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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Telecom Division  
International Bureau  
JAN 31 2001

In the Matter of

Transfer of Control of  
NewSouth Communications Corp.  
and UniversalCom, Inc. to  
NSHI Ventures LLC

Streamlined ITC-T/G-20010131-00057  
NEWSOUTH COMMUNICATIONS CORP.

FCC/MELLON

APPLICATION TO TRANSFER CONTROL OF PARENT OF  
COMPANY HOLDING INTERNATIONAL SECTION 214 AUTHORIZATION

Pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the "Act"), and Section 63.18(e)(3) of the Commission's rules, 47 C.F.R. § 63.18(e)(3), NewSouth Holdings, Inc. ("Holdings" or "Transferor") hereby seeks Commission approval for it to transfer control of itself and its wholly-owned subsidiaries, NewSouth Communications Corp. ("NewSouth") and UniversalCom, Inc. ("UniversalCom") to an existing shareholder of Holdings, NSHI Ventures LLC ("Ventures" or "Transferee" and, with the Transferor, "Applicants"). The transfer of control will be effected through the issuance of additional preferred voting stock to Transferee and increasing the number of votes attributed to the preferred stock currently held by Transferee so that Transferee will hold more than 50% of the voting power in Holdings. This Application satisfies the criteria for streamlined processing and such processing is respectfully requested.

New South was granted a global Section 214 authorization on April 29, 1998, File No. ITC-214-19980310-001778. UniversalCom was granted a global Section 214 authorization on

February 15, 1995, File No. ITC-95-079.<sup>1</sup> As explained in the narrative description of the proposed transaction attached hereto as Exhibit 1, the transfer of control here proposed does not result in any change to the entities providing international service, NewSouth and UniversalCom, and their rates and services will not be modified as a result of the consummation of this transaction.

#### INFORMATION REQUIRED BY SECTION 63.18

In accordance with Section 63.18(e)(3) of the Commission's rules, the Applicants submit the following information in support of this Application:

- (a) The name, address and telephone number of the Transferor is:
- NewSouth Holdings, Inc.<sup>2</sup>  
Two North Main Street  
Greenville, SC 29601  
Telephone: (864) 672-5045 / Fax: (864) 672-5040

The name, address and telephone number of the Transferee is:

NSHI Ventures LLC  
c/o Kohlberg Kravis Roberts & Co. L.P.  
9 West 57<sup>th</sup> Street, New York, N.Y. 10019.  
Telephone: (212) 750-8300 / Fax: (212) 750-0003

- (b) NewSouth Holdings, Inc. is a privately-held Delaware corporation.  
NSHI Ventures LLC is a Delaware Limited Liability Company.

- (c) Correspondence regarding this Application should be addressed to:

James J. Freeman	Gregory J. Vogt
Kelley, Drye & Warren	Wiley, Rein & Fielding
1200 19 <sup>th</sup> Street, N.W.	1776 K Street, N.W.
Suite 500	Washington, D.C. 20006
Washington, D.C. 20036	Telephone: (202) 719-3240
Telephone: (202) 955-9778	Fax: (202) 719-7049

<sup>1</sup> The 214 was granted under the name of Data and Electronic Services, Inc., d/b/a DES Long Distance. The FCC approved the transfer of control of UniversalCom, including the 214 authorization on April 26, 2000, File No. ITC-T/C-2000403-00196

<sup>2</sup> This is also the address of NewSouth Communications Corp. and its affiliates.

Fax: (202) 955-9792  
Email: jfreeman@kelleydrye.com

Email: gvogt@wrf.com

Counsel for NewSouth Holdings,  
Inc. and Subsidiaries  
Counsel for NSHI Ventures LLC

Copies of any correspondence relating to the Transferor, New South or UniversalCom

also should be sent to the following designated representative:

Kevin Hendricks  
NewSouth Communications  
Two North Main Street  
Greenville, SC 29601  
Telephone: (864) 672-5045 / Fax: (864) 672-5040  
Email: khendricks@newsouth.com

Copies of any correspondence relating to the Transferee also should be sent to the

following designated representative of Transferee:

Alexander Navab  
NSHI Ventures LLC  
c/o Kohlberg Kravis Roberts & Co. L.P.  
9 West 57<sup>th</sup> Street, New York, N.Y. 10019.  
Telephone: (212) 750-8300 / Fax: (212) 750-0003

(d) Transferor and its affiliated companies hold only the 214 authorizations identified above.

Transferee does not hold any 214 authorizations other than through its interest in NewSouth.<sup>3</sup>

(e – g) Not applicable.

(h) The manager and approximately 98% owner of NSHI Ventures LLC is KKR 1996 Fund L.P., a Delaware limited partnership (“Fund L.P.”), located at the same address as Ventures. Each of two state retirement funds holds approximately a 13% limited partnership interest in Fund L.P. No other partner, limited or general, holds a 10% or greater interest in Fund L.P. The sole general partner of this partnership is KKR Associates 1996 L.P., a Delaware limited partnership

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<sup>3</sup> Entities affiliated with KKR, identified below, hold a controlling interest in Birch Telecom, Inc., whose subsidiary, Birch Telecom of Missouri, Inc., holds a 214 authorization for global or limited global resale service. (File No. ITC-214-19990701-00441, granted August 11, 1999.)

(“Associates L.P.”). The sole general partner of Associates L.P. is KKR 1996 GP LLC, a Delaware limited liability company, whose managers are Henry R. Kravis and George R. Roberts. All of these entities are affiliated with Kohlberg Kravis Roberts & Co. L.P. (“KKR”), a private investment firm that makes equity investments through various entities such as those described above for itself and its investors. For additional information about KKR, please see its website at [www.kkr.com](http://www.kkr.com). An organizational chart of Ventures is included as Attachment 3 to Exhibit 1 hereto.

- (i) By its signature to this Application, Ventures certifies that it is not a foreign carrier itself and is not affiliated with a foreign carrier.
- (j) By its signature to this Application, Ventures certifies that none of the foreign affiliations identified in Section 63.18(j) of the FCC rules are applicable to it.
- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) By its signature to this Application, Ventures certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- (o) By their signatures to this Application, Transferor and Transferee certify that no party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. § 853a.
- (p) The Applicants request streamlined processing for this Application. Streamlined processing is appropriate under Section 63.12 because the Applicants are not affiliated with any foreign carriers or with a dominant U.S. carrier.


**CONCLUSION**

For the foregoing reasons, the Applicants request that the Commission authorize the transfer of control of NewSouth Holdings, Inc. and of its subsidiaries holding Section 214 authority, NewSouth Communications Corp. and UniversalCom to NSHI Ventures LLC.

Respectfully submitted,

Transferor:  
NewSouth Holdings, Inc.  
and  
NewSouth Communications Corp.  
UniversalCom, Inc.

Transferee:  
NSHI Ventures LLC

By:   
*James J. Freeman*

By: \_\_\_\_\_

James J. Freeman  
Kelley Drye & Warren LLP  
1200-19<sup>th</sup> Street NW, Suite 500  
Washington, D.C. 20036

Gregory J. Vogt  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Counsel for Transferor

Counsel for Transferee

Dated: January 30, 2001

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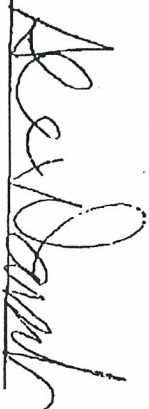
**CONCLUSION**

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Respectfully submitted,

Transferor:  
NewSouth Holdings, Inc.  
and  
NewSouth Communications Corp.  
UniversalCom, Inc.  
By: \_\_\_\_\_

Transferee:  
NSHI Ventures LLC

By: 

James J. Freeman  
Kelley Drye & Warren LLP  
1200-19<sup>th</sup> Street NW, Suite 500  
Washington, D.C. 20036

Gregory I. Vogt  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Counsel for Transferor

Counsel for Transferee

Dated: January 30, 2001

## DESCRIPTION OF THE TRANSACTION

As noted in the foregoing application, NewSouth Communications Corp. (“NewSouth”) and UniversalCom, Inc. (“UniversalCom”) are wholly owned subsidiaries of NewSouth Holdings, Inc. (“Holdings”) with principal offices at Two North Main Street, Greenville, SC 29601. NewSouth and UniversalCom are non-dominant communications services providers offering or preparing to offer local exchange and intrastate long distance services and enhanced services to end user customers. NewSouth and UniversalCom operate, depending on the market and service offered, as facilities-based or non-facilities-based carriers. In addition to its authorization to provide international service, NewSouth provides domestic long distance service and is authorized to provide intrastate toll in approximately 30 states and is authorized to provide local exchange services in 9 states. UniversalCom currently is authorized to provide services in Alabama, Florida, Louisiana and Mississippi.

In this transaction, NSHI Ventures LLC (“Ventures”), an existing shareholder of Holdings, will be issued additional shares and will have the terms of the preferred shares it currently holds amended to increase the number of votes they have so that, for the first time, Ventures will hold majority voting control of Holdings and its subsidiaries. Currently Ventures holds shares of Series D Convertible Participating Preferred Stock (“Series D Preferred Stock”) equal to approximately 23% of the voting power in Holdings.<sup>1</sup> Ventures also has the right to nominate 2 members of Holdings’ Board of Directors. Ventures already has invested approximately \$125 million in Holdings and its subsidiaries through the purchase of the Series D Preferred Stock.

In the instant transaction, Ventures and certain other existing shareholders will make a further investment of approximately \$35 million for 35 million shares of Series E Convertible Participating Preferred Stock (“Series E Preferred Stock”).<sup>2</sup> These shares initially will be convertible into 35 million shares of common stock and holders of the Series E Preferred Stock will have the same number of votes as the number of common shares into which the preferred is convertible (35 million votes). It is currently expected that Ventures will purchase 22,485,000 shares of the Series E Preferred Stock. Ventures and these other existing shareholders also will receive five year warrants to purchase up to 50 million shares of Holdings’ common stock at an exercise price of \$1 per share. These warrants will be issued in connection with the purchase by Ventures and the other shareholders of \$50 million in redeemable senior subordinated notes (the “Senior Notes”) to be issued by NewSouth and NewSouth Technologies, LLC<sup>3</sup> and guaranteed by Holdings. It is currently expected that Ventures will purchase \$29,671,000 aggregate principal amount of the Senior Notes and will receive warrants to purchase 29,671,000 shares of common stock.<sup>4</sup>

In addition to issuing new preferred shares and warrants to Ventures and other shareholders, Holdings will amend the terms of its outstanding Series A, B and D preferred stock. The price for conversion of the Series D Preferred Stock into common shares will be changed from one share of common for each \$14.25 of preferred to one share of common for each \$1 of preferred. Because the voting rights of the various series of preferred stock are based

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<sup>1</sup> Ventures also holds an option to acquire 4,702,161 additional Series D Preferred Stock at \$17.10 per share, each share of which is convertible into one share of common stock.

<sup>2</sup> None of the existing shareholders of Holdings are selling any of their shares in connection with this transaction.

<sup>3</sup> NewSouth Technologies, LLC is wholly owned by Holdings.



on the number of shares of common stock that the preferred can be converted into, reducing the conversion price will increase the numbers of votes held by the existing preferred shareholders, among whom is Ventures.

With the enhancement of the voting rights in the existing Series D Preferred Stock held by Ventures and the acquisition of the Series E Preferred Stock, Ventures will hold approximately 61.5% of the total voting power in Holdings. Attachment 1 hereto identifies the changes in Ventures voting power and the current and proposed shareholdings in Holdings. In addition to acquiring majority voting control, from and after the closing of its acquisition of additional stock, Ventures will have the right to name five of the nine members of the board of directors of Holdings.<sup>5</sup>

#### **Information Regarding NSHI Ventures LLC**

Ventures is a limited liability company formed specifically to acquire an interest in Holdings. The manager and approximately 98% owner of NSHI Ventures LLC is KKR 1996 Fund L.P., a Delaware limited partnership (“Fund L.P.”), located at the same address as Ventures. The sole general partner of this partnership is KKR Associates 1996 L.P., a Delaware limited partnership (“Associates L.P.”) that holds less than a 10% ownership interest in Fund L.P. The sole general partner of Associates L.P. is KKR 1996 GP LLC, a Delaware limited liability company, whose managers are Henry R. Kravis and George R. Roberts. All of these entities are affiliated with Kohlberg Kravis Roberts & Co. L.P., a private investment firm that makes equity investments through various entities for itself and its investors. For additional

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<sup>4</sup> The final allocation of shares, notes and warrants may differ somewhat, but any changes will not be material.

<sup>5</sup> Attachment 2 is an organizational chart of Holdings and its subsidiaries before and after the proposed transaction.

information about KKR, please see its website at [www.kkr.com](http://www.kkr.com). Attachment 3 is an organizational chart for Ventures.

The persons primarily involved in the management and operation of Ventures are the following:

James H. Greene, Jr. - Chief Executive Officer  
Alexander Navab - President  
Adam Clammer - Vice President, Secretary and Assistant Treasurer  
Thomas Uger - Vice President, Treasurer and Assistant Secretary  
William J. Janetschek - Assistant Secretary

#### Public Interest Considerations

The proposed transaction will serve the public interest.

As is the case with almost all competitive telecommunications carriers, it has become increasingly difficult for Holdings and its subsidiaries to raise the funds necessary to build out networks and bring them to a self-sustaining level. Holdings has been able to arrange with certain of its existing shareholders, including Ventures, for additional funding to allow it to continue to develop its networks and business. Provision of this funding will involve the issuance of additional stock and other changes that will result in a transfer of control of Holdings and its subsidiaries to Ventures thus requiring this application. Although there will be a change in control, the accompanying infusion of new funds will stabilize the company's finances.

The change in control of Holdings will be transparent to customers as NewSouth and UniversalCom will continue to operate as a wholly-owned subsidiary of Holdings. Their rates and services will not be modified as a result of the consummation of this transaction. It is not expected that there will be any immediate change in the management of Holdings or its subsidiaries as a result of the change in control. Of course, because the change in control of Holdings will occur through the issuance of new stock rather than by sale of the stock of existing stockholders, all of the existing owners will continue to be owners of Holdings after the change

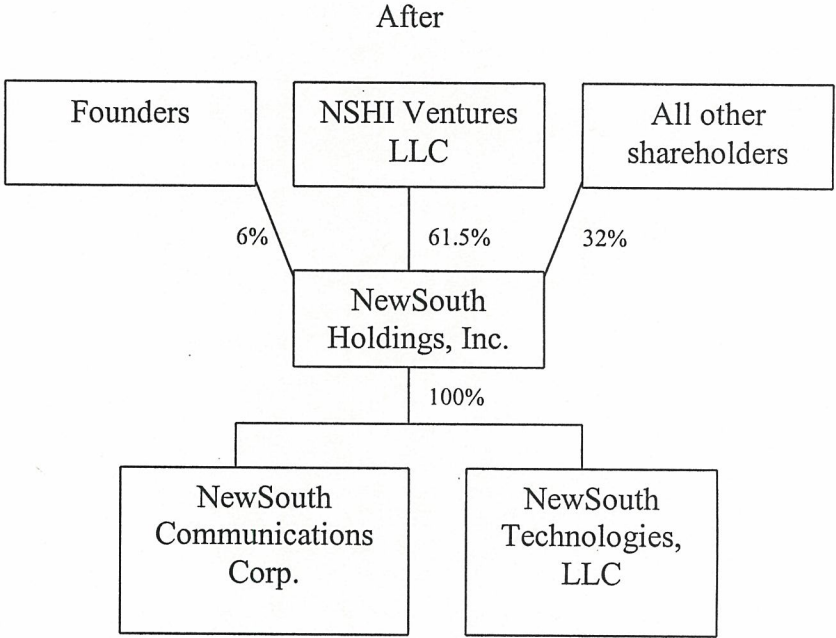
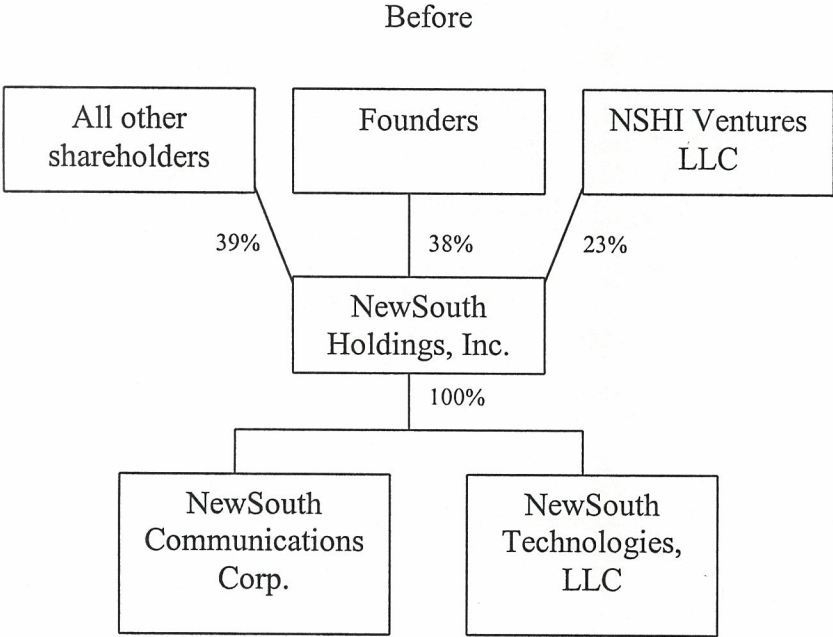
in control occurs. In addition to protecting the existing customers of NewSouth and UniversalCom, the new investment resulting from the transfer of control will contribute to the two companies' financial stability thus enhancing their ability to compete in this highly competitive telecommunications industry. For all of these reasons, the proposed transaction will serve the public interest and should be approved.

NEWSOUTH HOLDINGS, INC.

SHAREHOLDERS	TYPE OF SHARES (conversion price, current and post- transaction)	CURRENT VOTES (Based on conversion into Common)	POST- TRANSACTION VOTES
Ventures			
	A	0	0
	B	0	0
	D (\$14.25/\$1.00)	9,091,475	129,553,524
	E (na/\$1.00)	n/a	22,485,000d
	CM	0	0
All Other Shareholders			
	A (\$2.23/\$1.00)	6,716,413	14,999,989
	B (\$1.091/\$1.00)	1,833,332	1,999,554
	D (\$14.25/\$1.00)	3,271,836	46,623,651
	E (na/\$1.00)	n/a	12,515,000
	CM (Founders*)	15,225,000	15,225,000
	CM (Others)	3,831,835	3,831,835

\* Shares held by the founders of the company.

### New South Organizational Chart



NSHI VENTURES LLC ORGANIZATIONAL CHART

