



Agenda Date: 10/13/11

Agenda Item: IVE

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION OF ) ORDER OF APPROVAL  
PAETEC HOLDING CORP., PAETEC )  
COMMUNICATIONS, INC., US LEC OF PENNSYLVANIA, )  
LLC, TALK AMERICA, INC., CAVALIER TELEPHONE )  
MID-ATLANTIC, LLC AND INTELLIFIBER NETWORKS, )  
LLC AND WINDSTREAM CORPORATION FOR )  
APPROVAL FOR THE TRANSFER OF INDIRECT )  
CONTROL OF THE PAETEC REGULATED ENTITIES TO )  
WINDSTREAM CORPORATION ) DOCKET NO. TM11080488

**Jean L. Kiddoo and Brett P. Ferenchak of Bingham McCutchen LLP** for PAETEC Holding Corporation  
**Kimberly K. Bennett, Regulatory Counsel** for Windstream Corporation  
**James H. Laskey, Esq., Norris McLaughlin & Marcus,** for the Petitioners

BY THE BOARD:

On August 15, 2011 PAETEC Holding Corp. (PAETEC), PaeTec Communications, Inc. ("PCI") US LEC of Pennsylvania LLC ("USLEC-PA") Talk America, Inc. ("Talk America"), Cavalier Telephone Mid-Atlantic, LLC ("CavTel-MA") and Intellifiber Networks, LLC ("Intellifiber") (PCI, USLEC-PA, Talk America, CavTel-MA and Intellifiber collectively, the "PAETEC Entities") and Windstream Corporation ("Windstream and together with the PAETEC Entities, the "Petitioners") submitted a verified Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 requesting approval for the transfer of indirect control of the PAETEC Entities to Windstream (the "Transfer"). Following the Transfer, the PAETEC Entities will continue to offer services at the same terms, rates and conditions under which they currently offer such services in the State.

**BACKGROUND**

Windstream is a publicly traded Delaware Corporation with corporate offices located in Little Rock, Arkansas. Through its subsidiaries Windstream provides local and long distance services and video services to customers throughout the United States. According to the petition, Windstream currently has approximately 3.3 million access lines and approximately \$4 billion in annual revenues. Windstream currently does not provide service in New Jersey.

PAETEC is a publicly traded Delaware corporation with offices located in Fairport, New York. PAETEC, through its operating subsidiaries, provides services to business customers in 49 states and the District of Columbia. PAETEC has five operating subsidiaries that operate in New Jersey: PCI, USLEC-PA, Talk America, CavTel-MA and Intellifiber. See I/M/O the Petition For an Order Authorizing PAETEC Communications, Inc. to Provide Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE02060319, Order dated February 5, 2003, I/M/O the Petition of US LEC Pennsylvania Inc. for Authorization to Provide Resold and Facilities Based, Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE99030180, Order dated August 18, 1999, In the Matter of the Petition for an Order Authorizing Talk.com Holding Corp., d/b/a The Phone Company to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00100767, Order dated January 10, 2002. CavTel-MA is authorized to provide facilities based intrastate telecommunications service, See I/M/O the Petition for An Order Authorizing Cavalier Telephone Mid-Atlantic, LLC to Provide Local Exchange Telecommunications Services throughout New Jersey, Docket No. TE01060370, Order dated September 27, 2001. Also, Intellifiber (f/k/a Elantic) operates in New Jersey pursuant to Board authority originally granted to Dominion Telecom, Inc. on October 6, 2002. See I/M/O the Petition for an Order Authorizing Dominion Telecom, Inc. to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE01090594, Order dated October 31, 2002, which was later transferred to Elantic on May 12, 2004, See I/M/O the Joint Petition of Dominion Telecom, Inc., Dominion Fiber Ventures, LLC and Elantic Networks, Inc. for Approval of a Change of Control, Docket No. TM0403019, Order dated May 12, 2004. Collectively, the PAETEC Entities have 166 employees and approximately 9600 customers in New Jersey.

By letter dated September 27, 2011, the Division of Rate Counsel submitted comments stating that it hopes that the transfer in control will promote Petitioners' competitive position in the New Jersey telecommunications market to the benefit of both residential and business customers. Therefore, Rate Counsel does not object to Board approval of the Petition.

## **DISCUSSION**

Pursuant to an Agreement and Plan of Merger, dated July 31, 2011 among Windstream, Peach Merger Sub, Inc. (MergerCo, a direct, wholly-owned subsidiary of Windstream created for purposes of the merger), and PAETEC, MergerCo will merge with and into PAETEC, and PAETEC will continue to exist as the surviving corporation ("Transaction"). As a result of the Transaction, PAETEC will become the direct, wholly owned subsidiary of Windstream. Thus, Windstream will become the new ultimate parent company of PAETEC Entities. Petitioners state that there will be no change in rates terms and conditions and therefore the transaction will be seamless and transparent to customers. Petitioners also state that they have not identified any specific staffing changes in New Jersey as a result of the transaction.

In evaluating this petition, the Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1; N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees. Finally, regarding N.J.S.A. 48:3-10, the Board must be satisfied that there are no adverse impacts on obligations to employees.

**FINDINGS AND CONCLUSIONS**

The Board, after thorough review and investigation, and having considered the petition and all related documents submitted in this proceeding, concludes that there will be no negative impact on rates, terms and conditions of service by the PAETEC Entities and will have no negative impact on customers and employees of the PAETEC Entities. The PAETEC Entities will continue to offer the same services under the same rates, terms and conditions as indicated in their filed tariffs. Moreover, a positive benefit may be expected from the PAETEC Entities access to additional resources, which would make the PAETEC Entities more attractive providers, and allow the PAETEC Entities to better compete in the marketplace.

After review, the Board FINDS that the proposed transaction is consistent with the applicable law and the public interest. The Board, therefore, approves the purposes thereof.

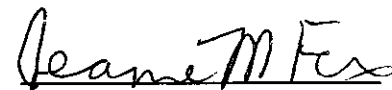
The Board HEREBY ORDERS that the Petitioners shall notify the Board of the closing of the proposed transactions within 7 days of the consummation of the transfer. The Board FURTHER ORDERS that this approval will expire if the transaction is not fully consummated on or before November 30, 2012.

This Order shall become effective upon the service thereof, in accordance with N.J.S.A. 48:2-40.


DATED: 10/13/11

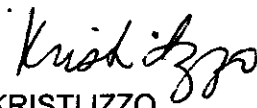
BOARD OF PUBLIC UTILITIES  
BY:

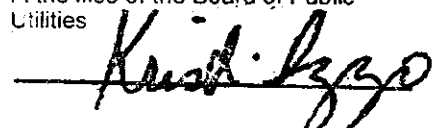
  
LEE A. SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

ATTEST:  
  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities  


Service List

Docket No. TM11080488

James H. Laskey  
Norris McLaughlin & Marcus, P.A.  
721 Route 202-206  
Bridgewater, NJ 08807  
[ilaskey@nmmlaw.com](mailto:ilaskey@nmmlaw.com)

Alex Moreau  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street – 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07102  
[alex.moreau@dol.lps.state.nj.us](mailto:alex.moreau@dol.lps.state.nj.us)

Jean L. Kiddoo  
Brett P. Ferenchak  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, D.C. 20006  
[jean.kidoo@bingham.com](mailto:jean.kidoo@bingham.com)  
[brett.ferenchak@bingham.com](mailto:brett.ferenchak@bingham.com)

William A. Haas  
Corporate Vice President of Regulatory  
and Public Policy  
PAETEC Holding Corp.  
One Martha's Way  
Hiawatha, IA 52233  
[william.haas@paetec.com](mailto:william.haas@paetec.com)

Kimberly K. Bennett  
VP-Regulatory Counsel  
Windstream Corporation  
4001 Rodney Parham Road  
Little Rock, Arkansas 72212  
[kimberley.k.bennett@windstream.com](mailto:kimberley.k.bennett@windstream.com)

Stephanie A. Brand  
Director, Division of Rate Counsel  
Department of the Public Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07101  
[njratepayer@advocate.state.nj.us](mailto:njratepayer@advocate.state.nj.us)

---

James F. Murphy  
Rocco Della Serra  
Board of Public Utilities  
Division of Telecommunications  
Two Gateway Center  
Newark, NJ 07102  
[james.murphy@bpu.state.nj.us](mailto:james.murphy@bpu.state.nj.us)  
[rocco.della-serra@bpu.state.nj.us](mailto:rocco.della-serra@bpu.state.nj.us)