

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of
EarthLink Business, LLC; EarthLink
Holdings Corp. and Windstream Holdings,
Inc. for Approval to Transfer Control of
Authorized Telecommunications Providers

DOCKET NOS. 16-2287-01
and 16-2538-01

ORDER APPROVING JOINT
APPLICATION

ISSUED: December 27, 2016

This matter is before the Public Service Commission of Utah (PSC) on a joint application filed by EarthLink Business, LLC; EarthLink Holdings Corp.; and Windstream Holdings, Inc. (Windstream). The Applicants request PSC approval to transfer indirect control of EarthLink Business, LLC to Windstream.

On December 7, 2016, in response to a PSC action request, the Division of Public Utilities (Division) recommended that the application be approved. In recommending approval, the Division stated:

The Applicants submit that the transaction ... will serve the public interest. The Applicants expect that the merger will enable the combined entities to better meet the needs of enterprises, wholesale buyers, and other customers. The transaction will bring together two successful carrier organizations that have proven themselves in a highly competitive marketplace. The transaction will help create a stronger competitor by bringing together each organization's respective strengths. Operating as an integrated company will allow each of the operating companies to be more competitive and to deliver greater value and variety of services to their customers than they do individually.

The PSC issued notices of filing, comment period, and hearing on November 18, 2016.¹

The Administrative Law Judge for the PSC held a hearing on December 21, 2016. William

¹ The hearing was originally scheduled for December 28, 2016. Pursuant to an agreement of the parties, the hearing was rescheduled to December 21, 2016.

Evans, Parsons Behle & Latimer, appeared as counsel for the Applicants, joined telephonically by outside counsel Jeffrey R. Strenkowski and the following representatives of the Applicants:

- John Fletcher, Executive Vice President, Chief Human Resources Officer, and General Counsel for Windstream;
- Cesar Caballero, with Windstream; and
- Samuel R. DeSimone, Jr., Executive Vice President, General Counsel, and Secretary for Earthlink Holdings Corp.

Assistant Attorney General Justin Jetter appeared for the Division, joined by Ron Slusher, utility technical analyst.

At hearing, the joint application, including all exhibits, and the Division's written comments were entered into the record, as were the following supplemental exhibits:

Applicants' Supplemental Exhibit 1: Consolidated Applications of Windstream Holdings, Inc. and EarthLink Holdings Corp. for Transfer of Control of International and Domestic Section 214 Authority, filed with the FCC on November 17, 2016 ("FCC Application"), and Supplemental Letter, filed with the FCC on December 1, 2016.

Applicants' Supplemental Exhibit 2: Public Notice issued by the FCC on December 2, 2016, establishing a pleading cycle for consideration of the FCC Application.

Applicants' Supplemental Exhibit 3: Approvals from the Georgia Public Service Commission, the Maryland Public Service Commission, and the Public Service Commission of the District of Columbia, dated respectively December 13, 2016, December 14, 2016, and December 15, 2016, approving the transaction that is the subject of the Utah Application.

Applicants' Supplemental Exhibit 4: Letter from the Louisiana Public Service Commission notifying the Applicants that the proposed transaction is deemed approved.

Mr. Fletcher and Mr. DeSimone testified that there has been no opposition to the Applicants' petition with the FCC for approval of the proposed transaction. Applicants' witnesses

further testified that parallel dockets have been filed in other states, and that no state regulatory body or other interested person has objected to the proposed transfer of control.

Mr. Slusher testified on behalf of the Division that the transaction described in the application appears to be in the public interest.

No one appeared at the hearing to object to the application.

Pursuant to Utah Admin. Code R746-349-7(A)(3):

If no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.

There is no objection to the granting of the application. Therefore, under Utah Admin. Code R746-349-7(A)(3) and in light of the comments and testimony of record, the PSC presumes the application to be in the public interest.

ORDER

Given the foregoing, the Public Service Commission of Utah approves the joint application of EarthLink Business, LLC; EarthLink Holdings Corp.; and Windstream Holdings, Inc. to transfer indirect control of EarthLink Business, LLC to Windstream Holdings, Inc.

DATED at Salt Lake City, Utah, December 27, 2016.

/s/ Jennie T. Jonsson
Administrative Law Judge

Approved and confirmed December 27, 2016 as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#290957

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on December 27, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

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Division of Public Utilities

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