

BOARD OF PUBLIC UTILITIES

APR 27 2017

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908-252-4221

April 26, 2017

**VIA FEDERAL EXPRESS**

Irene Kim Asbury, Secretary  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

TM19040433

Re: Verified Joint Petition of Broadview Networks Holdings, Inc.,  
and Windstream Holdings, Inc., et al.  
Docket No.



Dear Secretary Asbury:

Enclosed for filing on behalf of Broadview Networks Holdings, Inc., and Broadview Networks, Inc., Broadview NP Acquisition Corp., BridgeCom International, Inc., ATX Licensing, Inc., A.R.C. Networks, Inc., Eureka Telecom, Inc., and TruCom Corporation and Windstream Holdings, Inc. please find an original and 11 copies of a Verified Petition for Board approval of transfers of control.

Please return a copy of the filed petition with the assigned docket number in the enclosed self-addressed, stamped envelope.

Very truly yours,

NORRIS, McLAUGHLIN & MARCUS, P.A.

A handwritten signature in blue ink, appearing to read 'James H. Laskey', written over a blue horizontal line.

James H. Laskey

JHL/lis  
Enclosures

cc:  
Mark Beyer  
Rocco Della Serra  
Stefanie A. Brand, Esq.

CMs  
LEGAL  
DRG  
RPA  
L. G. Hoort  
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R. Della-Serra



STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

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Verified Joint Petition of

**Broadview Networks Holdings, Inc., and**

**Broadview Networks, Inc.,  
Broadview NP Acquisition Corp.,  
BridgeCom International, Inc.,  
ATX Licensing, Inc.,  
A.R.C. Networks, Inc.,  
Eureka Telecom, Inc., and  
TruCom Corporation**

and

**Windstream Holdings, Inc.**

for Approval to Transfer Control of  
the Broadview Licensees

Docket No. TM17040433



**VERIFIED JOINT PETITION FOR APPROVAL OF TRANSFERS OF CONTROL**

Broadview Networks, Inc. (“Broadview Networks”); Broadview NP Acquisition Corp. (“Broadview NP”); BridgeCom International, Inc. (“BridgeCom”); ATX Licensing, Inc. (“ATX”); A.R.C. Networks, Inc. (“A.R.C.”); Eureka Telecom, Inc. (“Eureka”); and TruCom Corporation (“TruCom”) (collectively, the “Broadview Licensees”); Broadview Networks Holdings, Inc. (“Broadview Holdings”); and Windstream Holdings, Inc. (“Windstream”) (together with Broadview Holdings and Broadview Licensees, “Petitioners”), to the extent necessary pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 and the regulations of the Board of Public Utilities (“Board”), hereby respectfully request approval to complete a transaction whereby Windstream will acquire indirect control of the Broadview Licensees.

In support of this Petition, Petitioners provide the following information:

## **I. DESCRIPTION OF THE PETITIONERS**

### **A. Windstream**

Windstream Holdings, Inc. is a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212, 501-748-7000. It 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. Windstream functions as a holding company and does not provide telecommunications services or hold any telecommunications licenses in its own right. Through its wholly owned subsidiary, Windstream Services, a Delaware limited liability company with addresses at the same location as Windstream, it owns and operates a number of licensed telecommunications providers in all states and the District of Columbia, many of which also hold authority from the Federal Communications Commission (“FCC”) to provide domestic interstate and international telecommunications services.

In New Jersey, Windstream’s regulated subsidiaries hold the following authorizations:

1. Cavalier Telephone Mid-Atlantic, LLC is authorized to provide competitive local exchange services pursuant to Board authority in Docket No. TE01060370.
2. Intellifiber Networks, Inc. is authorized to provide competitive local exchange services pursuant to Board authority in Docket No. TE01090594 (transferred to Elantic in Docket No. TM0403019).
3. Paetec Communications, Inc. is authorized to provide competitive local and interexchange services pursuant to Board authority in Docket No. TE02060319.
4. Talk America, Inc. is authorized to provide competitive local and interexchange services pursuant to Board authority in Docket No. TE00100767.
5. US LEC of Pennsylvania, Inc. is authorized to provide competitive local and interexchange services pursuant to Board authority in Docket No. TE99030180.
6. EarthLink Business, LLC, a Delaware limited liability company, is authorized to provide competitive facilities-based local exchange and interexchange services pursuant to authority granted by the Board in Docket No. TE00010014.

7. Business Telecom, LLC, a North Carolina limited liability company, is authorized to provide: facilities-based competitive local-exchange and interexchange services pursuant to authority granted by the Board in Docket No. TE01070416.
8. CTC Communications Corp., a Massachusetts corporation, is authorized to provide competitive local exchange and interexchange services pursuant to authority granted by the Board in Docket No. TE99100808.
9. Conversent Communications of New Jersey, LLC, a New Jersey limited liability company, is authorized to provide competitive local exchange and interexchange services pursuant to authority granted by the Board in Docket No. TE00020073.
10. Lightship Telecom, LLC, a Delaware limited liability company, is authorized to provide competitive local exchange and interexchange services pursuant to authority granted by the Board in Docket No. TE00010014.

Windstream's combined operations currently have approximately 2.1 million access lines and approximately \$5.39 billion in annual revenues nationwide as of the year end FY2016.<sup>1</sup> 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>.

Collectively, Windstream and its subsidiaries have 105 employees working in New Jersey.

## **B. Broadview**

Broadview Holdings is a privately held Delaware corporation with principal offices located at 800 Westchester Avenue, Suite N501, Rye Brook, New York 10573. Broadview Holdings does not provide telecommunications services in its own right. It owns and operates a number of telecommunications providers in the District of Columbia and all states, except Alaska, many of which also hold authority from the FCC to provide domestic interstate and international telecommunications services. Broadview Holdings, together with its subsidiaries

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<sup>1</sup> Windstream's most recent quarterly financial report is available at: <http://abea-43pvyw.client.shareholder.com/investors/>.

(collectively, “Broadview”), is a network-based electronically integrated communications provider which serves small and medium-sized businesses. The Broadview Licensees hold the following New Jersey authorizations:

1. Broadview Networks, Inc., a New York corporation, is authorized to provide competitive interexchange and local exchange services pursuant to authority granted by the Board by Order issued in Docket No. TE99120912, on August 12, 2000;
2. Broadview NP Acquisition Corp., a Delaware corporation, is authorized to provide competitive interexchange and local exchange services pursuant to authority granted by the Board by Order issued in Docket No. TE02040253, on August 7, 2002;
3. BridgeCom International, Inc., a Delaware corporation, is authorized to provide competitive interexchange and local exchange services pursuant to authority granted by the Board by Order issued in Docket No. TE01010040, on February 6, 2002;
4. ATX Licensing, Inc., a Delaware corporation, is authorized to provide competitive interexchange and local exchange telecommunications services pursuant to authority granted by the Board by Order issued in Docket No. TE99070467 on March 29, 2000.
5. A.R.C. Networks, Inc., a New York corporation, is authorized to provide competitive local exchange and interexchange telecommunications services pursuant to authority granted by the Board by Order issued in Docket No. TM0030170 on July 28, 2000.
6. Eureka Telecom, Inc., a Delaware corporation, is authorized to provide competitive local exchange telecommunications services pursuant to authority granted by the Board by Order issued in Docket No. TE00100817 on June 28, 2001.
7. TruCom Corporation, a New York corporation, is authorized to provide facilities-based competitive interexchange and local exchange services pursuant to authority granted by the Board by Order issued in Docket No. TE99070467 on March 29, 2000.

Collectively, Broadview has 63 employees located in New Jersey.

## II. DESIGNATED CONTACTS

Questions, correspondence or other communications concerning this filing should be directed to:

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and

And

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## III. DESCRIPTION OF THE TRANSACTION

On April 13, 2017, Windstream and Broadview Holdings entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which, among other things, an indirect subsidiary of Windstream created for the purpose of effectuating the transaction ("MergerSub") will be merged with and into Broadview Holdings, with Broadview Holdings continuing as the

surviving corporation (the “Transaction”). As a result of the Transaction, Windstream will be the new ultimate parent company of Broadview Holdings and the Broadview Licensees. This change in ultimate control does not involve a transfer of operating authority, assets or customers, and the Transaction is expected to be virtually seamless to end user customers. The current customers of the Broadview Licensees will remain customers of those entities following the Transaction. Accordingly, customers will continue to enjoy the same rates, terms and conditions of service as they do prior to closing.<sup>2</sup> Immediately following consummation of the Transaction, the Broadview 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 Transaction will be that these certificated entities ultimately will be indirectly owned by Windstream, and subsequently may change their names to reflect the “Windstream” brand in their names.

Diagrams demonstrating the Transaction are appended hereto as **Exhibit A**.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

##### **A. The Transaction is in the Public Interest**

Board approval of the Transaction will serve the public interest. The telecommunications industry has been and continues to be subject to rapid technological advances, evolving consumer preferences and dynamic changes. The creation of Windstream in 2006 established an independent, stand-alone, wireline-centric corporation that serves the public interest by focusing squarely on enhancing local broadband services primarily in rural areas. Since its creation, Windstream has expanded its product offering to include IP-based voice and data services, MPLS networking and optical wave services to enterprise and government agencies. Combining

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<sup>2</sup> Any subsequent changes in the ordinary course of business will be made pursuant to applicable regulatory approval, tariffing, or similar processes.

Broadview with Windstream will enable the Broadview Licensees to continue to offer and expand a broad range of high quality services, including hosted cloud voice and a variety of other cloud services, to small and medium sized business customers. Windstream will help ensure and improve the continuation of the Broadview Licensees' ability to deploy and maintain innovative and advanced telecommunications offerings, benefiting New Jersey consumers and serving the public interest, convenience and necessity.

The efficiencies and economies of scale resulting from the 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. Enabling small and medium-sized carriers to achieve such efficiencies is beneficial since economically stable competitors enhance competition which serves the public interest. The Transaction also will provide each of the Petitioners access to the others' advanced network capabilities, technical and financial strengths, and complementary services, which together are expected to strengthen Petitioners' ability to provide quality competitive services in the State of New Jersey. The combined enterprise will have greater economies of scale and scope than the Broadview Holdings subsidiaries would have had operating independently.

Windstream is technically, managerially and financially well-qualified to become the new ultimate owner of the Broadview Licensees. As noted above, subsidiaries of Windstream currently provide local and/or interexchange telecommunications services throughout the United States, including New Jersey. For additional detail on the financial, technical and managerial qualifications of Windstream, please see [www.windstream.com](http://www.windstream.com).

**B. The Transaction Will be Seamless to Customers**

The Transaction generally will be transparent to customers and, at the time of the Transaction, customers will not experience any immediate changes in services, or rates, terms



and conditions of service. The Broadview Licensees' existing tariffs will not be affected by the Transaction, and will remain in effect (subject to change in the ordinary course of business). Any future changes in rates, terms and conditions of service will be made in accordance with applicable Board requirements and any future consolidation of the operations into or with other Windstream processes, such that customers would see a change in their service, would be undertaken pursuant to applicable rules and notice requirements.<sup>3</sup>

**C. The Transaction Will Enhance Competition and Poses No Competitive Risks**

This Transaction will enhance competition because it will strengthen the Broadview and Windstream certificated entities. At the same time, because the market is so competitive, there is no risk that the combined entity would be able to exercise any market power in the sense of raising prices above competitive levels or excluding other competitors from the marketplace.

**D. The Transaction Poses No Harm to Pension Obligations, and There Are No Current Plans with Respect to New Jersey Employees**

Employment is a factor for the Board to consider pursuant to N.J.S.A. 48:2-51.1 as well as the ability of the utility to fulfill pension obligations to its employees pursuant to N.J.S.A. 48:3-10. As of this filing, Petitioners have not engaged in any material integration planning, and there are no current plans with regards to New Jersey employees as of yet. Broadview does not have an employee pension plan. Employees' existing rights in any other retirement benefit plan offered by Broadview will be retained upon completion of the Transaction. In the future, Broadview's employees may be able to rollover pre-closing contributions to their existing

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<sup>3</sup> The contemplated transfer of control does not raise any slamming concerns or necessitate compliance with FCC or state procedures to notify customers prior to a carrier-to-carrier sale or transfer of subscribers as it does not involve a change in any customer's existing service provider. Customers will remain with their current telecommunications service provider and will continue to be served under its existing authorization. Accordingly, there are no changes in customers' preferred carrier, and no further filings or authorizations are required under the FCC's carrier selection rules (47 CFR §64.1120) or under similar state rules.

retirement benefits plan into another qualified benefit plan such as an Individual Retirement Rollover Account or a Windstream retirement benefits plan.

**V. CONCLUSION**

For the foregoing reasons, Petitioners submit that the public interest, convenience, and necessity would be furthered by grant of this Petition. In order to consummate the Transaction as soon as possible, Petitioners request that the Board grant all relief sought herein as expeditiously as possible thus allowing Petitioners to close the Transaction as soon as practicable and meet critical business objectives. Accordingly, the Petitioners respectfully ask the Board to consider this Joint Petition no later than the Board's Meeting scheduled for June 30, 2017.

Respectfully submitted,



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Counsel for Petitioners

Dated: April 26, 2017