

In the Matter Of:

In Re: EarthLink Business, LLC, EarthLink Holdings Corp., et al.

HEARING PROCEEDINGS DOCKET NO. 16-2287-01, 16-2538-01

December 21, 2016

Job Number: 357756

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Joint
Application of EarthLink
Business, LLC; EarthLink DOCKET NOS. 16-2287-01
Holdings Corp. and Windstream and 16-2538-01
Holdings, Inc. for Approval
to Transfer Control of
Authorized Telecommunications
Providers

HEARING PROCEEDINGS

TAKEN AT: Public Service Commission
160 East 300 South, Room 451
Salt Lake City, Utah
DATE: Wednesday, December 21, 2016
TIME: 9:30 a.m.
REPORTER: Daren S. Bloxham, R.P.R.

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APPEARANCES

PRESIDING OFFICER:
Jennie T. Jonsson

FOR THE DIVISION OF PUBLIC UTILITIES:
Justin Jetter
ASSISTANT ATTORNEY GENERAL
160 East 300 South, Fifth Floor
Salt Lake City, Utah 84114

FOR THE APPLICANT:

William J. Evans
Parsons, Behle & Latimer
201 S. Main Street, Ste. 1800
Salt Lake City, Utah 84111

ALSO PRESENT: John Fletcher (by telephone)
Sam DeSimone (by telephone)
Jeff Strenkowski (by telephone)
Cesar Caballero (by telephone)
Ronald Slusher

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3 ALJ JONSSON: For the record, today is
4 Wednesday, December 21, 2016. It's 9:30 in the
5 morning. This is the date and time set for the hearing
6 in the Matter of the Joint Application of EarthLink
7 Business, LLC; EarthLink Holdings Corp. and Windstream
8 Holdings, Inc. for Approval to Transfer Control of
9 Authorized Telecommunications Providers. There are two
10 docket numbers in this matter. They are 16-2287-01 and
11 16-2538-01.

12 Let's get appearances on the record. For the
13 applicants?

14 MR. EVANS: I am William Evans of Parsons,
15 Behle & Latimer for the joint applicants. And for the
16 joint applicants on the phone this morning is John
17 Fletcher from Windstream Holdings, Sam DeSimone from
18 Earthlink, and outside counsel for the joint
19 applicants, Jeff Strenkowski, from Morgan Lewis in
20 Washington, D.C.

21 ALJ JONSSON: I believe we also have Cesar
22 Caballero. Do we not?

23 MR. EVANS: Is Cesar on the phone?

24 ALJ JONSSON: Is Cesar on the phone?

25 MR. CABALLERO: I am on the phone, yes.

1 MR. EVANS: From Windstream.

2 MR. CABALLERO: Windstream.

3 ALJ JONSSON: Thank you. And for the
4 Division of Public Utilities?

5 MR. JETTER: Good morning. I'm Justin Jetter
6 with the Utah Attorney General's Office representing
7 the Utah Division of Public Utilities. And with me at
8 counsel table is Ron Slusher, utility technical
9 consultant for the Utah Division of Public Utilities.

10 ALJ JONSSON: Thank you. Mr. Evans, go
11 ahead.

12 MR. EVANS: Thank you. We have filed on
13 November 16 the joint application for approval of the
14 transaction described in the application, along with
15 three exhibits. We have also since then filed
16 supplemental exhibits, three of them, on December 19,
17 which we will address as we take testimony from the
18 witnesses.

19 If you'd like, we can call our first witness
20 and start. I would request, and I can save this for
21 later or I can request now, that the application with
22 its exhibits and Supplemental Exhibits 1 through 4 be
23 admitted into the record.

24 ALJ JONSSON: Is there any objection?

25 MR. JETTER: No objection from the Division.

1 ALJ JONSSON: Thank you.

2 MR. EVANS: Okay. Thank you. Can we call
3 Mr. Fletcher as our first witness?

4 ALJ JONSSON: Mr. Fletcher, do you swear to
5 tell the truth today?

6 MR. FLETCHER: I do.

7 ALJ JONSSON: Very good. If you have any
8 trouble hearing Mr. Evans, let us know, and we will do
9 something about that.

10 THE WITNESS: Okay. His voice is a little
11 soft. I'm hearing most of it, but if he can get a
12 little closer, that would be helpful.

13 ALJ JONSSON: Great.

14 EXAMINATION

15 BY MR. EVANS:

16 Q. Okay. Good morning, Mr. Fletcher. Can you
17 hear me all right?

18 A. Yes, I can. Thank you.

19 Q. Okay. For the record, would you please state
20 your name, your business address, and your position at
21 Windstream.

22 A. Yes. My name is John Fletcher. My business
23 address is 4001 Rodney Parham Road, Little Rock,
24 Arkansas 72212. My position is executive
25 vice-president, chief human resources officer, and

1 general counsel for Windstream Holdings, Inc.

2 Q. And how long have you held those positions at
3 Windstream?

4 A. I have been the executive vice-president and
5 general counsel of Windstream since 2006. I assumed
6 the responsibilities of chief human resources officer
7 in 2015.

8 Q. Have you reviewed the joint application filed
9 by Windstream and Earthlink in Utah?

10 A. Yes.

11 Q. And do you have personal knowledge of the
12 matters set out in the application?

13 A. Yes.

14 Q. Are you the person who signed -- who signed
15 the verified application?

16 A. Yes.

17 Q. Are there any changes or corrections that
18 should be made to the joint application?

19 A. No corrections or changes are needed.

20 Q. All right. Is Windstream asking the
21 Commission to approve this transaction pursuant to the
22 informal procedures described in the Commission's Rule
23 746-349-7?

24 A. Yes.

25 Q. Is Windstream or any of its affiliates

1 serving as an incumbent local exchange carrier anywhere
2 in the state of Utah?

3 A. No, they are not.

4 Q. Are Windstream and Earthlink required to file
5 for Section 214 authority with the Federal
6 Communications Commission?

7 A. Yes.

8 Q. Has that been done?

9 A. Yes. We filed with the FCC on November 17th,
10 2016.

11 Q. And has that -- has that FCC application been
12 submitted in this Utah docket?

13 A. Yes. It was submitted as Supplemental
14 Exhibit No. 1.

15 Q. Has Windstream received notice from the FCC
16 establishing a pleading cycle for the application?

17 A. Yes. The FCC's notice was issued on
18 December 2nd, 2016. It required interested parties to
19 file comments on or before December 16th, 2016.

20 Q. And is the FCC's notice the document that has
21 been submitted in this Utah docket as Supplemental
22 Exhibit 2?

23 A. Yes.

24 Q. Have there been any comments filed on the FCC
25 application?

1 A. Comments in the docket for the FCC's review
2 were due on December 16th. As of today, our review of
3 the FCC system does not show any comments in
4 opposition.

5 **Q. So do you have an idea of when the joint**
6 **applicants might have FCC approval to conclude this**
7 **transaction?**

8 A. So we have received the Hart-Scott-Rodino
9 Antitrust Approval from the Department of Justice. And
10 based on FCC precedent and the absence of opposition,
11 we anticipate that the FCC will approve the transaction
12 sometime during the first quarter of 2017.

13 **Q. Do any state commissions other than Utah**
14 **require Windstream and Earthlink to obtain approval**
15 **before closing this transaction?**

16 A. Yes. The application filed with the Utah
17 Commission lists on page number 7 all of the states
18 that require approval.

19 **Q. And have applications been filed in all of**
20 **those states?**

21 A. Yes.

22 **Q. And I see that the New York application has**
23 **been submitted as Exhibit B to the Utah application; is**
24 **that right?**

25 A. Yes, that's correct.

1 Q. And are the applications that have been filed
2 in other jurisdictions substantially similar to the
3 Utah and New York applications?

4 A. Yes.

5 Q. Have any of the states in which approval is
6 required approved the transaction as of today?

7 A. Yes. Georgia, Maryland, and the District of
8 Columbia have approved the transaction.

9 Q. And have those approvals been submitted to
10 the Utah Commission?

11 A. Yes. They were filed with the Commission on
12 December 19th as Supplemental Exhibit No. 3.

13 Q. Have any other states approved?

14 A. Yes. Just yesterday, we received the
15 approval from the Louisiana Public Service Commission.

16 Q. And I will represent that we have filed that
17 Louisiana approval this morning as Supplemental
18 Exhibit 4, which we have handed to the Hearing Officer
19 and to the Division.

20 Mr. Fletcher, do you have supplemental
21 Exhibit 4 in front of you?

22 A. Yes, I do.

23 Q. Is this the communication you received from
24 the Louisiana Public Service Commission?

25 A. Yes.

1 Q. I notice that Louisiana's staff had filed a
2 protest to the application. Can you explain that?

3 A. That is correct. At the time we filed the
4 application, staff could not verify that certain
5 regulatory fees for one of the EarthLink's Louisiana
6 subsidiaries had been paid. As soon as evidence of
7 that payment was provided, the staff withdrew the
8 protest, and the application was deemed approved.

9 Q. Okay. In those states that have not yet
10 approved the application, including Utah, have you
11 received or are you aware of any protest or opposition
12 to the transaction?

13 A. No.

14 Q. Have you received or are you aware of any
15 other protest or opposition from staff, third parties,
16 or the public with respect to any state or federal
17 application for approval of this transaction?

18 A. No.

19 Q. Have you filed notifications in all states
20 that require only notification of the proposed
21 transaction?

22 A. Yes.

23 Q. Do Windstream and Earthlink have a date on
24 which they would like to close this transaction?

25 A. Yes. We are targeting to have the

1 transaction completed by March 1st, 2017, assuming we
2 have received all of the required approvals.

3 **Q. All right. Can you please offer a summary of**
4 **why you believe this transaction is in the public**
5 **interest?**

6 A. Yes. Combining Windstream and EarthLink's
7 resources and experience will provide each with access
8 to the other company's advanced network capabilities,
9 technical and financial strength, and complimentary
10 services, which together will enable the existing Utah
11 subsidiaries of both companies to continue to offer and
12 to expand a broad range of high quality competitive
13 services to enterprise and residential customers.

14 The efficiencies and economies of scale
15 resulting from the transaction will improve the
16 combined company's economic position, which we expect
17 will enable it to continue to attract financing, to
18 invest in, and offer new and innovative services.

19 Enabling small and medium-sized carriers to
20 achieve such efficiencies tends to create economically
21 stable competitors, which serves the public interest by
22 enhancing competition.

23 The transaction will also be transparent to
24 customers. Customers will not experience any immediate
25 change in their service or the rates, terms, or

1 conditions of service as a result of the transaction.
2 Existing price lists will remain in effect subject to
3 change in the ordinary course of business.

4 Any future consolidation of the combined
5 companies' operations that would affect service to Utah
6 customers would be undertaken pursuant to the
7 Commission's rules and notice requirements.

8 MR. EVANS: Thank you. Mr. Fletcher is now
9 available for cross-examination.

10 MR. JETTER: No questions from the Division.

11 ALJ JONSSON: Thank you.

12 MR. EVANS: May we call Sam DeSimone from
13 EarthLink, please.

14 ALJ JONSSON: Mr. DeSimone, do you swear to
15 tell the truth today?

16 MR. DeSIMONE: Yes.

17 ALJ JONSSON: All right. Thank you. Go
18 ahead.

19 EXAMINATION

20 BY MR. EVANS:

21 Q. Good morning, Mr. DeSimone. Can you hear me
22 okay?

23 A. Yes.

24 Q. For the record, would you please state your
25 name, your business address, and your position at

1 **Earthlink.**

2 A. Sure. I'm Samuel R. DeSimone, Jr. My
3 business address is 1170 Peachtree Street, Suite 900,
4 Atlanta, Georgia 30309. I'm the executive
5 vice-president, general counsel, and secretary of
6 Earthlink.

7 **Q. And how long have you held those positions?**

8 A. I have served as executive vice-president,
9 general counsel, and secretary of Earthlink since 2000.

10 **Q. Have you reviewed the joint application filed**
11 **by Windstream and Earthlink in Utah on November 16,**
12 **2016?**

13 A. Yes.

14 **Q. And are you the officer from Earthlink who**
15 **signed the verified application?**

16 A. Yes.

17 **Q. So you have personal knowledge of the details**
18 **of this transaction and the facts contained in the**
19 **application?**

20 A. Yes.

21 **Q. Is Earthlink requesting that the Commission**
22 **approve this transaction through informal proceedings**
23 **as described in the Commission's rules?**

24 A. Yes.

25 **Q. Were you present and could you hear**

1 Mr. Fletcher's testimony on the telephone this morning?

2 A. Yes.

3 Q. Apart from the information contained in the
4 supplemental exhibits and the information offered by
5 Mr. Fletcher in his testimony, do you have any changes
6 or corrections to make to the joint application?

7 A. No changes or corrections.

8 Q. Have you received or are you aware of any
9 opposition from third parties or the public to the FCC
10 Section 214 application that's been filed?

11 A. No.

12 Q. Have you received or are you aware of any
13 notices or correspondence from any state utility
14 commission denying the party's application for approval
15 of the transaction?

16 A. No.

17 Q. Have you received or are you aware of any
18 objection or opposition from regulators, third parties,
19 or the public to any application for approval filed
20 with any state commission?

21 A. No.

22 Q. Is Earthlink or any of its subsidiaries
23 serving as an incumbent local exchange carrier anywhere
24 in Utah?

25 A. No.

1 Q. Would you like to offer a summary of why you
2 believe this transaction is in the public interest?

3 A. Sure. The telecommunications industry has
4 been experiencing and continues to experience rapid
5 innovative and technological advances that have led to
6 an increasingly competitive environment for carriers
7 like Windstream and Earthlink and their Utah operating
8 companies.

9 This transaction will combine the resources
10 of two well-established providers that have long
11 demonstrated their ability to deliver high quality
12 service to Utah customers.

13 Through combining the financial, technical,
14 and managerial expertise of Windstream and Earthlink,
15 their Utah operating entities will be strengthened and,
16 therefore, better able to compete in the market for
17 telecommunications services to the benefit of all Utah
18 customers.

19 The transaction will have no negative impact
20 on current customers of Windstream or EarthLink in
21 Utah. It is designed so that the current customers
22 will receive the same high quality service they have
23 come to expect without any interruption and without
24 change to service offerings, rates, or terms and
25 conditions.

1 Combining forces with Windstream will help
2 ensure and improve the ability of the Earthlink
3 subsidiaries in Utah to deploy and maintain innovative
4 and advanced telecommunications offerings, benefiting
5 Utah customers and serving the public interest,
6 convenience, and necessity.

7 MR. EVANS: Thank you. Mr. DeSimone is
8 available for cross-examination.

9 MR. JETTER: I have no questions.

10 ALJ JONSSON: Thank you.

11 MR. EVANS: That concludes my case in chief.

12 ALJ JONSSON: Thank you. Mr. Jetter?

13 MR. JETTER: Thank you. The Division would
14 like to call and have sworn in Mr. Ron Slusher.

15 ALJ JONSSON: Mr. Slusher, do you swear to
16 tell the truth?

17 MR. SLUSHER: I do.

18 ALJ JONSSON: Thank you.

19 EXAMINATION

20 BY MR. JETTER:

21 Q. Mr. Slusher, would you please state your name
22 and occupation for the record.

23 A. My name is Ron Slusher, S as in Sam,
24 L-U-S-H-E-R. I'm a utility technical consultant for
25 the Division of Public Utilities.

1 Q. Thank you. And in the course of your
2 employment with the Division of Public Utilities, have
3 you had the opportunity to review the joint application
4 in this docket along with the exhibits that were filed
5 with the joint application?

6 A. I have.

7 Q. And did you create and cause to be filed with
8 the Commission a memorandum from the Division dated
9 December 7th, 2016?

10 A. I did.

11 Q. Have you had an opportunity to review three
12 supplemental exhibits that were filed December 19th,
13 2016, along with a fourth supplemental exhibit that was
14 filed this morning, December 21, 2016?

15 A. I have.

16 Q. And do any of those exhibits or the
17 information contained within them change the
18 recommendation of the Division?

19 A. They do not.

20 Q. And does the December 7th, 2016,
21 recommendation of approval, along with the explanation
22 of that recommendation included in that filing, remain
23 the position of the Division?

24 A. Yes, it does.

25 MR. JETTER: I'd like to move at this time to

1 enter the December 7th, 2016, filing from the Division
2 titled "Memorandum" on the document and also titled
3 "Comments from the Division of Public Utilities" into
4 the docket.

5 ALJ JONSSON: Any objection?

6 MR. EVANS: No objection.

7 ALJ JONSSON: Thank you.

8 Q. (By Mr. Jetter) Are you aware of any
9 opposition to this filing?

10 A. I have not seen any or heard of any.

11 Q. Thank you. Do you believe that approval of
12 the application for this merger would be just,
13 reasonable, and in the public interest?

14 A. Yes.

15 MR. JETTER: I have no further questions.

16 Mr. Slusher is available for cross-examination.

17 ALJ JONSSON: Any questions?

18 MR. EVANS: I have no questions. Thank you.

19 ALJ JONSSON: Thank you all very much. I do
20 have what I need, so I believe we can close this
21 hearing. An order will issue shortly.

22 MR. EVANS: Thank you very much. Thanks to
23 the callers.

24 (The proceedings concluded at 9:46 a.m.)

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REPORTER'S CERTIFICATE

STATE OF UTAH)
COUNTY OF UTAH)

I, Daren S. Bloxham, a Notary Public and Certified Shorthand Reporter, Registered Professional Reporter, hereby certify:

THAT the foregoing proceedings were taken before me at the time and place set forth in the caption hereof; that the witness was placed under oath to tell the truth, the whole truth, and nothing but the truth; that the proceedings were taken down by me in shorthand and thereafter my notes were transcribed through computer-aided transcription; and the foregoing transcript constitutes a full, true, and accurate record of such testimony adduced and oral proceedings had, and of the whole thereof.

I have subscribed my name on this 1st day of January, 2017.



Daren S. Bloxham
Registered Professional Reporter #335

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