

Supplemental Exhibit 2

Docket Nos. 16-2287-01 and 16-2538-01



PUBLIC NOTICE

Federal Communications Commission
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Released: December 2, 2016

APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF EARTHLINK HOLDINGS CORP. TO WINDSTREAM HOLDINGS, INC.

PLEADING CYCLE ESTABLISHED

WC Docket No. 16-393

Comments Due: December 16, 2016
Reply Comments Due: December 23, 2016

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

EarthLink, a publicly traded Delaware corporation, is authorized to provide telecommunications services in all 50 states.³ Applicants state that EarthLink's subsidiaries offer telecommunications services to small and medium-sized business, enterprise, and wholesale customers.⁴ EarthLink's local and long-haul fiber network spans 29,000 route miles in the Southeast, Northeast, and Southwest.⁵ Through one of its subsidiaries,⁶ EarthLink offers nationwide Internet access, including dialup, DSL, and cable broadband, and related services to approximately 400,000 residential customers over a mix of leased

¹ 47 U.S.C. §§ 214, 310(d); 47 CFR §§ 63.04, 63.18, 63.24. Consolidated Applications for Transfer of Control of International and Domestic Section 214 Authority, WC Docket No. 16-393 (filed Nov. 17, 2016) (Application). Applicants filed a supplement to their application on December 1, 2016. Letter from Julie A. Veach, Counsel to Windstream Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-393 (filed Dec. 1, 2016) (Applicants' Supplement).

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

³ *Id.* at 3.

⁴ *Id.*

⁵ *Id.*

⁶ A complete list of EarthLink's subsidiaries that are authorized carriers is provided in Exhibit 2 of the Application.

facilities from incumbent local exchange carriers (LECs) and cable operators.⁷ Applicants state that to the extent EarthLink operates as a common carrier, it does so as a competitive LEC.⁸

Windstream, a publicly traded Delaware corporation, is a telecommunications provider with operations throughout the United States and approximately \$5.5 billion in annual service revenues.⁹ As an incumbent LEC, Applicants state that Windstream provides telecommunications services and broadband services to approximately 1.4 million residential customers primarily located in rural areas of Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas.¹⁰ Windstream's competitive LEC subsidiaries offer services in portions of all states except Alaska.¹¹ Windstream operates a local and long-haul fiber network spanning approximately 129,000 route miles and provides services over fixed wireless infrastructure in 40 markets.¹² According to Applicants, Windstream currently has one 10 percent or greater interest holder, The Vanguard Group, Inc. (Vanguard Group) (13.4 percent), a U.S.-based investment management company.¹³

On November 5, 2016, Windstream, EarthLink, Europa Merger Sub, Inc. (Merger Sub 1, a Delaware corporation and indirect, wholly owned subsidiary of Windstream), and Europa Merger Sub, LLC (Merger Sub 2, a Delaware limited liability company and indirect, wholly owned subsidiary of Windstream) entered into an Agreement and Plan of Merger (Merger Agreement).¹⁴ Applicants state that under the terms of the Merger Agreement, first, Merger Sub 1 will be merged with and into EarthLink (the Merger) with EarthLink continuing as the surviving corporation (Surviving Corporation).¹⁵ Second, immediately following the Merger, the Surviving Corporation will be merged with and into Merger Sub 2 (together with the Merger, the Combination), with Merger Sub 2 continuing as the surviving company renamed as EarthLink Holdings, LLC (the Surviving Company).¹⁶ Immediately following the closing of the Combination, the Surviving Company will be a direct, wholly owned subsidiary of Windstream

⁷ Public Interest Statement at 3.

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ Application at 11; Public Interest Statement at 2, n.2.

¹¹ Applicants further state that not all services are provided in all areas. Public Interest Statement at 2, n.2. Applicants explain that Windstream's subsidiaries provide IP-based voice, data, and other services to businesses and government agencies both inside and outside of Windstream's incumbent LEC service area. Application at 11.

¹² Public Interest Statement at 2. Applicants state that Windstream offers video services predominantly through a partnership with DISH Networks and that in four markets, Windstream has launched an IP video entertainment platform called "Kinetic," which is currently available to 192,000 households. *Id.*

¹³ Applicants state that Vanguard Group also currently holds approximately 13.9 percent of EarthLink common stock. They further state that after consummation of the proposed transaction, Vanguard Group will hold approximately 13.7 percent of the combined company. Application at 8. Applicants state that the Chairman of the Board, President, and Chief Executive Officer of Vanguard Group is F. William McNabb. Applicants further state that the following individuals make up the remainder of the Board: Emerson U. Fullwood, Rajiv L. Gupta, Amy Gutmann, JoAnn Heffernan Heisen, F. Joseph Loughrey, Mark Loughridge, Scott C. Malpass, André F. Perold, and Peter F. Volanakis. Applicants' Supplement at 1. Applicants provided a list of carriers that are affiliated with Vanguard Group. *Id.* at 12-14.

¹⁴ Public Interest Statement at 4.

¹⁵ *Id.*

¹⁶ *Id.*

Services, LLC.¹⁷ Applicants further state that after consummation of the proposed transaction, Windstream and its wholly owned subsidiaries will own and control the assets, customer relationships, and operations of EarthLink.¹⁸

Applicants assert that grant of the transfer of control applications will enable Windstream to be a stronger competitor to larger providers and will result in “tangible, clear, and significant public interest benefits.”¹⁹ In summary, Applicants contend that the proposed transaction will: increase the combined company’s competitiveness by expanding its portfolio of services; result in efficiencies that benefit customers; and allow the combined company to offer more on-net service to existing and new customers without posing any harm to consumers.²⁰ Applicants project that the transaction will result in synergies related to lower overhead and at least \$50 million annually in network access synergies in a “relatively short timeframe.”²¹ They maintain that the network efficiencies, as well as other synergies totaling \$125 million annually, will better position the combined company to “invest where that investment is otherwise economic.”²² Applicants state that the combined entity will have the ability to offer service to more customers over its own last-mile and other transmission facilities than either predecessor entity before, which will result in improved service for customers.²³ On the other hand, Applicants assert that the transaction will not reduce competition or harm retail or wholesale customers.²⁴ Applicants state that they do not own overlapping last-mile facilities and that the majority of their fiber networks also do not overlap.²⁵ Applicants claim that the transaction will “enable a strengthened competitor to persist in competing against its much larger rivals in the enterprise, small- and medium-sized business and wholesale markets.”²⁶

¹⁷ *Id.* Attachment A depicts the companies’ corporate structure before, during, and after consummation of the proposed transaction. Applicants state that the proposed transaction will not result in a transfer of control of Windstream, and that Windstream’s current shareholders will hold approximately 51 percent of the shares of the combined company and will therefore maintain control. Application at 2, n.3.

¹⁸ Public Interest Statement at 5. Applicants state that, under the terms of the Merger Agreement, stockholders of EarthLink will receive 0.818 shares of common stock of Windstream (Windstream Common Stock) for each share of common stock of EarthLink upon the closing of the Merger. Applicants note that no fractional shares of Windstream Common Stock will be issued in the Merger, and EarthLink stockholders will receive cash in lieu of any fractional shares. Applicants state that Windstream’s current Board of Directors will be expanded to twelve directors. EarthLink will select three directors from its existing Board to join the expanded Board of Windstream, subject to Windstream’s normal corporate governance process for evaluating candidates for its Board of Directors. Application at 2; Public Interest Statement at 4-5.

¹⁹ Public Interest Statement at 6.

²⁰ *Id.* at 5, 6, 10.

²¹ *Id.* at 7.

²² *Id.* at 8.

²³ *Id.* at 9.

²⁴ *Id.* at 10-15.

²⁵ *Id.* at 13. Applicants state that they have not found any EarthLink-owned dedicated last-mile facilities within Windstream’s incumbent LEC service area or to buildings or other locations that Windstream serves as a competitive LEC over its own last-mile facilities. *Id.* at 10.

²⁶ *Id.* at 13-14.

SECTION 214 AUTHORIZATIONS

A. International

The applications for consent to the transfer of control of the international section 214 authorizations from EarthLink to Windstream have been assigned the file numbers listed below.

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

B. Domestic

Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction.²⁷

GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Pursuant to section 1.419 of the Commission's rules, 47 CFR § 1.419, interested parties may file comments **on or before December 16, 2016**, and reply comments **on or before December 23, 2016**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes and boxes must be disposed of before entering the building.

²⁷ Applicants did not request streamlined treatment for the domestic 214 application under section 63.03 of the Commission's rules, 47 CFR § 63.03.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th St., SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

In addition, please provide one copy of each pleading to each of the following:

- 1) Neil Dellar, Office of General Counsel, transactionteam@fcc.gov;
- 2) Dennis Johnson, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) David Krech, International Bureau, david.krech@fcc.gov; and
- 4) Sumita Mukhoty, International Bureau, sumita.mukhoty@fcc.gov.

The proceeding in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.²⁹ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Dennis Johnson, Wireline Competition Bureau, (202) 418-0809; David Krech, International Bureau, (202) 418-7443; or Sumita Mukhoty, International Bureau, (202) 418-7165.

²⁸ 47 CFR § 1.1200 *et seq.*

²⁹ See 47 CFR § 1.45(c).

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