

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Application
of Talk America Services, LLC,
for a Certificate of Public
Convenience and Necessity to Docket No. 14-2236-01
Provide Resold Local Exchange and
Interexchange Telecommunications
Services within the State of Utah

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
Hearing Room 451
160 East 300 South
Salt Lake City, Utah

DATE: Tuesday, November 18, 2014

TIME: 10:01 a.m.

REPORTED BY: Scott M. Knight, RPR

A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE: MELANIE A. REIF
FOR DIVISION OF PUBLIC UTILITIES:

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FOR TALK AMERICA SERVICES, LLC:

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I N D E X

WITNESS	Page
CESAR CABALLERO (Appearing Telephonically)	
DIRECT EXAMINATION BY MR. EVANS	6
RONALD SLUSHER	
DIRECT EXAMINATION BY MR. JETTER	12

1 PROCEEDINGS

2 THE HEARING OFFICER: Good morning, everyone. I'm
3 Melanie Reif, the administrative law judge for the Utah
4 Public Service Commission this morning in the hearing in
5 Docket 14-2236-02. This matter is entitled In the Matter of
6 the Application of Windstream Holdings, Incorporated;
7 McLeodUSA Telecom--Telecommunications Services, LLC; PAETEC
8 Communications, Inc.; Windstream Communications, Inc.;
9 Windstream NTI, Inc.; Windstream NuVox, Inc.; and Talk
10 America Teleservices, LLC, for the Approval of Transfer of
11 Customers to Talk America Services, LLC.

12 And I think I need to make a correction because I
13 just announced our 10:30 hearing instead of our ten o'clock
14 hearing, so--

15 MR. EVANS: Okay.

16 THE HEARING OFFICER: --my apologies. I had the
17 notice for the other one on top of the--on top of the other.
18 So just a slight clarification. A lot is similar in both
19 cases.

20 But just for clarification, we're taking the CPCN
21 application first, and that is Docket 14-2236-01. And that
22 is entitled In the Matter of the Application of Talk America
23 Services, LLC, for a Certificate of Public Convenience and
24 Necessity for Provide Resold Local Exchange and
25 Interexchange Telecommunications Services within the State

1 of Utah.

2 Just one other thing: I had a little bit of a
3 cold, so I might be a little hard to understand. My voice
4 is cracking a lot. So my apologies. I'm still getting--
5 getting better, so. . .

6 Anyway, welcome again, and my apologies for
7 getting that docket mixed up, but we will hear one right
8 after the other this morning. And I'll try to do all I can
9 to make this as efficient and quick for all of you.

10 Mr. Evans, do you wish to start--we'll start
11 appearances with you.

12 MR. EVANS: Yes. Thank you. I'm William Evans of
13 Parsons, Behle & Latimer, here today for Talk America
14 Services, LLC. And with us on the phone is Cesar Caballero
15 from Talk America Services.

16 MR. CABALLERO: Bill, can you speak up a little
17 bit louder, please?

18 MR. EVANS: Yes. Thank you. Is that better?

19 THE HEARING OFFICER: Mr. Caballero, are you able
20 to hear better?

21 MR. CABALLERO: I can hear you just fine, and I
22 was able to hear Bill a little bit better, yes. Thank you.

23 THE HEARING OFFICER: Okay. Excellent.

24 MR. JETTER: And I am Justin Jetter representing
25 the Utah Division of Public Utilities. And with me is

1 Ronald Slusher, utility technical consultant for the Utah
2 Division of Public Utilities.

3 THE HEARING OFFICER: Thank you.

4 Welcome again, everyone. I'm going to do two
5 things. And please, if there's anything else that you want
6 to have addressed or brought to the Commission's attention,
7 please make me aware of that. But I will at this point take
8 administrative notice of the filing--the application from
9 Talk America which was filed with the Commission on
10 September 24th, 2014, as well as the Division's response to
11 that and recommendation which was filed on October 24th.

12 MR. EVANS: And are you taking administrative
13 notice of the exhibits attached, so that I don't later have
14 to submit those in?

15 THE HEARING OFFICER: Correct. The application
16 entails the entire application, including any exhibits
17 attached.

18 MR. EVANS: Okay. Thank you.

19 THE HEARING OFFICER: Sure.
20 So, Mr. Evans, you may proceed.

21 MR. EVANS: Yes. Thank you. I'm going to get
22 close to this microphone so Mr. Caballero can hear.

23 And, Cesar, let me know if you're still having--

24 MR. CABALLERO: Okay.

25 MR. EVANS: --trouble.

1 We're here to present evidence in support of the
2 application, Talk America for certificate of public
3 convenience and necessity. We appreciate you having taken
4 not--administrative notice of the application and exhibits.
5 We have Mr. Caballero on the phone, prepared to offer
6 testimony in support of the application. And if it please
7 your Honor, we would ask to call him now.

8 THE HEARING OFFICER: Sure.

9 Good morning, Mr. Caballero.

10 MR. CABALLERO: Good morning, your Honor.

11 THE HEARING OFFICER: Are you prepared to testify?

12 MR. CABALLERO: Yes, your Honor.

13 THE HEARING OFFICER: And would you please raise
14 your right hand.

15 MR. CABALLERO: It is raised.

16 THE HEARING OFFICER: Do you swear that the
17 testimony that you will give today will be the truth?

18 MR. CABALLERO: I do.

19 THE HEARING OFFICER: Okay. Thank you, sir.
20 You may proceed, Mr. Evans.

21 CESAR CABALLERO,
22 being first duly sworn, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. EVANS:

1 Q Good morning, Mr. Caballero. For the record,
2 would you please state your full name, business address, and
3 your position in the company?

4 A Yes. My name is Cesar Caballero. My business
5 address is 4001 North Rodney Parham Road, Little Rock,
6 Arkansas 72212. And I am senior regulatory counsel for
7 Windstream Corporation.

8 Q And have you reviewed the application of Talk
9 America Services for a certificate of public convenience and
10 necessity that has been filed in this docket?

11 A I have.

12 Q Do you have knowledge of the contents presented in
13 the application?

14 A Yes, I do.

15 Q I notice that the verification in the application
16 was signed by Jeffery Small, senior vice president of
17 corporate development and operations. Is that correct?

18 A That is correct.

19 Q But you have been designated and authorized by
20 Talk America to serve as witness for this proceeding; is
21 that correct?

22 A That is correct.

23 Q For the purposes of your testimony in this matter
24 today, then, do you adopt as your own the statements made in
25 Talk America's application?

1 A Yes, I do.

2 Q And are those statements true and correct, to the
3 best of your knowledge?

4 A Yes.

5 Q Are there any changes or corrections that need to
6 be made to the application?

7 A No.

8 Q Do you have a copy of the application in front of
9 you?

10 A Yes, I do.

11 Q The application at page 2 states that this was
12 filed in connection with the transaction involving the
13 transfer of customers from certain indirect subsidiaries of
14 Windstream, which the application calls the Windstream
15 Companies, to Talk America Services. Is that correct?

16 A Yes, it is.

17 Q And you understand that the Commission must also
18 approve the transfer of customers to Talk America?

19 A Yes, I do.

20 Q And Windstream currently has on file with the
21 Commission an application seeking approval of that transfer
22 of customers, correct?

23 A That's correct.

24 Q Does Talk America intend to offer facilities-based
25 services in Utah?

1 A Not at this time. Talk America Services will
2 initially provide services at resale. They will be
3 reselling local exchange, interexchange, and broadband
4 services to residential customers. If, at any time in the
5 future, Talk America decides to offer facilities-based
6 services, Talk America will advise the Commission and will
7 comply with all necessary regulatory requirements.

8 Q Okay. The application at page 7 addresses the
9 managerial qualifications of the team that will be
10 responsible for the operation of Talk America in Utah. Can
11 you turn to page 7, please?

12 A Yes. That is correct.

13 Q Okay. And there are biographies attached in
14 Exhibit A as referenced there; is that correct?

15 A Yes. The exhibit has a summary of the experience
16 of some of the key personnel that will be working with Talk
17 America and will be handling the operations in Utah and all
18 the other states. As the exhibit shows, all of them are
19 very capable. They have held positions with Windstream and
20 other telecommunications companies in the past. And they
21 will have the experience to manage Talk America Services on
22 a go-forward basis.

23 Q Are there any changes or corrections that you
24 know--that you know of that should be made to the
25 biographies of these people as set out in Exhibit A?

1 A No.

2 Q Okay. Let me ask you about Exhibit B to the
3 application. The application states that this is a pro
4 forma financial statement. Is that right?

5 A Yes. Talk America is a new company. They are not
6 operating service yet in any state. So what the pro forma
7 financials demonstrate is, if Talk America was in business
8 today what its financial capability would be.

9 Q And the application at page 9 states that these
10 financial statements are subject to change based on the
11 final terms of reorganization and stock price allocation
12 after the transfer of assets. Has that reorganization been
13 completed?

14 A No, it has not. It is expected to take place
15 early next year.

16 Q So at present, the financial statements are the
17 best representation you have of Talk America's financial
18 condition?

19 A Yes.

20 Q Has there been any opposition to Talk America's
21 application for a certificate of convenience and necessity
22 that you are aware of?

23 A No.

24 Q Can you please describe why you believe it would
25 be in the public interest for the Commission to issue a

1 certificate to Talk America?

2 A Yes. I think initially a CPCN to Talk America
3 will allow it to continue to provide high-quality
4 telecommunication services without interruption to the
5 current residential customers of the Windstream Companies,
6 who we anticipate will be transferring to Talk America with
7 the Commission's approval.

8 The transfer, along with an issuance of the CPCN,
9 will allow Talk America to provide these residential
10 customers with better-quality services at very competitive
11 prices.

12 The entrance of Talk America into the market also
13 would encourage the more efficient use of existing
14 communications resources and will result in greater
15 innovation and diversification because Talk America will
16 specialize on the residential market. As a result, Talk
17 America's presence will have the effect of enhancing
18 competition and increasing customer choice in the state.

19 Q Thank you.

20 Mr. Caballero is available for cross.

21 THE HEARING OFFICER: Mr. Jetter, any questions?

22 MR. JETTER: No questions from the Division.

23 Thank you.

24 THE HEARING OFFICER: Thank you, Mr. Evans.

25 Appreciate your thoroughness.

1 MR. EVANS: Thank you.

2 THE HEARING OFFICER: Mr. Jetter?

3 MR. JETTER: Division would like to call Ron
4 Slusher.

5 THE HEARING OFFICER: Mr. Slusher, good morning.

6 MR. SLUSHER: Good morning.

7 THE HEARING OFFICER: Are you prepared to testify
8 this morning?

9 MR. SLUSHER: Yes.

10 THE HEARING OFFICER: And do you swear that the
11 testimony you're about to give will be the truth?

12 MR. SLUSHER: Yes.

13 THE HEARING OFFICER: Thank you.

14 RONALD SLUSHER,
15 being first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. JETTER:

19 Q Would you please state your name and occupation
20 for the record?

21 A My name is Ron Slusher, S-l-u-s-h-e-r. I'm a
22 utility technical consultant for the Division of Public
23 Utilities.

24 Q And in the course of your job at the Division of
25 Public Utilities, have you had an opportunity to review the

1 application in this docket made by Talk America?

2 A Yes.

3 Q And have you reviewed the exhibits attached to
4 that application?

5 A Yes, I did.

6 Q And did you file a document entitled "Memorandum"
7 that shows up in the docket as comments from the DPU filed
8 on October 24th, 2014?

9 A Yes, I did.

10 Q And did you also create Exhibit A, which is an
11 affidavit with your name on it?

12 A Yes, I did.

13 Q And those have already been taken administrative
14 notice of by the administrative law judge. Is there any
15 corrections or edits that you would like to make to either
16 of those?

17 A No.

18 Q And do all of the recommendations made therein
19 still reflect the position of the Division of Public
20 Utilities?

21 A They do.

22 Q And specifically, does--does the Division of
23 Public Utilities recommend approval of the application of
24 Talk America Services as being just, reasonable, and in the
25 public interest?

1 A Yes, we do.

2 Q Thank you. Finally, are you aware of any
3 opposition to approval of this application?

4 A I have not seen or heard of any opposition.

5 Q Thank you.

6 I have no further questions.

7 THE HEARING OFFICER: Thank you, Mr. Jetter.

8 Any questions for Mr. Slusher?

9 MR. EVANS: No questions. Thank you.

10 THE HEARING OFFICER: Okay. Mr. Slusher, just one
11 question, please. There was testimony from Mr. Caballero
12 concerning the pro forma financial statement that was
13 submitted in this--in this docket, and in particular, it's
14 attached as Exhibit B to the application. Is the Division
15 satisfied with what has been submitted?

16 THE WITNESS: Yes. With the way the structure's
17 going to take place of transferring residential customers
18 from Windstream Companies to Talk America, it should be
19 fine.

20 THE HEARING OFFICER: Is there anything further
21 that you believe is necessary concerning the financial
22 statement that has not been received?

23 THE WITNESS: No.

24 THE HEARING OFFICER: Okay. Okay. Thank you,
25 everyone, for your testimony and your time this morning in

1 presenting this to the Commission.

2 Mr. Evans, before we adjourn this part of the
3 hearing, I did want to ask you as a matter of courtesy: Was
4 there a particular time frame that you were targeting?

5 MR. EVANS: I think that's--that's a question for
6 Mr. Caballero. I think the Commission is usually very
7 timely with these, and so--

8 MR. CABALLERO: So we are hoping to close the
9 transaction in the first quarter of 2015, your Honor. And
10 what we're targeting is to have all the regulatory approvals
11 for the transaction by year-end, if at all possible, so that
12 we can make the necessary notifications and everything that
13 would be required to all of these customers.

14 THE HEARING OFFICER: Okay. Mr. Caballero and
15 Mr. Evans both, I don't see any problem with the Commission
16 getting this done, very likely, before the first quarter of
17 2015, if not by the end of 2014. Just wanted to make sure
18 there wasn't some sort of an expedited need.

19 MR. EVANS: Thank you.

20 May I offer one more comment on this? The--the
21 rule at 746-349-6 provides that CLECs like Talk America that
22 are subject to pricing flexibility are exempt from certain
23 statutes and rules. We didn't specifically request the
24 exemption in our application, but the rule is phrased in a
25 way that the Commission on its own, or ordinarily--I know

1 it's the Commission's practice to do that, but I wanted to
2 go on the record with a request that we be granted the usual
3 exemptions under that rule as part of the certificate.

4 THE HEARING OFFICER: Very good.

5 Does the Division have any response to that?

6 MR. JETTER: I have no response at this time. I
7 haven't reviewed this particular issue with respect to this
8 company.

9 THE HEARING OFFICER: Do you need a moment to do
10 so?

11 MR. JETTER: If I could have just a moment.

12 THE HEARING OFFICER: Sure.

13 Let's be off the record.

14 (Recess taken, 10:18-10:19 a.m.)

15 THE HEARING OFFICER: We're back on the record.

16 Mr. Evans, just for my clarification, are you--are
17 you asking that the rule as a whole be applied or was there
18 a particular section of the rule that you believe is
19 pertinent? And are you raising that in general or are you
20 raising it with respect to the financial statement?

21 MR. EVANS: I'm raising it in general. And I am
22 just asking that the exemptions that appear under
23 subparagraphs (1), (2), and (3) of that rule be applied.
24 And I know it's the Commission's usual practice to do that,
25 but I didn't know whether they like to see a specific

1 request in the application that ours didn't have. And so
2 I'm just raising it here to make sure that we don't skip
3 over that, because we would like those exemptions to apply
4 just as they're stated in the rule.

5 THE HEARING OFFICER: Okay. And the exemptions
6 that you mention being referred to by the Commission, are
7 you referring to the orders that you typically see in these
8 kinds of dockets?

9 MR. EVANS: Yes.

10 THE HEARING OFFICER: Okay. Mr. Jetter?

11 MR. JETTER: The Division has no objection to that
12 request. I believe that the application of the rule should
13 generally apply those exemptions unless there's a reason not
14 to. And I--I'm not aware of any reason why we would, I
15 guess, not apply those exemptions in this case.

16 THE HEARING OFFICER: Okay. Thank you both. I
17 would anticipate that you will see the typical order that we
18 issue in these kinds of cases, but it is always helpful to
19 highlight the issue.

20 Mr. Evans, just to clarify, because this
21 particular exemption does mention Lifeline, I--and if we
22 need--if we need to get this for Mr. Caballero, that's fine.
23 Just for clarification, though, for the record, is Talk
24 America intending to seek USF, in particular, state USF?

25 MR. EVANS: Let's--

1 MR. CABALLERO: Your Honor, could you repeat the
2 question? Is Talk America intending to receive any USF?

3 THE HEARING OFFICER: In particular, state USF.

4 MR. CABALLERO: No, Talk America Services will not
5 be applying for any federal or state USF.

6 THE HEARING OFFICER: Okay. Great. I'm glad to
7 get that clarification. Thank you very much.

8 Is there anything else that needs to come before
9 the Commission regarding this docket?

10 MR. EVANS: Nothing here.

11 THE HEARING OFFICER: Okay. Well, thank you once
12 again. We'll be off the record. And we'll issue an order
13 just as soon as we can.

14 MR. EVANS: Thank you.

15 THE HEARING OFFICER: Thank you.
16 (Proceedings concluded at 10:22 a.m.)

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1 CERTIFICATE

2 This is to certify that the foregoing proceedings
3 were taken before me, SCOTT M. KNIGHT, a Registered
4 Professional Reporter and Notary Public in and for the State
5 of Utah, residing at South Jordan, Utah;

6 That the proceedings were reported by me in
7 stenotype and thereafter caused by me to be transcribed into
8 typewriting, and that a full, true, and correct
9 transcription of said proceedings so taken and transcribed
10 is set forth in the foregoing pages, inclusive.

11 I further certify that I am not of kin or
12 otherwise associated with any of the parties to said cause
13 of action, and that I am not interested in the event
14 thereof.



15 *Scott M. Knight*
16 _____

17 Scott M. Knight, RPR
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