

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of: The Joint   )     Docket Nos.  
Application of PAETEC Holding Corp.,     )     11-2441-01  
PaeTec Communications, Inc.,             )     and  
McLeodUSA Telecommunications             )     11-2249-01  
Services, LLC, and Windstream             )  
Corporation for the Indirect             )  
Transfer of Control of PaeTec             )  
Communications, Inc. and McLeodUSA     )  
Telecommunications Services, LLC to     )  
Windstream Corporation                    )

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TRANSCRIPT OF HEARING PROCEEDINGS

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TAKEN AT:                             Public Service Commission  
  160 East 300 South  
  Salt Lake City, Utah

DATE:                                   September 28, 2011

TIME:                                  1:13 p.m.

REPORTED BY:                         Kelly L. Wilburn, CSR, RPR

APPEARANCES

Presiding:

**MELANIE REIF**, Administrative Law Judge

-oOo-

For PAETEC:

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For the Division

WILLIAM DUNCAN

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Direct by Ms. Burton-Lee

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1 SEPTEMBER 28, 2011 1:13 P.M.

2 P R O C E E D I N G S

3 THE COURT: Good afternoon everyone. I'm  
4 Melanie Reif, the Administrative Law Judge assigned to  
5 hear this matter. And today is Wednesday,  
6 September 28, 2011.

7 We're here to hear: The Matter of the Joint  
8 Application of PAETEC Holding Corporation, PAETEC  
9 Communications, Inc., McLeodUSA Telecommunications  
10 Services, LLC, and Windstream Corporation for the  
11 Indirect Transfer of Control of PAETEC Communications,  
12 Inc. and McLeodUSA Telecommunications Services, LLC to  
13 Windstream Corporation, under Docket 11-2441-01.

14 And we are also hearing: The Joint  
15 Application of PAETEC Holding Corporation, PAETEC  
16 Communications, Inc., McLeodUSA Telecommunications  
17 Services, LLC, and Windstream Corporation for the  
18 Indirect Transfer of Control of PAETEC Communications,  
19 Inc. and McLeodUSA Telecommunications Services, LLC to  
20 Windstream Corporation, under Docket 11-2249-01.

21 These two cases were consolidated and we'll  
22 be hearing them together today. This is the date and  
23 time for the duly-noticed hearing. And if we could  
24 now take appearances from the Companies. And  
25 Mr. Ferenchak, if you'd like to start, please do so.

1 MR. FERENCHAK: Thank you, your Honor. My  
2 name is Brett Ferenchak. And I'm with the law firm of  
3 Bingham, B-i-n-g-h-a-m, McCutchen, LLP. And we  
4 represent PAETEC Holding Corp. and its subsidiaries.

5 THE COURT: And Ms. Shearer, would you go  
6 ahead and make your appearance?

7 MS. SHEARER: My name is Jeanne Shearer. I'm  
8 the vice president of state government affairs for  
9 Windstream Corporation.

10 THE COURT: And Ms. Bennett?

11 MS. BENNETT: I'm Kimberly Bennett. I'm  
12 in-house regulatory counsel for Windstream  
13 Communications.

14 THE COURT: Thank you. Mr. Roesser, please.

15 MR. ROESSER: Chris Roesser. I work as an  
16 industry analyst at Milton Partners. M-i-l-t-o-n,  
17 Partners.

18 THE COURT: Thank you. And for the Division?

19 MS. BURTON-LEE: Dahnelle Burton-Lee for the  
20 Division of Public Utilities. And with me is Bill  
21 Duncan from the Division today.

22 THE COURT: Very good. To make matters as  
23 simple as possible I, at this time, would like to  
24 clarify that this Commission takes judicial -- excuse  
25 me, administrative notice of both the applications

1 that were mentioned in the dockets referred to  
2 earlier, as well as the Division's recommendation  
3 pertaining to both of those dockets, which is dated  
4 August 31, 2011.

5 Mr. Ferenchak, you had mentioned early on  
6 that you would like to address a motion, and I think  
7 now would be a good time to do that.

8 MR. FERENCHAK: Thank you, your Honor. At  
9 this time I would move for admission *pro hac vice*,  
10 pursuant to Rule 746-100-6(b), for the limited  
11 purposes of this hearing.

12 THE COURT: Very good Mr. Ferenchak. The  
13 Commission approves your motion.

14 MR. FERENCHAK: Thank you, your Honor.

15 THE COURT: Ms. Burton-Lee, I wanted to  
16 address with you the memo from the Division and  
17 perhaps give you the opportunity to address that real  
18 briefly. And wanted to ask you if you would like to  
19 proffer that, or if you would like to have Mr. Duncan  
20 speak on that issue.

21 MS. BURTON-LEE: Well, typically -- or on  
22 other cases what we've done is submit this through an  
23 affidavit, but because of the nature of this  
24 proceeding we hadn't done that. We may do that in the  
25 future.

1           At this point it may be best, just for the  
2 record to make sure that it's clear, to have  
3 Mr. Duncan sworn in as a witness and just have him  
4 briefly proffer it as an exhibit for purposes of the  
5 hearing and the position of the Division.

6           THE COURT: Okay, very good.

7           Mr. Duncan, are you prepared to do that?

8           MR. DUNCAN: Yes.

9           THE COURT: Okay.

10          (Mr. Duncan was duly sworn.)

11          THE COURT: Mr. Duncan, did you -- oh, I'm  
12 sorry. Please go ahead.

13          MS. BURTON-LEE: No, not a problem.

14                         WILLIAM DUNCAN,

15          called as a witness, having been duly sworn,  
16          was examined and testified as follows:

17                         DIRECT EXAMINATION

18          BY MS. BURTON-LEE:

19           Q.    Mr. Duncan, could you state your full name,  
20 your address, and position with the Division?

21           A.    Yes, William Duncan. I'm manager of the  
22 telecommunications section for the Utah Division of  
23 Public Utilities. Address 160 East 300 South, Salt  
24 Lake City.

25           Q.    And did you assist in the preparation of a

1 memorandum filed with the Public Service Commission of  
2 Utah on August 31, 2011, with regard to these two  
3 applications?

4 A. Yes, I did.

5 Q. Do you have a brief summary of that  
6 memorandum for the Commissioner today?

7 A. Yes. Ron Slusher was actually the consultant  
8 that worked on it, but he is not with us today due to  
9 some family matters. But I did oversee the  
10 preparation of it and approved it.

11 The Division reviewed the joint application  
12 between PAETEC Holding Corporation, PAETEC  
13 Communications, Incorporated, McLeodUSA  
14 Telecommunications Services, and Windstream  
15 Corporation for the indirect transfer of control of  
16 PAETEC Communications, Inc. and McLeodUSA  
17 Telecommunications Services to Windstream Corporation.

18 And as a result of that investigation we have  
19 recommended that the -- that this be approved. And we  
20 believe that it's in the public interest. And that it  
21 will allow the Joint Applicants to better provide  
22 expanded and advanced telecommunications services in  
23 the State of Utah.

24 Q. Okay. And just as a point of clarification,  
25 that would be with regard to both dockets as -- the

1 joint application as to PAETEC Holding Corporation as  
2 well as PAETEC Communications; is that correct?

3 A. Yes, it would.

4 Q. Okay, thank you.

5 MS. BURTON-LEE: That's all we have. But we  
6 would like to submit this as an exhibit in both  
7 dockets, just for the record. It has been filed. If  
8 the Commission would like to take judicial notice,  
9 that's fine. Just so it's acknowledged in both  
10 dockets as the testimony of the Division in this  
11 matter.

12 THE COURT: Yes. As I --

13 MS. BURTON-LEE: In both matters.

14 THE COURT: As I noted earlier, we -- the  
15 Commission takes judicial notice in both dockets,  
16 which have been consolidated.

17 MS. BURTON-LEE: Perfect. Okay.

18 THE COURT: So thank you.

19 MS. BURTON-LEE: Thank you.

20 THE COURT: For those on the telephone, are  
21 there any questions of Mr. Duncan?

22 MR. FERENCHAK: Your Honor, this is Brett  
23 Ferenchak. I do not have any questions at this time.

24 THE COURT: Okay, thank you.

25 Okay. And hearing no other questions I'll



1 assume that there aren't any. And at this time would  
2 like to address that Rule 746-349-7, subsection (a)  
3 sub (e), states that:

4 "If no objection to the proposed  
5 transaction is submitted in any filed  
6 comments or reply comments the  
7 Commission will presume that the  
8 approval of the transaction is in the  
9 public interest, and use of information  
10 contained in the application and  
11 accompanying documents is evidence to  
12 support a Commission order."

13 There have not been any objections filed in  
14 this matter, and as such we will presume there are  
15 none. And granting of the application will -- as  
16 such, we will issue an order approving the indirect  
17 transfer of control on both of these applications.

18 Does anyone have anything else that they  
19 would like to add?

20 MS. BURTON-LEE: No, your Honor.

21 THE COURT: Okay. Very good, we'll be off  
22 the record. Thank you very much.

23 (The hearing was concluded at 1:22 p.m.)  
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C E R T I F I C A T E

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE        )

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 9, inclusive.

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

SIGNED ON THIS **11th** DAY OF **October**, **2011**.

Kelly L. Wilburn, CSR, RPR  
Utah CSR No. 109582-7801

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