

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**June 11, 2008**

**IN RE:**

**PETITION OF WINDSTREAM COMMUNICATIONS, INC. F/K/A  
ALLTEL HOLDING CORPORATE SERVICES, INC. FOR  
EXPEDITED APPROVAL OF TRANSFER OF CUSTOMER BASE**

**DOCKET NO.  
06-00185**

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**ORDER APPROVING TRANSFER OF ASSETS**

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This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on March 12, 2007 for consideration of the Petitions of Windstream Communications, Inc. ("Windstream" or "Petitioner") formerly known as Alltel Holding Corporate Services, Inc. ("AHCSI") requesting approval for a transfer of customers.

**Background**

Alltel Corporation ("Alltel") is a Delaware corporation with headquarters in Little Rock, Arkansas. Through its subsidiaries, Alltel is authorized to provide various telecommunications services including wireless, long distance, competitive local exchange, Internet and broadband communications services in 49 states, and serves approximately 2.9 million access lines in 15 states.

Alltel Communications, Inc. ("ACI"), a Delaware corporation headquartered in Little Rock, Arkansas, is a wholly-owned subsidiary of Alltel and is authorized to provide telecommunications services by Authority Order issued in Docket No. 99-00149. ACI currently

provides long distance telephone services to residential, small, medium and large business customers nationwide and has approximately 1,000 customers in Tennessee.

Alltel Holding Corp. (“AHC”) is a wholly-owned subsidiary of Alltel and was formed to facilitate a merger transaction (the “transaction”) conducted by Alltel for the purpose of separating its wireline and wireless businesses.

Alltel Holding Corporate Services, Inc. (“AHCSI”), also a Delaware corporation, was certificated to provide telecommunications services in Tennessee by Authority Order issued in Docket No. 05-00337. AHCSI is a subsidiary of AHC, which in turn is a subsidiary of Alltel.

Valor Communications, Group, Inc. (“Valor”)<sup>1</sup> is a Delaware corporation headquartered in Irving, Texas and is the holding company owner of subsidiaries that offer a number of telecommunications services, including local exchange and toll service, to approximately 530,000 access lines in Arkansas, New Mexico, Oklahoma and Texas.

Windstream Communications, Inc. (“Windstream”) is the new name of AHCSI. Windstream f/k/a AHCSI is a wholly-owned subsidiary of Windstream Corporation. Windstream Corporation is actually the same corporate entity as Valor, but with a new name as the surviving entity in the merger transaction with AHC. Subsidiaries of Windstream Corporation will include the current subsidiaries of Valor as well as Alltel’s separated wireline businesses. These subsidiaries will operate the business currently operated by subsidiaries of Valor and the wireline business currently operated by subsidiaries of Alltel.

### **The Petition**

On July 11, 2006, AHCSI notified the Authority that it had changed its name to Windstream on May 1, 2006. On July 14, 2006, Windstream filed a Petition (“*Transfer of Customer Base Petition*”) seeking approval to transfer ACI’s customers to Windstream. On July

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<sup>1</sup> Valor is not certificated to provide services in Tennessee.

17, 2006, Windstream acquired ACI's customers. On August 18, 2006, the Petitioner filed another petition ("*Customer Notification Waiver Petition*") requesting a waiver of the customer notification requirements of TRA Rules 1220-4-2-.56(d)(2), 1220-4-2-.56(d)(3), and 1220-4-2-.56(d)(4). These rules require that a pre-approved customer notification letter be sent to customers 30 days prior to a transfer to a different service provider, that the letter be sent by the current instead of the acquiring telecommunications provider, and include language stating that the acquiring service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring provider, as well as language indicating that the acquiring service provider will provide to the affected customers a 30 day written notice of any rate increases that may affect their service up to 90 days from the date of transfer of customers.

While evaluating these requests, TRA Staff discovered that control of ACI had been changed as a result of a transfer of authority resulting from a corporate reorganization of Alltel, the parent company of Windstream, and a merger with Valor Corporation.

Concurrent with its October 2, 2006, Data Response, Windstream filed a third Petition requesting *nunc pro tunc* approval of the transfer of authority resulting from the transaction described above ("*Transfer of Authority Petition*") and a fourth Petition requesting *nunc pro tunc* approval of the name change from AHCSI to Windstream ("*Name Change Petition*").

In an October 17, 2006 Data Response, the Petitioner further clarified the transaction as follows: Alltel conducted a transaction to separate its wireline business from its wireless business, then created a subsidiary called AHC, which is the parent of Windstream f/k/a AHCSI in order to carry out the separation. Ownership of AHC was transferred from Alltel to Alltel's shareholders, thereby establishing AHC along with its subsidiary, AHCSI as a stand-alone company. The transaction was completed when AHC was merged into Valor, with Valor

emerging as the surviving entity, resulting in a transfer of authority of AHC, and thus its Tennessee certificated subsidiary AHCSI to Valor. The Valor entity surviving the merger was renamed Windstream Corporation, the parent of Windstream. The FCC approved the transfer of control described above in an Order released January 25, 2006 in WC Docket No. 05-354.<sup>2</sup>

In its October 17, 2006 Data Response, the Petitioner stated that its parent company has sufficient financial qualifications to acquire control of its Tennessee operations, that it will retain experienced management and technical personnel after the merger, and that the transfer is in the public interest because it will improve operational efficiency and provide greater opportunities to improve performance and the price and quality of services available to consumers.

In its *Customer Notification Waiver Petition*, filed August 18, 2006, the Petitioner requested a waiver of TRA Rule 1220-4-2-.56(d)(2) which requires customer notification prior to a transfer of customers, and stated that Windstream provided ACI customers notice of the transfer in May, 2006 in accordance with the FCC anti-slamming rule. The Company stated that the notice was provided 30 days in advance of the transfer as required by both FCC and Authority rules, that customers received the notice on both ACI and Windstream letterheads, and that the customer notification letter contained language indicating that the customer would not be charged any fees associated with the transfer, in compliance with TRA Rule 1220-4-2-.56(d)(3).<sup>3</sup> Further, Windstream stated that it had not received any customer complaints since it started providing services to ACI's customers on July 17, 2006, and that providing another notice of the

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<sup>2</sup> The FCC was notified of the consummation of the transaction on August 16, 2006.

<sup>3</sup> Although the customer notification letter does not explicitly state that the acquiring provider agrees to pay any fees charged to the customer associated with the transfer, it does convey that customers will not incur charges as a result of the transfer, and should contact the acquiring provider if such a charge should occur. This language is consistent with that previously approved by the Authority in Docket 06-00060. In that Docket, the Authority found that language which adequately conveys that a customer will not incur charges as a result of a transfer is consistent with TRA Rule 1220-4-2-.56(2)(d)(3) and unanimously approved the customer notification letter.

transfer would lead to customer confusion and, therefore, hinder the intent of the Authority's rule.

The Company's compliance deficiencies include failure to seek pre-approval from the Authority, the fact that the customer notification letter was sent by the acquiring provider instead of the current provider, and failure to include language fulfilling the TRA Rule 1220-4-2-.56(d)(4) requirement that customers will receive thirty days written notice of rate increases for up to ninety days from the date of the transfer. However, ninety days have elapsed since the transfer of customers to Windstream, which essentially renders the requirement in TRA Rule 1220-4-2-.56(d)(4) moot.

On October 25, 2006, the TRA was notified that Windstream's bond was being cancelled. Windstream filed an acceptable corporate surety bond on January 3, 2007 and has currently met all of the requirements for changing its name pursuant to TRA Rule 1220-4-1-.08, including registering the name change with the Tennessee Secretary of State and recording its new name in the public utility's surety bond. Further, the company did not serve customers in Tennessee at the time of name change; the name change from AHCSI to Windstream took place in May of 2006, and Windstream began serving customers in Tennessee on July 17, 2006, therefore no customer notification was required.

#### **March 12, 2007 Authority Conference**

As regards the transfer of customers from ACI to Windstream, Tenn. Code Ann. § 65-4-112(a) (2004) states:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) provides:

- (d) In the case of a transfer of a customer base between two or more telecommunications service providers, the Authority, upon petition by the acquiring telecommunications service provider, may deem that sufficient notice has been given and approval received from the affected customers when the following criteria are met:
1. The acquiring telecommunications service provider shall provide the Authority a copy of the self-certification letter it shall file with the Federal Communications Commission ("FCC"), as required in CC Docket No. 00-257, certifying that the customer transfer is in compliance with all FCC regulations governing such transactions.
  2. A notification letter, pre-approved by the Authority, shall be mailed by the current provider of telecommunications service to its customers describing the customer transfer and explaining that unless the customer selects another telecommunications service provider, the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter. The notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer. For good cause shown, the Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider. Good cause includes, but is not limited to, evidence that the current provider is no longer providing service in Tennessee.
  3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
  4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

Regarding the transfer of authority resulting from the merger of AHC and Valor, a non-certificated entity, Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA

approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on March 12, 2007, the panel voted unanimously to approve the transfer of customer base and transfer of control, *nunc pro tunc*, and a majority of the panel voted to approve the request for a waiver of TRA Rule 1220-4-2-.56(d)<sup>4</sup> as well as the request for a name change from AHCSI to Windstream.<sup>5</sup>

**IT IS THEREFORE ORDERED THAT:**

1. The transfer of Customer base of Alltel Communications, Inc. to Windstream Communications Inc. as described in the *Transfer of Customer Base Petition*, filed July 14, 2006 is approved *nunc pro tunc*, pursuant to Tenn. Code Ann. § 65-4-112 (2004).

2. The request for a waiver of the requirements of TRA Rule 1220-4-2-.56(2)(d)(2) as described in the *Customer Notification Waiver Petition*, filed August 18, 2006, is granted.

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<sup>4</sup> Director Jones found that the letter sent to the consumers by Windstream failed to comply with Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d)(2) & Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d)(4) but noted that the customers did in fact receive 30 days notice. See separate opinion filed by Director Jones explaining his opinion regarding the application of Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d)(4).

<sup>5</sup> Director Jones abstained from voting. It is his opinion that Tenn. Comp. R. & Regs. 1220-4-1-.08 does not require Authority approval of a name change and that requiring such approval is in direct opposition to the Authority's decision in Rulemaking Docket No. 04-00072.

3. The customer notification letter already sent to Alltel Communications, Inc. customers is approved, pursuant to Tenn. Comp. R. & Regs.1220-4-2-.56(2)(d).

4. The transfer of authority of Alltel Holding Corporate Services, Inc. now Windstream Corporation resulting from the merger of Valor Communications Group, Inc. and Alltel Holding Corporation, as described in the *Transfer of Authority Petition* filed on October 2, 2006 is approved *nunc pro tunc*, pursuant to Tenn. Code Ann. § 65-4-113 (2004).

5. The name change from Alltel Holding Corporate Services, Inc. to Windstream Communications, Inc. as described in the *Name Change Petition* filed on October 2, 2006 is approved *nunc pro tunc*.

  
Sara Kyle, Chairman

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Pat Miller, Director <sup>6</sup>

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Ron Jones, Director <sup>7</sup>

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<sup>6</sup> Director Miller voted in agreement with the other Directors but resigned his position as Director before the issuance of this order.

<sup>7</sup> Director Jones filed a separate opinion.