stating that trading activities resulting from consolidation or transfer of funds within fund families decreased the equity and voting interests of certain disclosable interest holders); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Mar. 14, 2023) (clarifying specific approvals requested regarding Deutsche Bank entities; certification of statements made in past supplements and a statement regarding the calculation of ownership interests; the place of incorporation of certain entities in the Oaktree ownership structure; and an update regarding one of the funds managed by Oaktree). *See infra* notes 5, 7. [↑](#footnote-ref-3)
2. 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1). [↑](#footnote-ref-4)
3. On April 11, 2023, the Commission reorganized the International Bureau (IB) into the Space Bureau and the Office of International Affairs. *See* News Release, FCC, *FCC Space Bureau & Office Of International Affairs To Launch Next Week; Public Kickoff Event to Take Place on April 11 at FCC Headquarters* (Apr. 7, 2023), <https://www.fcc.gov/document/fcc-space-bureau-office-international-affairs-launches-april-11>. [↑](#footnote-ref-5)
4. *Windstream Holdings II, LLC Files A Petition for Declaratory Ruling*, *Pleading Cycle Established*,IB Docket No. 22-129, Public Notice, ICFS File No. ISP-PDR-20201021-00010, DA 22-295 (IB Mar. 18, 2022) (*2022 Public Notice*). On March 31, 2023, Petitioners filed an amendment to update the record. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-AMD-20230330-00005 (filed Mar. 31, 2023) (notifying the Commission that Energy Super, an Australian Superannuation fund merged into LGIAsuper, another Australian Superannuation Fund founded in Queensland, and longer requires specific approval. Consequently, Petitioners also seek specific approval for LGIAsuper and LGIAsuper Trustee). IB released an updated Accepted for Filing Public Notice on April 7, 2023. *Non Streamlined International Applications/Petitions Accepted For Filing, Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000)*, Public Notice, Report No. TEL-02264NS, ICFS File No. ISP-AMD-20230330-00005 (OIA Apr. 7, 2023) (*2023* *Public Notice*). [↑](#footnote-ref-6)
5. National Telecommunications and Information Administration, Petition to Adopt Conditions to Authorizations and Licenses, ICFS File No. ISP-PDR-20201021-00010 (filed Feb. 3, 2023) (citing Letter of Agreement from Tony Thomas, President & Chief Executive Officer Windstream Holdings II, LLC, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division (dated Jan. 18, 2023) (Windstream LOA or LOA). The NTIA filing attaches a copy of the Windstream LOA. [↑](#footnote-ref-7)
6. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 and ICFS File No. ISP-AMD-20230330-00005 (filed Apr. 27, 2023) (Annual Certification Agreement Letter) (“Windstream acknowledges that it is subject to Section 310(b) of the Act, Section 1.5000- 1.5004 of the Commission’s rules, and the terms and conditions of its foreign ownership declaratory ruling, including the requirement to obtain prior approval under Section 1.5004 of the Commission’s rules. For as long as Windstream is structured as a limited liability company, Windstream commits to monitor its ownership and file with the Commission an annual certification each year, as of the date of grant of the declaratory ruling, stating that it remains in compliance with Section 310(b) of the Act, Sections 1.5000-1.5004 of the Commission’s rules, and the terms and conditions of its foreign ownership declaratory ruling. This certification will be filed in accordance with Section 1.16 of the Commission’s rules and subscribed to as true under penalty of perjury. Windstream shall file the annual certifications in ICFS File Nos. ISP-PDR20201021-00010 and ISP-AMD-20230330-00005. If Windstream is not in compliance with Section 310(b) of the Act, Sections 1.5000-1.5004 of the Commission’s rules, and the terms and conditions of its foreign ownership declaratory ruling, it agrees to notify the Commission within fifteen (15) calendar days after discovery of such non-compliance.”). [↑](#footnote-ref-8)
7. *Id*. [↑](#footnote-ref-9)
8. Restated Petition at 2. *See also* 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. June 26, 2020) (Bankr. Findings of Fact, Conclusions of Law, and Order). [↑](#footnote-ref-10)
9. Restated Petition at 2. [↑](#footnote-ref-11)
10. *Id.* [↑](#footnote-ref-12)
11. *Id.* [↑](#footnote-ref-13)
12. *Id.* [↑](#footnote-ref-14)
13. *Id.* [↑](#footnote-ref-15)
14. *Id.* at 2-3. [↑](#footnote-ref-16)
15. *Id.* at 3; *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) (Step One Application). According to the January 2021 Supplement, “effective January 1, 2021, Windstream Services II, LLC changed its name to Windstream Services, LLC. All references to Windstream Services II, LLC in the Petition should thus be read as references to Windstream Services, LLC.” January 2021 Supplement at 1, n.1. [↑](#footnote-ref-17)
16. Restated Petition at 3. [↑](#footnote-ref-18)
17. 47 CFR §§ 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, 63.24. *See* 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. at 7-8 (filed June 11, 2020) (Waiver Request). [↑](#footnote-ref-19)
18. 47 CFR §§ 1.2105(b)(2), 1.2107(c), 1.927(h). *See* 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); 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 (Aug. 27, 2020) (Amendment to Pending Waiver). [↑](#footnote-ref-20)
19. Restated Petition at 5-6. [↑](#footnote-ref-21)
20. *Id.* at 4-5. [↑](#footnote-ref-22)
21. *See* Bankr. Findings of Fact, Conclusions of Law, and Order. [↑](#footnote-ref-23)
22. *Applications Granted for the Transfer of Control of Windstream Holdings, Inc., Debtor-in-Possession, and Subsidiaries*, WC Docket No. 20-151, Public Notice, 35 FCC Rcd 10076, 10081 (IB, WCB, WTB, OEA 2020) (*2020 Waiver Grant PN*). [↑](#footnote-ref-24)
23. *Id.* at 10081. [↑](#footnote-ref-25)
24. *Id.* at 10082-83. [↑](#footnote-ref-26)
25. *Id.* at 10081-82 . [↑](#footnote-ref-27)
26. February 2022 Supplement at 3. Windstream filed *pro forma* assignment notices notifying the Commission of the assignment of its authorizations, wireless licenses, and receive-only earth stations to Windstream’s post-bankruptcy structure. Pro Forma Assignment Notice, Windstream Services, LLC, File No. ITC-ASG-20211220-00202 (filed Dec. 20, 2021); Pro Forma Assignment Notice, Windstream Services LLC, File No. 0009266664 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Valor Telecommunications of Texas, LLC, File No. 0009266650 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Windstream NTI, LLC, File No. 0009266661 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Oklahoma Windstream, LLC, File No. 0009266647 (filed Oct. 20, 2020); Pro Forma Assignment Notice, MPX, Inc., File No. 0009266638 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Business Only Broadband, File No. 0009265519 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Windstream D&E Systems, Inc., File No. SES-T/C-20201016-01136 (filed Oct. 16, 2020); *see* February 2022 Supplement at 3, n.5; *see also Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000), International Authorizations Granted*, Public Notice,Report No. TEL-02267, DA No. 23-357 (OIA Apr. 27, 2023) (stating among other things that “[t]he applicant ‘acknowledges that [the] notice of [the international section 214] pro forma assignment is not timely filed . . . .’ and ‘any oversight in filing was inadvertent and unintentional’” and that “[a]ction on this notification is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules, and without prejudice to Commission action on other related, pending applications or petitions”). [↑](#footnote-ref-28)
27. Restated Petition at 4; Step One Application, Description of Proposed Transaction and Public Interest Statement at 4-5 (Public Interest Statement). [↑](#footnote-ref-29)
28. Restated Petition at 5. According to the Restated Petition, “Windstream has two classes of equity interest: Common Units, which are voting and uninsulated under the FCC’s rules; and Limited Rights Common Units, which are insulated under Section 11.1(b) of the Windstream LLC Agreement. *Id.* Holders of Special Warrants are permitted to elect to exercise for Common Units or Limited Rights Common Units. *Id.* at 5-6. To the extent that any holder of Special Warrants is unable to acquire Common Units and fails to elect to acquire Limited Rights Common Units, it will continue to hold Special Warrants.” *Id.* at 6. [↑](#footnote-ref-30)
29. *Id.* at 4-5. [↑](#footnote-ref-31)
30. *Id.* at 5. [↑](#footnote-ref-32)
31. *Id.* at 9-10, Exh. D. [↑](#footnote-ref-33)
32. *Id.*, Exh. B at 2. Petitioners notified the Commission that the equity interest held by Nexus Aggregator L.P. shifted from 49.36% to 49.27%. January 2023 Supplement, Exh. A. [↑](#footnote-ref-34)
33. Restated Petition, Exh. E at 2. [↑](#footnote-ref-35)
34. *Id.*, Exh. E at 3. [↑](#footnote-ref-36)
35. *Id*. [↑](#footnote-ref-37)
36. Restated Petition, Exh. F. at 23. Disclosable interest holders that have direct interest in Windstream are listed in Exhibit F. The note to the PIMCO Ownership Structure Chart in Exhibit F states that M Unit holders should be treated as insulated members of PIMCO LLC and be considered to have a voting interest in Windstream equal to their equity interest. Thus, Petitioners state that none of the foreign holders of M Units require specific approval. Restated Petition at Exh. F (*citing iHeartMedia, Inc. Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, 35 FCC Rcd 12770, 12772, n.15, 12776 (2020)). [↑](#footnote-ref-38)
37. Restated Petition, Exh. F at 31. [↑](#footnote-ref-39)
38. *Id.*, Exh. B at 2. [↑](#footnote-ref-40)
39. *Id.*, Exh. B at 2 and Exh. G at 7. [↑](#footnote-ref-41)
40. *Id.*, Exh. B at 2. Disclosable interest holders that have direct interest in Windstream are listed in Exhibit G of the Restated Petition. Restated Petition, Exh. G at 1-6. *See* *also* February 2022 Supplement at 3 and attached chart depicting Brookfield indirect equity interest in Windstream. [↑](#footnote-ref-42)
41. Restated Petition, Exh. B at 2. Disclosable interest holders that have direct interest in Windstream are listed in Exhibits E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, and KK of the Restated Petition. [↑](#footnote-ref-43)
42. *Id.*, Exh. B at 2. [↑](#footnote-ref-44)
43. *See* *supra* note 1; February 2022 Supplement at 1-2. According to Petitioners, during the pendency of the Petition, investors traded both Common Units and Special Warrants with existing and new investors which resulted “in equity changes of less than 1% for the largest two investors (Elliott and PIMCO), equity changes of less than three-tenths of a percent for a few smaller holders, and in most cases equity changes of only a few hundredths of a percent.” Additionally, the February 2022 Supplement notes other changes including that, one investor no longer holds an interest in Windstream while the Restated Petition lists 11 new investors. In the January 2023 Supplement, Petitioners updated the record to disclose the shift of the interests held by certain investors. Petitioners state that the “transactions and additional distributions since October, 2022 have proven very limited in scope, and have not resulted in any new entities holding more than 5% or 10% or more of Windstream’s equity of voting interests. Thus, the transactions—standing alone or in the aggregate—did not change in any material way the analysis that the Commission or the Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector are required to perform.” January 2023 Supplement at 3. [↑](#footnote-ref-45)
44. *Id*. at 2-3. According to the February 2022 Supplement, existing U.S. and foreign investors disclosed in the Restated Petition are permitted to trade Common Units and Special Warrants among themselves and may sell Common Units and Special Warrants to new U.S. investors that would not require specific approval. The February 2022 Supplement also states that substantial changes to the ownership percentages provided in the Restated Petition are not anticipated. [↑](#footnote-ref-46)
45. 47 CFR § 1.65(a). [↑](#footnote-ref-47)
46. On May 26, 2022, the Petitioners filed a letter pursuant to section 1.65 of the Commission’s rules. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed May. 26, 2022) (May 2022 PIMCO letter). The May 22 PIMCO Letter includes the following attachments: Allianz SE Group Communications Media Release, SEC Administrative Proceeding Order, DOJ May 17, 2022 Letter, and SEC Temporary Waiver of Section 9(c) of the Investment Company Act of 1940 Order. On December 22, 2022 Petitioner also filed a letter providing a list of further information that the Commission requested from Petitioners regarding AGI’s settlement with SEC and guilty plea with DOJ. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Dec. 22, 2022) (December 2022 PIMCO Letter). On January 11, 2023 Petitioners filed a letter providing further information about AGI’s settlement with SEC and guilty plea with DOJ (filed Jan. 11, 2022) (January 2023 PIMCO Letter). [↑](#footnote-ref-48)
47. May 2022 PIMCO Letter, SEC Administrative Proceeding Order at 1-2. [↑](#footnote-ref-49)
48. *Id.*, SEC Administrative Proceeding Order at 2-3. [↑](#footnote-ref-50)
49. *Id.*, SEC Administrative Proceeding Order at 8. [↑](#footnote-ref-51)
50. *Id.*, SEC Administrative Proceeding Order at 2. [↑](#footnote-ref-52)
51. May 2022 PIMCO Letter at 1; May 2022 PIMCO Letter, SEC Administrative Proceeding Order at 9. [↑](#footnote-ref-53)
52. On May 3, 2023, Petitioners filed a supplement providing additional information about AGI. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed May. 3, 2023) (May 2023 Supplement) (the supplement includes the hearing where the presiding judge approved the plea agreement, and AGI was adjudged guilty. *United States v. Allianz Global Investors U.S., LLC*, Case 1:22-cr-00279-CM, Hearing Transcript at 18 (transcript entered May 20, 2022)). [↑](#footnote-ref-54)
53. May 2022 PIMCO Letter, DOJ May 17, 2022 Letter at 1-2. [↑](#footnote-ref-55)
54. January 2023 PIMCO Letter, Exh. B (Plea Agreement) at 4-6. AGI pleaded guilty to violating 15 U.S.C. §§ 78j(b) and 78ff, 17 CFR § 240.10b-5, and 18 U.S.C. § 2. Plea Agreement at 1. The maximum statutory term of probation cited in the Plea Agreement applies to felonies. *Id.* (citing 18 U.S.C. §§ 3551(c)(1), 3561(c)(1)). AGI was subject to additional DOJ financial obligations that were reduced as part of the Plea Agreement. *Id.* at 4-6. [↑](#footnote-ref-56)
55. May 2022 PIMCO Letter at 1. [↑](#footnote-ref-57)
56. *Id*. at 2. [↑](#footnote-ref-58)
57. *Id.* . In the January 2023 PIMCO Letter, Petitioners state that according to AGI’s May 17, 2022 plea agreement with the DOJ, the DOJ found that “while AIA holds an equity interest in AGI, DoJ’s investigation did not reveal ‘that anyone at any other organizations that fell within the broader umbrella of the parent company Allianz SE was aware of or participated in the misconduct.’” January 2023 PIMCO Letter at 2 (citing to January 2023 PIMCO Letter at Exh. B which contains DOJ’s May 17, 2022 plea agreement’s statement of facts). Petitioners further state that the DOJ found that the investigation did not reveal “evidence that these control failures occurred within any other organizations that fall within the broader umbrella of the parent company Allianz SE.” *Id*. [↑](#footnote-ref-59)
58. May 2022 PIMCO Letter at 2 (stating that PIMCO is the “investment manager, adviser or sub-adviser to the entities that hold warrants in Windstream”). [↑](#footnote-ref-60)
59. *Id* (referring to Restated Petition at Exh. F). Petitioners state that “AGI is a wholly-owned subsidiary of AIA, which holds its interest in AGI through two intermediate, wholly-owned entities as shown in Exhibit A.” January 2023 PIMCO Letter at 2 (citing to January 2023 PIMCO at Exh. A). [↑](#footnote-ref-61)
60. May 2022 PIMCO Letter at 2. *See also,* January 2023 PIMCO Letter at 2 & Exh. C. [↑](#footnote-ref-62)
61. Petitioner states that “[a]lthough Allianz SE indirectly holds 100% of the voting equity in PIMCO, PIMCO operates its business separately and autonomously from Allianz SE and its other subsidiaries, including AIA and AGI. In particular, Allianz SE and its other subsidiaries are not involved in PIMCO’s fund management and investment processes. . . It is also documented in written agreements between PIMCO and Allianz SE that contemplate explicitly that PIMCO will operate independently from any other Allianz asset management subsidiaries and, accordingly, function as competitors in the asset management marketplace.” January 2023 PIMCO Letter at 3. [↑](#footnote-ref-63)
62. May 2022 PIMCO Letter at 2 (stating that on May 17, 2022, the SEC granted a temporary waiver from section 9(a) of the Investment Company Act of 1940 to allow PIMCO to serve as an investment adviser or sub-adviser to U.S. registered funds until final action is taken on a permanent order, which PIMCO expects to receive in the ordinary course). Petitioners provide that “[b]ecause of the criminal conviction of AGI and PIMCO’s status as an ‘affiliated person’ of AGI under the broad definition of that term in the Investment Company Act of 1940 (‘Investment Company Act’), PIMCO sought and obtained exemptive relief from the SEC under Section 9(c) of the Investment Company Act in order to continue to serve as an investment adviser or sub-adviser to U.S. registered funds, and for PIMCO’s subsidiary PIMCO Investments to continue to serve as a principal underwriter to registered funds. . . PIMCO’s application to the SEC, which is attached as Exhibit D, emphasized and discussed in great detail PIMCO’s separateness from the rest of Allianz, and the robustness of its risk management, compliance, and other control functions. Exhibit D at 21-24. Section 9(c) requires the SEC to consider the public interest and the protection of investors before issuing exemptive relief under that provision, so the SEC reviewed and was necessarily satisfied with PIMCO’s separateness and the robustness of its control functions, in determining that PIMCO could continue to serve as an investment adviser to registered funds and that PIMCO Investments could continue to serve as a principal underwriter.” January 2023 PIMCO Letter at 5 (citing January 2023 PIMCO Letter at Exh. D; SEC Temporary Order and Notice of Application (May 17, 2022), <https://www.sec.gov/rules/ic/2022/ic-34587.pdf>; and SEC Permanent Order (June 14, 2022), <https://www.sec.gov/rules/ic/2022/ic-34616.pdf>). [↑](#footnote-ref-64)
63. May 2022 PIMCO Letter at 2. [↑](#footnote-ref-65)
64. *See* *generally Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179 (1986) (1986 Policy Statement) (character qualifications of broadcast licensees); *1990 Character Policy Statement Policy Regarding Character Qualifications in Broadcast Licensing,* Policy Statement and Order, 5 FCC Rcd 3252, 3252 & n.3 (1990) (*1990 Character Policy Statement*), *recon. granted in part,* 6 FCC Rcd 3448 (1991), *further recon. granted in part,* 7 FCC Rcd 6564 (1992) (holding that any felony conviction is potentially relevant to character, and the Commission retains discretion to consider serious misdemeanors convictions “in appropriate or compelling cases”). *See also* *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*; *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23915, para. 53 (1997), *subsequent history omitted* (application of character standards in connection with foreign participation in the U.S. telecommunications market); MCI Telecommunications Corp.; Petition for Revocation of Operating Authority,3 FCC Rcd 509, 512, n.14 (1988) (stating that character qualifications standards adopted in the broadcast context can provide guidance in the common carrier context). [↑](#footnote-ref-66)
65. 1986 Policy Statement, 102 F.C.C.2d 1179, 1216-1219, paras. 76-83. [↑](#footnote-ref-67)
66. *1990 Character Policy Statement*, 5 FCC Rcd at 3252 (listing mitigating factors as the willfulness, frequency, currentness, and seriousness of the misconduct; the nature of the participation of managers or owners; efforts made to remedy the wrong; overall record of compliance with FCC rules and policies; and rehabilitation). [↑](#footnote-ref-68)
67. 1986 Policy Statement, 102 F.C.C.2d 1179, 1219, para. 82. [↑](#footnote-ref-69)
68. *Id*. at para. 79 (*citing Applications of: Cowles Broadcasting, Inc. (WESH-TV) Daytona Beach, Fla. for Renewal of License Central Fla. Enterprises, Inc. Daytona Beach, Fla. for Constr. Permit*, 86 F.C.C.2d 993, 994–95 (1981), *aff’d*, *Central Fla. Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982) (cited in 1986 Policy Statement, 102 F.C.C.2d at 1218 n.94, para. 79). In *Cowles*,the Commission found that the licensee's facilities were not used in wrongdoing,  “there was no integration of operating personnel” between the licensee and non-licensee subs, *id.* at 1002; and “there was no basis to conclude that the principal common officers of [the licensee subsidiary and wrongdoing subsidiaries] participated in or encouraged any misconduct.”  *Central Florida*, 683 F.2d at 509; *see also Cowles*, 86 F.C.C.2d 993 at 998-99, para. 16. [↑](#footnote-ref-70)
69. May 2022 PIMCO Letter, Exh. D at 2-3 (providing a copy of the SEC Administrative Proceeding Order). The SEC Administrative Proceeding Order can also be found at <https://www.sec.gov/litigation/admin/2022/34-94927.pdf>. [↑](#footnote-ref-71)
70. January 2023 PIMCO Letter at 2, 9; *id.* Ex C; Windstream May 26, 2022 Letter at 2. [↑](#footnote-ref-72)
71. January 2023 PIMCO Letter at Ex. B (DOJ Statement of Facts) at para. 2. [↑](#footnote-ref-73)
72. *Id.* at 5; SEC, Order Pursuant to Section 9(c) of the Investment Company Act of 1940 Granting an Exemption from Section 9(a) of the Act (June 14, 2022), <https://www.sec.gov/Archives/edgar/data/1493338/999999999722003241/filename1.pdf> (SEC Permanent Order) (granting to “Covered Persons” a permanent exemption from disqualification from providing fund servicing activities governed by section 9(a) of the Investment Company Act of 1940); SEC, Temporary Order and Notice of Application, <https://www.sec.gov/rules/ic/2022/ic-34587.pdf>, at 2, 5-6 (SEC Temporary Order) (defining “Covered Person” to include “Continuing Fund Servicing Applicants,” including PIMCO). [↑](#footnote-ref-74)
73. SEC, Temporary Order at 14-15; Application Pursuant to Section 9(c) Of The Investment Company Act of 1940 for Temporary and Permanent Orders Exempting Applicants from the Provisions of Section 9(a) of Such Act at 17, part V.E, <https://www.sec.gov/Archives/edgar/data/69596/000119312522152935/d327003d40app.htm>. [↑](#footnote-ref-75)
74. January 2023 PIMCO Letter at 3. [↑](#footnote-ref-76)
75. *Id*. at 2-3. Exhibit D of the January 2023 PIMCO Letter provides an attachment of the SEC Order which states, “[t]he Pleading Entity represents that (i) except as identified in Section II.B. above, none of the current or former directors, officers or employees of the Pleading Entity engaged in the Conduct; (ii) no current or former director, officer, or employee of the Pleading Entity or any Covered Person who previously has been or who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant, Allianz SE, or of any Covered Person; (iii) such directors, officers, and employees and any other person who otherwise participated in the Conduct will not have any future involvement in the Covered Persons’ activities in any capacity described in Section 9(a) of the Act; and (iv) because, except as identified in Section II.B. above, the directors, officers and employees of Applicants did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or principal underwriter.” January 2023 PIMCO Letter, Exh. D at 18-19. [↑](#footnote-ref-77)
76. January 2023 PIMCO Letter at 3-6. Exhibit D of the January 2023 PIMCO Letter provides an attachment of the SEC order which states “The Pleading Entity represents that (i) except as identified in Section II.B. above, none of the current or former directors, officers or employees of the Pleading Entity engaged in the Conduct; (ii) no current or former director, officer, or employee of the Pleading Entity or any Covered Person who previously has been or who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant, Allianz SE, or of any Covered Person; (iii) such directors, officers, and employees and any other person who otherwise participated in the Conduct will not have any future involvement in the Covered Persons’ activities in any capacity described in Section 9(a) of the Act; and (iv) because, except as identified in Section II.B. above, the directors, officers and employees of Applicants did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or principal underwriter. Each of the following employees identified in the Statement of Facts as having engaged in the Conduct has been terminated or is no longer employed by any affiliate of the Pleading Entity.” January 2023 PIMCO Letter, Exh. D at 9. [↑](#footnote-ref-78)
77. *See* January 2023 PIMCO Letter at 8. [↑](#footnote-ref-79)
78. 86 F.C.C.2d 993. [↑](#footnote-ref-80)
79. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with [Executive Order No. 13913](https://www.westlaw.com/Link/Document/FullText?findType=Y&pubNum=0001043&cite=EXECORDERNO13913&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=CA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))) (*Executive Branch Review Order*); [*Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997)](https://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997265080&pubNum=0004493&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=CA&fi=co_pp_sp_4493_23918&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_4493_23918) (*Foreign Participation Order*), *recon. denied*, [15 FCC Rcd 18158 (2000)](https://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000526112&pubNum=0004493&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=CA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of applications for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act). *See also T-Mobile/Sprint Order*, [34 FCC Rcd 10578, 10732-33, para. 349 (2019)](https://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2049672170&pubNum=0004493&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=CA&fi=co_pp_sp_4493_10732&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_4493_10732) (*T-Mobile/Sprint Order*). [↑](#footnote-ref-81)
80. [47 CFR § 1.40001(a)](https://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=47CFRS1.40001&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_8b3b0000958a4). *See Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24. [↑](#footnote-ref-82)
81. *Executive Branch Review Order*, 35 FCC Rcd at 10930, para. 7 (citing [*Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66](https://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997265080&pubNum=0004493&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=CA&fi=co_pp_sp_4493_23920&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_4493_23920); [*Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission’s Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)](https://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997265079&pubNum=0004493&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=CA&fi=co_pp_sp_4493_24171&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_4493_24171)). *See also T-Mobile/Sprint Order*, [34 FCC Rcd at 10733, paras. 349](https://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2049672170&pubNum=0004493&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=CA&fi=co_pp_sp_4493_10733&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_4493_10733); *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *Pet. for recon. dismissed*, [32 FCC Rcd 4780 (2017)](https://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2041836775&pubNum=0004493&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=CA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). [↑](#footnote-ref-83)
82. [47 CFR § 1.40001(b)](https://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=47CFRS1.40001&originatingDoc=Ia64b4f404e4711ec834f874beb14aaa2&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_a83b000018c76) (“The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) ... that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.”). [↑](#footnote-ref-84)
83. Letter from Megan Fluckiger, Department of Justice, to Marlene H. Dortch, Secretary, FCC, File No. ISP-PDR-20201021-00010, and Attach. (filed Mar. 24, 2022). [↑](#footnote-ref-85)
84. Letter from Megan Fluckiger, Department of Justice, to Marlene H. Dortch, Secretary, FCC, File No. ISP-PDR-20201021-00010 (filed Oct. 11, 2022). [↑](#footnote-ref-86)
85. Committee Petition at 1-2; Windstream LOA. [↑](#footnote-ref-87)
86. Windstream LOA. [↑](#footnote-ref-88)
87. *2020 Waiver Grant PN,* Attach. A (listing the authorizations and licenses). [↑](#footnote-ref-89)
88. *See, e.g., Grant of Consolidated Communications Holdings, Inc. and Searchlight III CVL, L.P. Petition For Declaratory Ruling,* DA-21-1468, IB Docket No. IB 21-172, IBFS File No. ISP-PDR-20210105-00001 at 8 (IB 2021).

 [↑](#footnote-ref-90)
89. 47 CFR § 1.5001(i). [↑](#footnote-ref-91)
90. In the January 2023 Supplement, Petitioners notified the Commission that certain changes in interest holdings resulted in changes to the percentages reported in the Restated Petition. As a result, certain entities which initially requested specific approval in the Restated Petition currently have 0% equity and 0% voting interest, no longer required to request specific approval. The entities that no longer require specific approval are: FFI Fund Ltd (0% equity, 0% voting) (Cayman Islands); FYI Ltd (0% equity, 0% voting) (Cayman Islands); Olifant Fund, Ltd (0% equity, 0% voting) (Cayman Islands); Columbia Cent CLO 27 Limited (0% equity, 0% voting) (Cayman Islands); and Spectrum Master Fund, Ltd. (0% equity, 0% voting) (Cayman Islands). January 2023 Supplement at Exh. A. [↑](#footnote-ref-92)
91. *See* 47 CFR § 1.5002(b)(iii)(A); *see* *also* Restated Petition at 12-15 (requests for specific approval). [↑](#footnote-ref-93)
92. Restated Petition at 5. [↑](#footnote-ref-94)
93. 47 CFR § 1.5001(k). [↑](#footnote-ref-95)
94. Through the two-step transaction, Windstream Holdings, Inc. and its subsidiaries emerged from bankruptcy as Windstream Holdings II, LLC, a reorganized Delaware limited liability company. Restated Petition at 5-6. Because the controlling U.S. parent of the common carrier licensee is now a limited liability company, calculations of indirect voting interests are governed by section 1.5002(b)(iii)(A) of the Commission’s rules. 47 CFR § 1.5002(b)(iii)(A). As such, entities that hold interests into Windstream Holdings II, LLC that are not insulated pursuant to section 1.5003 of the Commission’s rules will be deemed to hold 100% voting interest in Windstream Holdings II, LLC. *Id.*; 47 CFR § 1.5003. A finding that an entity is “deemed” to hold a 100% voting interest for purposes of determining compliance with section 310(b)(4) of the Act and section 1.5000(a)(1) *et seq*. of the Commission’s rules does not indicate that the interest constitutes *de* *jure* control for purposes of compliance with section 310(d) of the Act. [↑](#footnote-ref-96)
95. Restated Petition at 16-19. [↑](#footnote-ref-97)
96. Committee Petition at 2. [↑](#footnote-ref-98)
97. 47 CFR § 1.5004. While all of the terms and conditions set forth in section 1.5004 of the Commission’s rules apply, we highlight the following provisions: (1) where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign- organized entity; (2) a licensee that has received a foreign ownership ruling, including a U.S.-organized successor-in-interest to such licensee as part of reorganization, or any subsidiary or affiliate relying on such licensee’s ruling, shall file a new petition for declaratory ruling under §1.5000 to obtain Commission approval before its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms of conditions of its rulings; and (3) if at any time the licensee, including any successor-in interest and any subsidiary or affiliate knows, or has reason to know, that it is no longer in compliance with its foreign ownership rulings or the Commission’s rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance. [↑](#footnote-ref-99)
98. 47 CFR §§ 1.5002-1.5003. [↑](#footnote-ref-100)
99. 47 CFR § 1.5004, note to paragraph (a). [↑](#footnote-ref-101)
100. 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). [↑](#footnote-ref-102)
101. 47 CFR § 1.5004. [↑](#footnote-ref-103)
102. Windstream LOA. [↑](#footnote-ref-104)
103. Annual Certification Agreement Letter. [↑](#footnote-ref-105)