

Supplemental Exhibit 3

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

COMMISSIONERS:

CHUCK EATON, CHAIRMAN
LAUREN "BUBBA" McDONALD, JR.
TIM G. ECHOLS
H. DOUG EVERETT
STAN WISE



FILED

DEC 13 2016

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

REECE McALISTER
EXECUTIVE SECRETARY

EXECUTIVE SECRETARY

Georgia Public Service Commission

(404) 656-4501
(800) 383-5813

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

December 13, 2016

DOCKET # 6937, 11472,
4232, 6328, 5891
DOCUMENT # 166179, 166180,
166181, 166182, 166183

Jeffrey R. Strenkowski, Counsel
Morgan Lewis
2020 K Street, NW
Washington, DC 20006-1806

Re: Docket Numbers 4242, 6328, 5891, 6937, and 11472 – Joint Application for Approval to Transfer Indirect Control of Business Telecom, LLC, CTC Communications Corp., DeltaCom, LLC, Earthlink Business, LLC, Earthlink Carrier, LLC, and Earthlink Holdings Corp. to Windstream Holdings, Inc. ("the Applicants")

Dear Mr. Strenkowski:

On November 23, 2016, the Applicants filed with the Georgia Public Service Commission (the "Commission") the above referenced application. Based on the representation contained in the application, no further action by the Commission is required. The information has been placed in the company's file.

Sincerely,

Leon E. Bowles
Director of Telecommunications

LEB/TS
GPSC files: X-950, L-007, R-0334, L-024, L-0168

W. KEVIN HUGHES
CHAIRMAN

HAROLD D. WILLIAMS
JEANNETTE M. MILLS
MICHAEL T. RICHARD
ANTHONY O'DONNELL



PUBLIC SERVICE COMMISSION

#2, 12/14/16 AM, ML# 204326, S-1703

December 14, 2016

Russell M. Blau
Ronald W. Del Sesto, Jr.,
Jeffrey R. Strenkowski
Brett P. Ferenchak
Morgan, Lewis & Bockius LLP
2020 K Street, NW
Washington, DC 20006-1806

Dear Messrs. Blau, Del Sesto, Strenkowski and Ferenchak:

The Commission has reviewed the Joint Application filed on November 15, 2016 by Business Telecom, LLC, Choice One Communications Resale, L.L.C., Conversent Communications Resale, L.L.C., CTC Communications Corp., DeltaCom, LLC, EarthLink Business, LLC, EarthLink Holdings, Corp., and Windstream Holdings, Inc. for Transfers of Control.

After considering this matter at the December 14, 2016 Administrative Meeting, the Commission approved the transaction and transfers of control.

By Direction of the Commission,

/s/ David J. Collins

David J. Collins
Executive Secretary

DJC/st

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, NW, SUITE 800
WASHINGTON, DC 20005

ORDER

December 15, 2016

FORMAL CASE NO. 892, IN THE MATTER OF THE JOINT APPLICATION OF BUSINESS TELECOM, LLC, CHOICE ONE COMMUNICATIONS RESALE L.L.C., CONVERSENT COMMUNICATIONS RESALE, L.L.C., CTC COMMUNICATIONS CORP., EARTHLINK BUSINESS, LLC, EARTHLINK HOLDINGS CORP. AND WINDSTREAM HOLDINGS, INC. FOR APPROVAL OF A TRANSFER OF CONTROL OF THE EARTHLINK LICENSEES, Order No. 18636

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) approves the Joint Application of Business Telecom, LLC (“BT”); Choice One Communications Resale, L.L.C. (“Choice One”); Conversent Communications Resale, L.L.C. (“Conversent”); CTC Communications Corp. (“CTC”) (collectively, “EarthLink Licensees”); EarthLink Business, LLC (“EarthLink Business”); EarthLink Holdings Corp. (“EarthLink Parent”); and Windstream Holdings, Inc. (“Windstream Parent”) (collectively, “Applicants”), for the transfer of indirect control of the EarthLink Licensees to Windstream Parent (“EarthLink Transaction”).¹ In addition, the Commission dismisses the Applicants’ request for authority for EarthLink Business to transfer its equity interests in the other EarthLink Licensees to a to-be-formed intermediate holding company (the “Pro Forma Change”) to effect a pro forma change in their corporate structure, because transactions involving purely intra-corporate reorganizations and restructurings of competitive local exchange carriers shall only require the filing of a Notification of the Transaction with the Commission.²

II. BACKGROUND

2. On November 16, 2016, the Applicants filed their Joint Application. No comments on the Joint Application were received. In the Application, the Applicants seek the Commission’s approval for the transfer of indirect control of the EarthLink Licensees to Windstream Parent.³ In addition, the Applicants request the authority for EarthLink Business to

¹ *Formal Case No. 892, In the Matter of the Joint Application of Business Telecom, LLC, Choice One Communications Resale L.L.C., Conversent Communications Resale, L.L.C., CTC Communications Corp., EarthLink Business, LLC, EarthLink Holdings Corp. and Windstream Holdings, Inc. for Approval of a Transfer of Control of the EarthLink Licensees* (“Formal Case No. 892”), filed November 16, 2016 (“Joint Application”).

² *See Formal Case No. 892, In the Matter of the Joint Application of Sidera Networks, LLC for Approval of a Pro Forma Intra-Company Transaction* (“Formal Case No. 892”), Order No. 17536, rel. July 10, 2014.

³ *Formal Case No. 892, Joint Application at 1.*

transfer its equity interests in the other EarthLink Licensees to a to-be-formed intermediate holding company (the “Pro Forma Change”), which will constitute a “pro forma” transfer of control of BT, Choice One, Conversent and CTC, but will otherwise have no effect on those entities or their operations.⁴

A. Description of the Applicants

1. Windstream Companies

3. According to the Applicants, Windstream Parent is a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212, 501-748-7000. Windstream is a publicly traded (NASDAQ: WIN) Fortune 500 leading provider of advanced network communications and technology solutions for consumers, businesses, enterprise organizations and wholesale customers.⁵ The Applicants state that Windstream Parent functions as a holding company and does not provide telecommunications services or hold any telecommunications licenses in its own right.⁶ The Applicants add that, through its wholly owned subsidiary, Windstream Services, Windstream Parent owns and operates a number of licensed telecommunications providers in all states and the District of Columbia, except Alaska, many of which also hold authority from the Federal Communications Commission (“FCC”) to provide domestic interstate and international telecommunications services.⁷ In the District of Columbia, Windstream’s regulated subsidiaries hold the following authorizations:

1. Cavalier Telephone Mid-Atlantic, LLC is authorized to provide local exchange service pursuant to Commission authority in Docket No. TA-01-26.
2. Intellifiber Networks, LLC is authorized to provide local exchange service pursuant to Commission authority in Docket No. TA-10-1.
3. McLeodUSA Telecommunications Services, LLC is authorized to provide local exchange service pursuant to Order No. 12050.
4. Paetec Communications, LLC is authorized to provide local exchange service pursuant to Order No. 11339.
5. US LEC of Virginia, LLC is authorized to provide local exchange service pursuant to Order No. 11362.

⁴ *Formal Case No. 892, Joint Application at 1-2.*

⁵ *Formal Case No. 892, Joint Application at 2.*

⁶ *Formal Case No. 892, Joint Application at 2.*

⁷ *Formal Case No. 892, Joint Application at 2.*

6. Windstream KDL, LLC is authorized to provide local exchange service pursuant to Order No. 14757.

7. Windstream NTI, LLC is authorized to provide local exchange service pursuant to Order No. 14848.⁸

4. The Applicants claim that Windstream's combined operations currently have approximately 2.1 million access lines and approximately \$5.7 billion in annual revenues nationwide as of the year end FY2015. The Applicants state that additional information regarding Windstream, including its most recent SEC Forms 10-K and 10-Q, as filed with the Securities and Exchange Commission, is available at <http://investor.windstream.com/investors/index.cfm>.⁹

2. EarthLink Companies

5. The Applicants represent that EarthLink Holdings Corp. is a publicly traded Delaware corporation (NASDAQ: ELNK) with principal offices located at 1170 Peachtree Street, Suite 900, Atlanta, GA 30309, 404-815-0770.¹⁰ The Applicants assert that EarthLink Parent functions as a holding company and does not provide telecommunications services or hold any telecommunications licenses in its own right.¹¹ EarthLink Parent owns and operates a number of telecommunications providers in all states and the District of Columbia, many of which also hold authority from the FCC to provide domestic interstate and international telecommunications services.¹² EarthLink Parent together with its subsidiaries (collectively, "EarthLink"), provides a broad range of data, voice and managed network services to business customers in the United States.¹³ The Applicants state that EarthLink also provides nationwide Internet access and related value-added services to residential customers.¹⁴ The Applicants also state that EarthLink operates an extensive network including more than 29,000 route fiber miles and 90 metro fiber rings.¹⁵ The Applicants claim that, through its owned and leased facilities, EarthLink's data and voice IP services can reach more than 90 percent of the United States.¹⁶ In the District of Columbia, the EarthLink Licensees hold the following authorizations:

⁸ *Formal Case No. 892, Joint Application at 2-3.*

⁹ *Formal Case No. 892, Joint Application at 3.*

¹⁰ *Formal Case No. 892, Joint Application at 3.*

¹¹ *Formal Case No. 892, Joint Application at 3.*

¹² *Formal Case No. 892, Joint Application at 3.*

¹³ *Formal Case No. 892, Joint Application at 3.*

¹⁴ *Formal Case No. 892, Joint Application at 3.*

¹⁵ *Formal Case No. 892, Joint Application at 3.*

¹⁶ *Formal Case No. 892, Joint Application at 3.*

1. Business Telecom, LLC, a North Carolina limited liability company, is authorized to provide local exchange services pursuant to authority granted by Order No. 11177 issued in Formal Case No. 892, on May 7, 1998.
2. CTC Communications Corp., a Massachusetts corporation, is authorized to provide local exchange services pursuant to authority granted by Order No. 11383 issued in Formal Case No. 892.
3. Choice One Communications Resale, L.L.C., a Delaware limited liability company, is authorized to provide resold local exchange services pursuant to authority granted by Order No. 15281 issued in Case No. TA-09-04 on June 1, 2009.
4. Conversent Communications Resale, L.L.C., a Delaware limited liability company, is authorized to provide resold local exchange services pursuant to authority granted by Order No. 15280 issued in Case No. TA-09-05 on June 1, 2009.

The Applicants state that additional information regarding EarthLink, including its most recent SEC Forms 10-K and 10-Q, as filed with the Securities and Exchange Commission, is available at <http://www.EarthLink.net/about/investor/>.¹⁷

B. Description of the Transaction

6. The Applicants assert that, on November 5, 2016, Windstream Parent, EarthLink Parent, Europa Merger Sub, Inc. (“Merger Sub 1”), a Delaware corporation and an indirect, wholly-owned subsidiary of Windstream Services, LLC, and Europa Merger Sub, LLC (“Merger Sub 2”), a Delaware limited liability company and an indirect, wholly-owned subsidiary of Windstream Services, LLC, entered into an Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which, among other things, (i) Merger Sub 1 will be merged with and into EarthLink Parent (the “Initial Merger”) with EarthLink Parent continuing as the surviving corporation (the “Surviving Corporation”) and (ii) immediately following the Initial Merger, the Surviving Corporation will be merged with and into Merger Sub 2 (the “Subsequent Merger” and, together with the Initial Merger, the “EarthLink Transaction”), with Merger Sub 2 continuing as the surviving company known as EarthLink Holdings, LLC (the “Surviving Company”) and an indirect, wholly-owned subsidiary of Windstream Parent, in each case subject to the terms and conditions of the Merger Agreement.¹⁸

7. The Applicants state that, as part of the EarthLink Transaction, EarthLink Parent stock will be exchanged for Windstream Parent stock. As a result of the EarthLink Transaction,

¹⁷ Formal Case No. 892, Joint Application at 3-4.

¹⁸ Formal Case No. 892, Joint Application at 5-6.

Windstream Parent will be the new ultimate parent company of the EarthLink Licensees.¹⁹ This change in ultimate control does not involve a transfer of operating authority, assets or customers, and the EarthLink Transaction is expected to be virtually seamless to end user customers.²⁰ Additionally, the Applicants state that the current customers of the EarthLink Licensees will remain customers of those entities following the EarthLink Transaction. Accordingly, customers will continue to enjoy the same rates, terms and conditions of service as they do prior to closing.²¹ After consummation of the EarthLink Transaction, the Applicants claim that EarthLink Licensees will continue to offer the same services, rates, terms and conditions pursuant to their existing authorizations, and the only material change resulting from the EarthLink Transaction will be that these certificated entities ultimately will be indirectly owned by Windstream Parent, and subsequently may change their names to reflect the "Windstream" brand in their names.²²

8. Additionally, and only as part of the EarthLink Transaction, the Applicants request authority for EarthLink Business to transfer its equity interests in the other EarthLink Licensees (currently subsidiaries of EarthLink Business) to a to-be-formed subsidiary company.²³ The Applicants assert that this change would constitute a pro forma transfer of control of BT, Choice One, Conversent and CTC.²⁴ The Applicants believe that adding an intermediate holding company could provide the companies more flexibility with respect to future credit arrangements with their lenders.²⁵

C. Public Interest Considerations

1. The EarthLink Transaction is in Public Interest

9. The Applicants state that Commission approval of the EarthLink Transaction clearly will serve the public interest. The Applicants add that the telecommunications industry has been and continues to be subject to rapid technological advances, evolving consumer preferences and dynamic changes.²⁶ According to the Applicants, the creation of Windstream in 2006 established an independent, stand-alone, wireline-centric corporation that serves the public

¹⁹ *Formal Case No. 892, Joint Application at 6.*

²⁰ *Formal Case No. 892, Joint Application at 6.*

²¹ *Formal Case No. 892, Joint Application at 6.*

²² *Formal Case No. 892, Joint Application at 6.*

²³ *Formal Case No. 892, Joint Application at 6.*

²⁴ *Formal Case No. 892, Joint Application at 6.*

²⁵ *Formal Case No. 892, Joint Application at 6.* Diagrams demonstrating the Transaction are appended to the Joint Application as Exhibit A.

²⁶ *Formal Case No. 892, Joint Application at 7.*

interest by focusing squarely on enhancing local broadband services primarily in rural areas.²⁷ The Applicants claim that, since its creation, Windstream has expanded its product offering to include IP-based voice and data services, MPLS networking and wave services to enterprise and government agencies.²⁸ The Applicants assert that combining the EarthLink Licensees with Windstream will enable the existing certificated entities to continue to offer and expand a broad range of high quality services to enterprise and residential customers. The Applicants also assert that Windstream will help ensure and improve the continuation of the Earth-Link Licensees' ability to deploy and maintain innovative and advanced telecommunications offerings, benefiting District of Columbia consumers and serving the public interest, convenience and necessity.²⁹

10. The Applicants claim that the efficiencies and economies of scale resulting from the EarthLink Transaction will improve the combined enterprise's economic position and, thus, its ability to continue to attract financing to invest in and offer new and innovative services.³⁰ The Applicants also claim that enabling small and medium-sized carriers to achieve such efficiencies is beneficial since economically stable competitors enhance competition which serves the public interest.³¹ The Applicants state that the EarthLink Transaction also will provide each of the Applicants access to the others' advanced network capabilities, technical and financial strengths, and complementary services, which together are expected to strengthen Applicants' ability to provide quality competitive services in the District of Columbia. The Applicants assert that the combined enterprise will have greater economies of scale and scope than the EarthLink Parent subsidiaries would have had operating independently.³²

2. The EarthLink Transaction Poses No Competitive Risks

11. The Applicants state that they are seeking to complete the EarthLink Transaction as soon as possible in order to ensure that customers and Applicants promptly realize the benefits of operating as a combined entity.³³ The Applicants state that this EarthLink Transaction will enhance competition because it will strengthen the EarthLink and Windstream certificated entities.³⁴ The Applicants emphasize that the EarthLink Transaction will not have a negative impact on current Windstream customers or customers of the EarthLink Licensees.³⁵

²⁷ Formal Case No. 892, Joint Application at 7.

²⁸ Formal Case No. 892, Joint Application at 7.

²⁹ Formal Case No. 892, Joint Application at 7.

³⁰ Formal Case No. 892, Joint Application at 7.

³¹ Formal Case No. 892, Joint Application at 7-8.

³² Formal Case No. 892, Joint Application at 8.

³³ Formal Case No. 892, Joint Application at 8.

³⁴ Formal Case No. 892, Joint Application at 8.

³⁵ Formal Case No. 892, Joint Application at 8.

III. COMMISSION DECISION

A. Indirect Transfer of Control

12. D.C. Code § 34-1001 sets forth the Commission's authority to review the transactions filed for Commission consideration and approval. In addition, 15 DCMR § 2511.2 sets forth the application requirements for entities seeking Commission approval for a corporate restructuring.³⁶ The first step in this process, however, is for the Commission to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If it determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the requirements provided in 15 DCMR § 2511.2.³⁷ The relevant portion of D.C. Code § 34-1001 reads:

No franchise nor any right to or under any franchise to own or operate any public utility as defined in this subtitle . . . shall be assigned [or] transferred . . . nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer . . . or agreement shall have been approved by the Commission in writing.³⁸

13. A "public utility" is defined under D.C. Code § 34-214 as, *inter alia*, a "telephone corporation" or a "telephone line."³⁹ D.C. Code § 34-220 provides that a "telephone corporation" includes:

every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers . . . owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in

³⁶ See 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission pursuant to D.C. Official Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

³⁷ See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval. The five standards are: (1) how the proposed transaction will affect competition in the District of Columbia; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights.

³⁸ D.C. Code § 34-1001 (2016).

³⁹ D.C. Code § 34-214 (2016).

the conduct of the business of affording telephonic communications for hire, or which licenses, lets, or permits telephonic communication for hire.⁴⁰

14. D.C. Code § 34-221 states that a “telephone line” includes:

conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.⁴¹

15. The Commission has interpreted these provisions to mean that if a Competitive Local Exchange Carrier (“CLEC”) has facilities in the District of Columbia, then it can be classified as a public utility under the D.C. Code and therefore certain transactions, such as assignments or transfers, require prior Commission approval.⁴² In this instance, the Commission first must ascertain whether the EarthLink Licensees are public utilities for this transaction to be subject to Commission approval. In order to ascertain whether the EarthLink Licensees can be classified as public utilities under D.C. Code § 34-1001, we must first determine whether they have facilities in the District of Columbia. A method the Commission uses to determine whether a CLEC has facilities in the District of Columbia is to analyze the information provided in the Survey Response Form to the annual surveys all CLECs must file, pursuant to 15 DCMR § 2707.1.⁴³ The purpose of the Survey Response Form is for CLECs to provide the Commission with information that will help gauge the level of competition in the District of Columbia as well as to provide gross annual jurisdictional revenue information for budgetary assessment purposes.⁴⁴ To be precise, the Survey Response Form seeks information on whether a CLEC provided jurisdictional service on a retail basis in the District of Columbia, and if so, the type of services provided, the number of customers served and lines supplied. The other important piece of information a CLEC provides on the Survey Response Form is its gross jurisdictional revenue, which is defined as revenue from the sale of telecommunications services to end users in the

⁴⁰ D.C. Code § 34-220 (2015).

⁴¹ D.C. Code § 34-221 (2015).

⁴² See *Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also *Formal Case No. 892, In the Matter of Joint Application of CTC Communications Corp., Conversant Communications Resale, L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes*, Order No. 16933, rel. October 12, 2012, citing *Formal Case No. 968, Joint Application of AT&T Corporation and Teleport Communications Group, Inc. for Approval of a Transfer of a Franchise*, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission’s authority to review certain transactions.

⁴³ 15 DCMR § 2707.1 (2012).

⁴⁴ See D.C. Code § 34-912 (b) (2) and 15 D.C.M.R. §§ 2701.1 and 1300, *et seq.*

District of Columbia. The information regarding the lines supplied enables the Commission to measure the strength of a CLEC's presence in the District of Columbia based on the number of lines and whether a CLEC is a public utility under D.C. Code §§ 34-214, 34-220, and 34-221.

16. On April 18, 2016, pursuant to 15 DCMR § 2707.1, CTC Communications Corp. filed its Survey Response to the Commission's Survey Letter.⁴⁵ The other EarthLink Licensees, Conversent, Choice One, and BT also have filed their respective responses to the Commission's Survey Letter as well.⁴⁶ Among the EarthLink Licensees, only the Survey Response of CTC Communications Corp. indicates that it has facilities in the District of Columbia.⁴⁷ The Survey Responses of the other EarthLink Licensees indicate that they do not have facilities in the District. We take administrative notice of CTC Communications Corp.'s answers submitted in its Survey Response and conclude that the EarthLink Licensees meet the definition of a public utility set forth in D.C. Code §§ 34-214, 34-220, and 34-221.⁴⁸ Thus, the EarthLink Licensees, through their corporate relationship with CTC Communications Corp., are subject to our transfer of control procedures based upon CTC Communications Corp.'s use of telecommunications facilities in the District.⁴⁹ Therefore, the transfer of indirect control of the EarthLink Licensees to Windstream Parent is subject to Commission review under 15 DCMR § 2511.2.

17. Under the requirements of 15 DCMR § 2511.2, an application must contain a description of how the transaction satisfies the following five standards set out in 15 DCMR § 2511.2(d): (1) how the proposed transaction will affect competition in the District of Columbia; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights.⁵⁰ The Commission reviews the Joint Application to determine whether each of the five standards has been met.

⁴⁵ *ASMT2016-66-T-2*, Mandatory Annual Assessment Survey of Competitive Local Exchange Carriers of CTC Communications Corp., filed April 18, 2016 ("Survey Response"); and Survey Letter and blank Survey Response Form rel. March 15, 2016 ("Survey Letter").

⁴⁶ *ASMT2016-62-T-2*, Mandatory Annual Assessment Survey of Competitive Local Exchange Carriers of Conversent Communications Resale, LLC, filed April 18, 2016 and Survey Letter and blank Survey Response Form rel. March 15, 2016; *ASMT2016-48-T-2*, Mandatory Annual Assessment Survey of Competitive Local Exchange Carriers of Choice One Communications Resale, LLC, filed April 18, 2016 and Survey Letter and blank Survey Response Form rel. March 15, 2016; and *ASMT2016-39-T-2*, Mandatory Annual Assessment Survey of Competitive Local Exchange Carriers of Business Telecom, LLC, filed April 18, 2016 and Survey Letter and blank Survey Response Form rel. March 15, 2016.

⁴⁷ Survey Response at 4.

⁴⁸ See Survey Response.

⁴⁹ Survey Response at 2.

⁵⁰ 15 DCMR § 2511.2(d) (2012).

18. In response to the first standard, the Applicants state that the proposed transaction will not have a negative impact on competition because the EarthLink Transaction will have no adverse effects whatsoever upon competition in the District of Columbia, because the EarthLink Licensees will continue to operate in the District of Columbia immediately following completion of the transfer of indirect control. Moreover, the EarthLink Transaction will help strengthen the competitive position of EarthLink Licensees and the combined companies will be able to compete more effectively against incumbent carriers and larger competitive carriers.⁵¹ The Commission finds that the Applicants have provided an adequate response to the competition standard.

19. Regarding the second standard, the Applicants assert that the EarthLink Transaction will not affect universal service because EarthLink Licensees will continue to contribute to the Universal Service Trust Fund as may be required. Additionally, the Applicants state that EarthLink Licensees do not receive universal service funds for services they provide in the District of Columbia.⁵² We are satisfied that the Applicants have sufficiently responded to the universal service standard.

20. Turning to the third standard, the Applicants state that the EarthLink Transaction will not affect public safety and welfare and that EarthLink Licensees will continue to be operated by highly experienced, well-qualified management, operating and technical personnel.⁵³ The Applicants have provided a response that adequately addresses the public safety and welfare standard.

21. With regard to the fourth standard, the Applicants represent that the EarthLink Transaction will not affect the quality of local telecommunications services, and that EarthLink Licensees will continue to provide the same telecommunications services they currently provide.⁵⁴ The Applicants add that the combination of the EarthLink Licensees with Windstream will enable the existing certificated entities to continue to offer and expand a broad range of high quality services to enterprise and residential customers.⁵⁵ The Applicants have provided a response that adequately addresses the quality of local telecommunications services standard.

22. Concerning the fifth standard, the Applicants state that the EarthLink Transaction will not affect consumer rights. The rates, terms, and conditions of service to customers of EarthLink Licensees will not change as a result of the Transaction.⁵⁶ The Commission finds that the Applicants' response has satisfied the standards in 15 DCMR § 2511.2.

⁵¹ *Formal Case No. 892, Joint Application at 8.*

⁵² *Formal Case No. 892, Joint Application at 8.*

⁵³ *Formal Case No. 892, Joint Application at 8-9.*

⁵⁴ *Formal Case No. 892, Joint Application at 9.*

⁵⁵ *Formal Case No. 892, Joint Application at 7.*

⁵⁶ *Formal Case No. 892, Joint Application at 9.*

B. Pro Forma Change

23. In Order No. 17536, the Commission held that “for the sake of administrative economy, CLEC transactions concerning corporate reorganizations and restructurings that are purely intra-corporate in nature, and do not involve transfer of ownership or control to an outside entity or organization, shall only require a Notification of the Transaction. Purely intra-corporate CLEC restructurings or reorganizations shall be subject to dismissal by this Commission.”⁵⁷ The Applicants request the authority for EarthLink Business to execute a “pro forma change” where it will transfer its equity interests in the other EarthLink Licensees to a to-be-formed intermediate holding company, which will constitute a “pro forma” transfer of control of BT, Choice One, Conversent and CTC.⁵⁸ The Applicants add that this pro forma change will otherwise have no effect on those entities or their operations.⁵⁹

24. In our review of the Application, we determined that the “pro forma change” is purely intra-corporate in nature. EarthLink Business is transferring its equity interest to form a new holding company that could provide BT, Choice One, Conversent and CTC with more flexibility concerning future credit arrangements with their lenders.⁶⁰ The pro forma change is merely inserting an intermediate holding company into the corporate structure to facilitate future credit arrangements. The ultimate ownership and control of the EarthLink Licensees is not being transferred to another outside entity and is, therefore, not affected. Because the “pro forma change” is purely intra-corporate by nature, we will dismiss the Applicants request transfer its equity interests to effect the pro forma change, pursuant to Order No. 17536.

IV. CONCLUSION

25. The Commission finds that the Joint Application satisfies the five requirements of 15 DCMR § 2511.2(d). Therefore, for the reasons set forth in this Order, the transfer of control outlined in the Joint Application is approved. However, based on our precedent in Order No. 17536, we dismiss the Applicants’ request for the authority for EarthLink Business to transfer its equity interests in certain EarthLink Licensees to a to-be-formed intermediate holding company to effect a pro forma change in their corporate structure.

THEREFORE, IT IS ORDERED THAT:

26. The Joint Application of Business Telecom, LLC; Choice One Communications Resale, L.L.C.; Conversent Communications Resale, L.L.C.; CTC Communications Corp.;

⁵⁷ See Formal Case No. 892, *In the Matter of the Joint Application of Sidera Networks, LLC for Approval of a Pro Forma Intra-Company Transaction* (“Formal Case No. 892”), Order No. 17536, rel. July 10, 2014.

⁵⁸ Formal Case No. 892, Joint Application at 1-2.

⁵⁹ Formal Case No. 892, Joint Application at 1-2.

⁶⁰ Formal Case No. 892, Joint Application at 6. Diagrams demonstrating the Transaction are appended to the Joint Application as Exhibit A.

EarthLink Business, LLC; EarthLink Holdings Corp.; and Windstream Holdings, Inc., for the transfer of indirect control of the EarthLink Licensees to Windstream Parent is **APPROVED**; and

27. The request of Business Telecom, LLC, Choice One Communications Resale, L.L.C., Conversent Communications Resale, L.L.C., CTC Communications Corp., EarthLink Business, LLC, EarthLink Holdings Corp., and Windstream Holdings, Inc. for the authority for EarthLink Business to transfer its equity interests in the certain EarthLink Licensees to a to-be-formed intermediate holding company to effect a pro forma change in their corporate structure is **DISMISSED**.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**