

# Morgan Lewis

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February 28, 2017

## **VIA E-FILING**

Oregon Public Utility Commission  
201 High St SE, Suite 100  
Salem, Oregon 97301  
Attn: Filing Center

**Re: Docket Nos. CP-661, CP-659, CP-99, CP-856, and UM-659**

### **Notification Regarding the Transfer of Indirect Control of Authorized Telecommunications Providers**

Dear Sir or Madam:

By this letter, Business Telecom, LLC ("BT"), CTC Communications Corp. ("CTC"), DeltaCom, LLC ("DeltaCom"), EarthLink Business, LLC ("EarthLink Business") (the "EarthLink Licensees"); EarthLink Holdings Corp. ("EarthLink Parent"); and Windstream Holdings, Inc. ("Windstream Parent") (collectively, the "Parties") notify the Commission that effective February 27, 2017, Windstream Parent acquired indirect control of the EarthLink Licensees. Additionally, EarthLink Business intends to 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, CTC, and DeltaCom, but otherwise has no effect on those entities or their operations. (The Pro Forma Change and the indirect transfer of control of all EarthLink Licensees to Windstream Parent, collectively, the "Transaction.") Commission approval or prior notice was not required for the Transaction. Accordingly, this letter is submitted for informational purposes.

### **Description of the Parties**

Windstream Parent 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 Parent 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 Parent, it owns and operates a number of licensed telecommunications

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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. In Oregon, Windstream's regulated subsidiaries hold the following authorizations:

1. McLeodUSA Telecommunications Services, LLC is authorized to provide local exchange and interexchange telecommunications services and operator services pursuant to Order No. 09-230 issued in CP-719.
2. PAETEC Communications, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to Order No. 04-486 issued in CP-540.
3. Talk America, Inc. is authorized to provide interexchange telecommunications services pursuant to Order No. 01-145 issued in CP-328.
4. Windstream Communications, Inc. is authorized to provide interexchange telecommunications services and operator services pursuant to Order No. 06-040 issued in CP-1310.
5. Windstream Norlight, Inc. is authorized to provide interexchange telecommunications services pursuant to Order No. 07-473 issued in CP-1385.
6. Windstream NuVox, Inc. is authorized to provide local exchange telecommunications services pursuant to Order No. 10-487 issued in CP-1496.

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. EarthLink Parent functions as a holding company and does not provide telecommunications services or hold any telecommunications licenses in its own right. It 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. 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. EarthLink operates an extensive network including more than 29,000 route fiber miles and 90 metro fiber rings. Through its owned and leased facilities, EarthLink's data and voice IP services can reach more than 90 percent of the United States. EarthLink also provides nationwide Internet access and related value-added services to residential customers. In Oregon, the EarthLink Licensees hold the following authorizations:

1. Business Telecom, LLC, a North Carolina limited liability company, is authorized to provide interexchange services pursuant to Order No. 05-785 issued in CP-99.

2. CTC Communications Corp., a Massachusetts corporation, is authorized to provide competitive telecommunications services pursuant to Order No. 06-616 issued in CP-856.
3. DeltaCom, LLC, an Alabama limited liability company, is authorized to provide interexchange services pursuant to Order No. 10-314 issued in UM-659.
4. EarthLink Business, LLC, a Delaware limited liability company, is authorized to provide local exchange and interexchange services pursuant to Order No. 08-314 issued in CP-661.

### **Description of the Transfer of Control**

Pursuant to the Agreement and Plan of Merger, dated November 6, 2016, by and among Windstream Parent, EarthLink Parent, Europa Merger Sub, Inc. ("Merger Sub 1"), a Delaware corporation and an indirect, wholly-owned subsidiary of Windstream Services, LLC<sup>1</sup>, and Europa Merger Sub, LLC ("Merger Sub 2"), a Delaware limited liability company and an indirect, wholly-owned subsidiary of Windstream Services, LLC, on February 27, 2017, Windstream Parent became the new ultimate parent company of the EarthLink Licensees. Specifically, among other things, (i) Merger Sub 1 was 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 was 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. As part of the EarthLink Transaction, EarthLink Parent stock was exchanged for Windstream Parent stock.

This change in ultimate control did not involve a transfer of operating authority, assets or customers, and the EarthLink Transaction was virtually seamless to end user customers. The current customers of the EarthLink Licensees remained customers of those entities following the EarthLink Transaction. Accordingly, customers continue to enjoy the same rates, terms and conditions of service as they do prior to closing.<sup>2</sup> The EarthLink Licensees 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 is that these certificated entities are indirectly owned by Windstream Parent, and subsequently may change their names to reflect the "Windstream" brand in their names.

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<sup>1</sup> Windstream Services does not provide telecommunications services in its own right, but rather is a holding company within the Windstream group of companies.

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

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Additionally, and only as part of the EarthLink Transaction, EarthLink Business intends to transfer its equity interests in the other EarthLink Licensees (currently subsidiaries of EarthLink Business) to a to-be-formed subsidiary company. This change will constitute a *pro forma* transfer of control of BT, CTC, and DeltaCom.

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

\* \* \* \*

This letter has been electronically filed with the Commission. We would appreciate acknowledgement of receipt and acceptance of this letter. Should you have any questions, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeffrey Strenkowski".

Russell M. Blau  
Jeffrey Strenkowski  
Brett P. Ferenchak

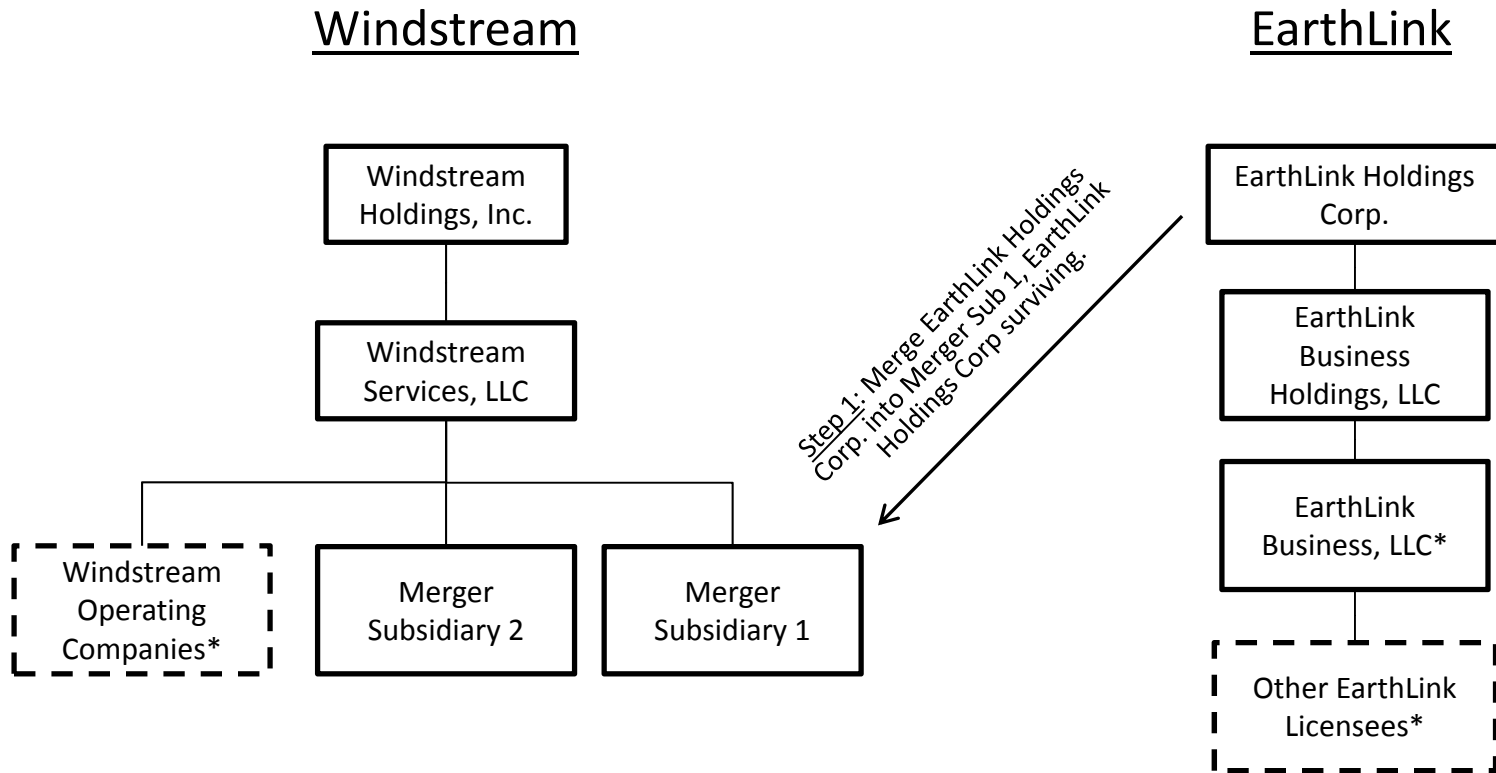
Counsel for the Parties

**EXHIBIT A**

**Diagrams of the Pre- and Post-Transaction Corporate Ownership Structures**

# Transaction Structure Charts

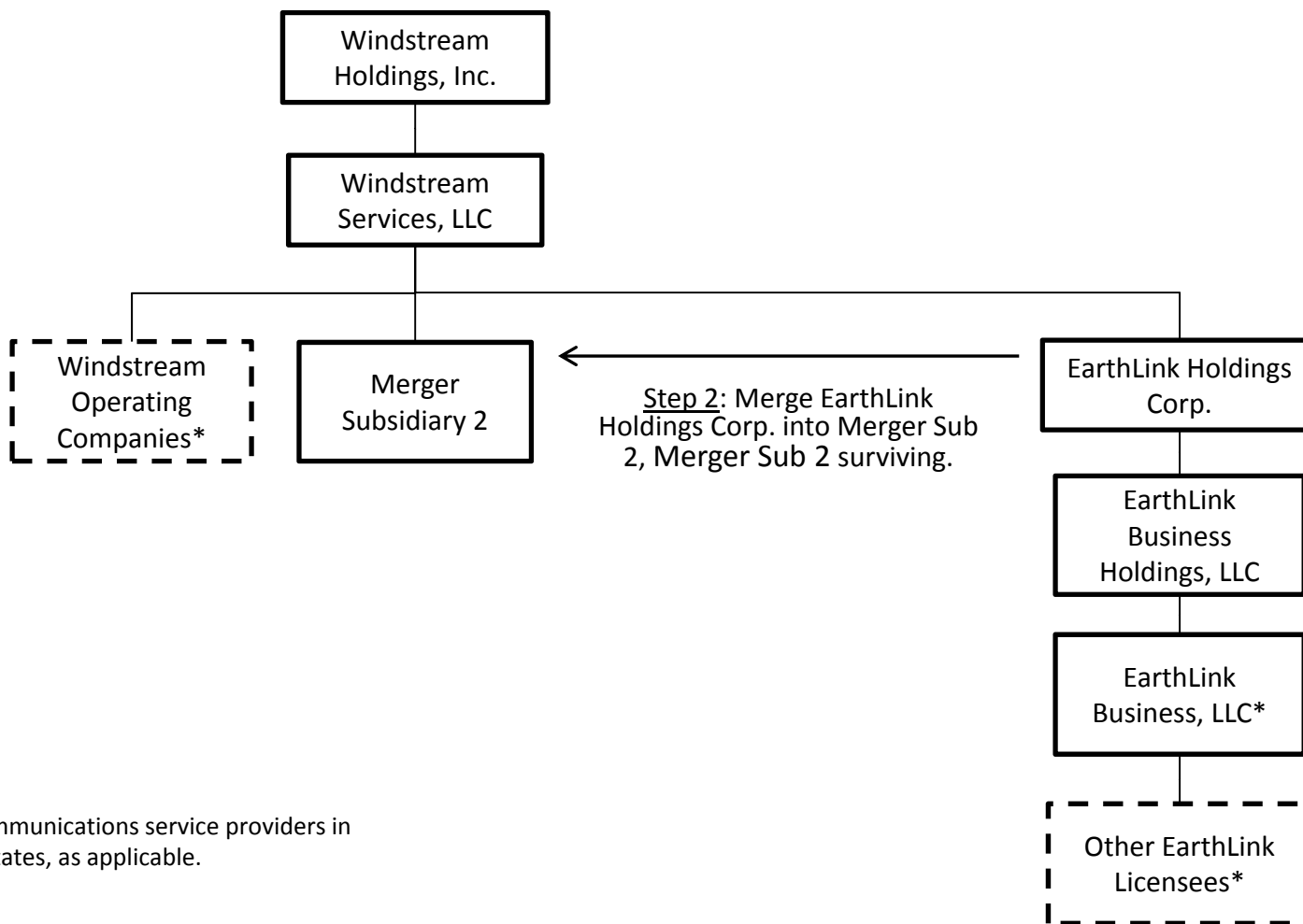
## Pre-Transaction and Step 1



\* Telecommunications service providers in various states, as applicable.

# Transaction Structure Charts

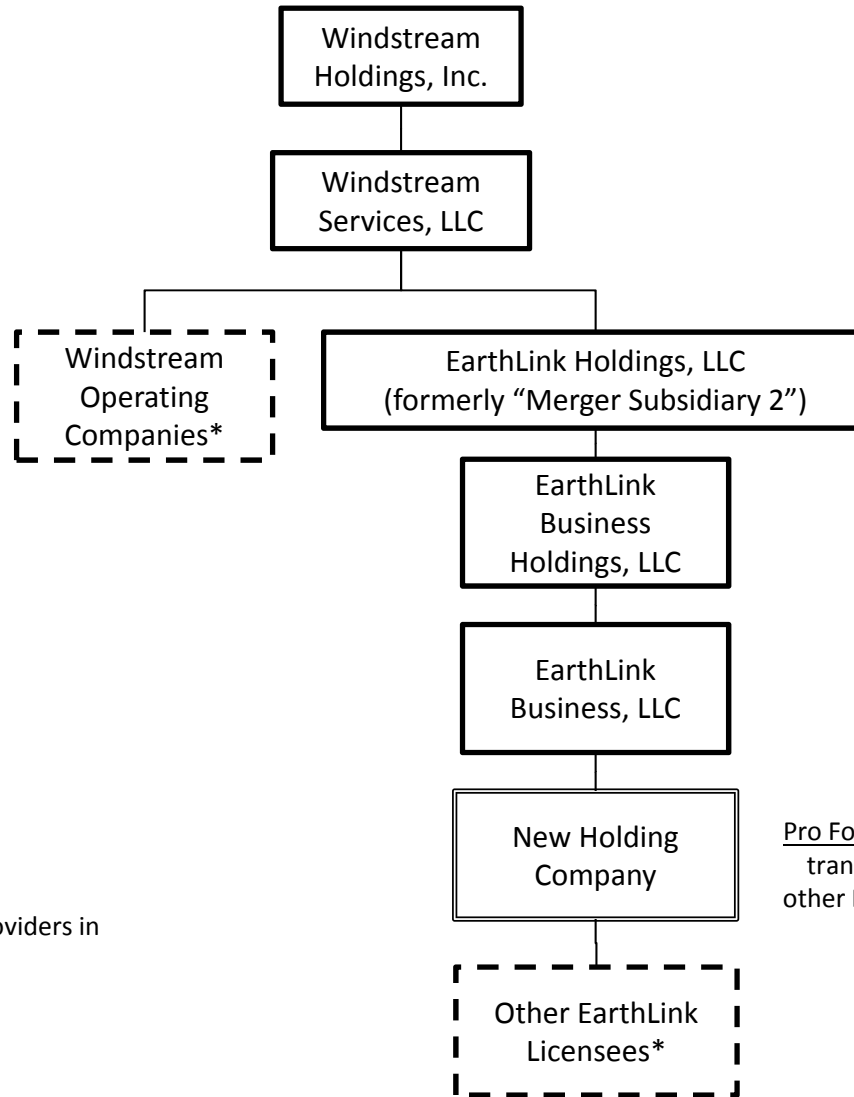
## Step 2



\* Telecommunications service providers in various states, as applicable.

# Transaction Structure Charts

## Pro Forma Change and Resulting Structure



\* Telecommunications service providers in various states, as applicable.

Pro Forma Change: EarthLink Business, LLC transfers its ownership interests in the other EarthLink Licensees to a new holding company.