

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
PAETEC HOLDING CORPORATION,	)	File Nos. ITC-T/C- _____
Transferor	)	
	)	WC Docket No. _____
and	)	
	)	
WINDSTREAM CORPORATION,	)	
Transferee	)	
	)	
Applications for Transfer of Control of	)	
Domestic and International Authorized	)	
Carriers Under Section 214 of the	)	
Communications Act, as Amended	)	

To: International Bureau  
Wireline Competition Bureau

**APPLICATIONS FOR CONSENT TO TRANSFER OF CONTROL**

Pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 214, and Sections 63.03, 63.04 and 63.24(e) of the rules, 47 C.F.R. §§ 63.03, 63.04 and 63.24(e), PAETEC Holding Corporation (“PAETEC” or “Transferor”) and Windstream Corporation (“Windstream” or “Transferee”) (together “Applicants”) seek Commission consent to the transfer of ultimate control of PAETEC’s authorized subsidiaries described herein from PAETEC to Windstream. Both PAETEC and Windstream have local exchange and non-dominant interexchange carrier subsidiaries authorized by the Commission to provide international and domestic interstate telecommunications services. A domestic Section 214 supplement, containing the information required by 47 C.F.R. § 63.04, is attached as **Exhibit A**. Applicants do not seek streamlined processing of the domestic section 214 application but

request expedited review so that Windstream’s and PAETEC’s customers, and the public at large, can begin to realize the public interest benefits of this transaction later this year.<sup>1</sup>

**I. THE APPLICANTS**

**A. WINDSTREAM CORPORATION (FRN 0014400220)**

Windstream Corporation, a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212, (501) 748-7000, is a publicly traded (NASDAQ: WIN) S&P 500 diversified communications and technology solutions provider with operations throughout the United States and the District of Columbia and about \$4 billion in annual revenues.<sup>2</sup> Windstream’s subsidiaries provide IP-based voice and data services, MPLS networking, data center and managed hosting services, and communication systems to businesses and government agencies. The company also delivers broadband, digital phone and high-definition TV services to residential customers primarily located in rural areas and operates a local and long-haul fiber network spanning approximately 60,000 route miles. Windstream’s operations currently include approximately 3.3 million access lines and 1.34 million high-speed Internet customers. A map of Windstream’s current service area is attached as **Exhibit C**.

**B. PAETEC HOLDING CORPORATION (FRN 0016331985)**

PAETEC Holding Corporation is a publicly traded (NASDAQ: PAET) Delaware corporation headquartered at One PAETEC Plaza, 600 Willowbrook Office Park, Fairport, New

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<sup>1</sup> Applicants are requesting that all state regulatory reviews be completed by early November. A Hart-Scott-Rodino pre-merger notification was submitted to the Department of Justice and Federal Trade Commission on August 11, 2011, the waiting period for which Applicants expect will be completed by September 12, 2011, unless extended by a Request for Additional Information (“Second Request”).

<sup>2</sup> Windstream’s ILEC subsidiaries offer local exchange and intrastate, interstate and international long distance telecommunications services in Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas. Its CLEC subsidiaries offer such services in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Wisconsin.

York 14450, (585) 340-2822.<sup>3</sup> PAETEC’s FCC-regulated subsidiaries are competitive local exchange carriers (“CLECs”) and do not include any incumbent local exchange carriers (“ILECs”). PAETEC, through these subsidiaries, is authorized to provide and provides local exchange and intrastate, interstate and international long distance telecommunications services primarily to business customers in 48 states and the District of Columbia.<sup>4</sup> The company operates seven data centers in the U.S. and owns approximately 36,700 route miles of fiber in portions of 39 states and the District of Columbia. A map of PAETEC’s current service area is attached as **Exhibit D**.

PAETEC’s FCC-regulated subsidiaries include PAETEC Corp.;<sup>5</sup> PaeTec Communications, Inc.; PaeTec Communications of Virginia, Inc.; McLeodUSA Telecommunications Services L.L.C.; US LEC LLC;<sup>6</sup> US LEC Communications, LLC; US LEC of Alabama, LLC; US LEC of Florida, LLC; US LEC of Georgia, LLC; US LEC of Maryland, LLC; US LEC of North Carolina, LLC; US LEC of Pennsylvania, LLC; US LEC of South Carolina, LLC; US LEC of Tennessee, LLC; US LEC of Virginia, LLC; Cavalier Telephone, LLC; Cavalier Telephone Mid-Atlantic, LLC; Talk America, Inc.; Talk America of Virginia, Inc.; LDMI Telecommunications, Inc.; Network Telephone Corp.; The Other Phone Company,

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<sup>3</sup> As described in more detail below, the following entities hold a ten percent (10%) or greater direct or indirect interest in PAETEC Holding Corp: Columbia Wanger Asset Management LLC (“CWAM”) (10.1%); Columbia Management Investment Advisor, LLC (“CMIA”) (10.1%), indirectly as 100% owner of CWAM; and Ameriprise Financial, Inc. (10.1%), indirectly as 100% owner of CMIA.

<sup>4</sup> This includes all states except Alaska and Hawaii, although one of PAETEC’s subsidiaries is authorized to provide intrastate long distance telecommunications services in Hawaii.

<sup>5</sup> PAETEC Corp. does not provide telecommunications services but holds an International Section 214 Authorization under which two of its subsidiaries, PaeTec Communications, Inc. and PaeTec Communications of Virginia, Inc., operate.

<sup>6</sup> US LEC LLC does not provide telecommunications services but holds an International Section 214 Authorization under which four of its subsidiaries, US LEC Communications, LLC, US LEC of Alabama, LLC, US LEC of Maryland, LLC, and US LEC of Pennsylvania, LLC, provide service.

Inc.; and Intellifiber Networks, Inc. (collectively, the “PAETEC Licensees”). Except for PAETEC Corp. and US LEC LLC, which only hold International Section 214 Authorizations under which certain of their subsidiaries operate, and Talk America of Virginia, Inc., which only holds Domestic 214 Authorization, each PAETEC Licensee holds Domestic Section 214 Authorization and holds (or operates under a parent company’s) International Section 214 Authorization.

Intellifiber Networks, Inc., formerly known as Elantic Telecom Inc. (“Intellifiber”), holds a Basic International Telecommunications Services (“BITS”) license, granted by the Canadian Radio-television and Telecommunications Commission (“CRTC”), to provide international service in Canada, and is registered with the CRTC as a non-facilities-based reseller of telecommunications services.

Diagrams showing the current corporate structure of PAETEC and the post-Transaction corporate structure of the combined operations are attached as **Exhibit B**.

## **II. DESCRIPTION OF THE TRANSACTION**

Pursuant to an Agreement and Plan of Merger (the “Agreement”) dated July 31, 2011, by and among Windstream, Peach Merger Sub, Inc. (“MergerCo”) (a direct, wholly-owned subsidiary of Windstream created for the purpose of the merger), and PAETEC, Windstream will acquire PAETEC (the “Transaction”). Under the terms of the Agreement, PAETEC will merge with MergerCo, and upon consummation of the merger, PAETEC will continue as the surviving corporation in the merger as a wholly owned subsidiary of Windstream. In accordance with Delaware law, all of the rights, privileges, powers, immunities, purposes and franchises of MergerCo and PAETEC will vest in the surviving corporation and all of the debts, liabilities, obligations and duties of MergerCo and PAETEC will become the debts, liabilities, obligations

and duties of the surviving corporation. In the end, Windstream will be the new ultimate parent company of PAETEC and its subsidiaries.

### **III. PUBLIC INTEREST STATEMENT**

Pursuant to Sections 310(d) and 214 of the Act, control of the subject federal licensees and authorized carriers may not be transferred unless the Commission finds “that the public interest, convenience and necessity will be served thereby.”<sup>7</sup> The first step in the public interest analysis is an evaluation of the Transferee’s qualifications. Windstream is legally, technically and financially qualified to acquire control of the authorized carriers at issue in the instant applications.

#### **A. Public Interest Benefits of the Transaction**

Commission approval of the Transaction will serve the public interest. Created in 2006, Windstream initially focused primarily on the provision of local, residential wireline services, mostly in rural areas.<sup>8</sup> However, through a series of transactions that have enabled the company to expand service offerings to enterprise and government customers in second- and third-tier markets, Windstream has kept pace with rapid technological advances, evolving consumer preferences and dynamic changes in the industry.

The Transaction will enable Windstream to further augment its CLEC and long-haul operations to better serve multi-location enterprise customers. In particular, the acquisition of PAETEC will expand the network coverage of Windstream’s subsidiaries to 42 states, a substantial increase over their current footprint. The acquisition will also expand Windstream’s fiber network from 60,000 route miles to approximately 100,000 route miles across the country.

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<sup>7</sup> 47 U.S.C. §§ 214, 310(d).

<sup>8</sup> Windstream was formed on July 17, 2006 through the spin-off of ALLTEL Corporation’s landline business and its merger with Valor Communications Group.

In addition, the acquisition will enable Windstream’s subsidiaries to expand their data center offerings across the United States. This Transaction will thus advance Windstream’s continued ability to deploy and maintain innovative telecommunications offerings, benefiting consumers and serving the public interest, convenience and necessity. In particular, the Transaction strengthens the ability of Windstream’s CLEC subsidiaries to compete in markets outside of Windstream’s ILEC territory.

The efficiencies and economies of scale resulting from the Transaction will improve the combined entities’ economic position and, thus, their ability to continue to attract financing to invest in and offer new and innovative services as competitive providers. Enabling carriers to achieve such efficiencies is publicly beneficial as competition serves the public interest, and better positions these companies to face new competitive challenges. The Transaction will also provide each Applicant with access to the other’s advanced network capabilities, technical and financial strengths, and complementary services, which together are expected to strengthen Applicants’ combined ability to provide quality service and compete with local exchange carriers, incumbent cable companies, and other communications providers. The Transaction will enable the customers of PAETEC to benefit from innovative products offered by Windstream and *vice versa*, and the combined enterprise will be able to achieve greater economies of scale and scope than either Windstream or PAETEC would if it continues to operate independently.

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

But for a potential brand name change, the Transaction will largely be seamless to PAETEC customers, all of whom will continue to be served by their current PAETEC carrier.<sup>9</sup>

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<sup>9</sup> Because there is no change in the serving carrier of any of the customers of PAETEC’s operating subsidiaries as a result of the Transaction, no carrier change notice to customers and the Commission is required pursuant to Section

The Transaction itself is not expected to adversely affect the rates or other terms of service that customers currently experience.<sup>10</sup> The Transaction is not expected to adversely affect – and if anything, will improve – the already high level and quality of service that PAETEC’s customers currently receive.

**C. The Transaction Poses No Material Competitive Risk to the Domestic Interstate Market and Approval Is Consistent with Commission Precedent**

The Transaction is not expected to harm competition in any relevant market. In fact, by enhancing Windstream’s CLEC operations and transport network, the Transaction will strengthen and promote competition and will yield tangible public interest benefits. Given the increasingly competitive nature of the interstate telecommunications market, the Applicants seek to complete the Transaction later this year in order to ensure that customers and Applicants can rapidly obtain the benefits that will be generated by the combined companies.

**1. Applicants Have a *De Minimis* Share of the Domestic Interstate Interexchange Market**

PAETEC and Windstream presently have a *de minimis* share of the domestic interstate interexchange market and are regulated as nondominant in that market.<sup>11</sup> The Commission has already determined that combinations between nondominant carriers resulting in less than 10 percent market share of the interstate interexchange market are “extremely unlikely [to] result in

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64.1120(e). See 47 C.F.R. § 64.1120(e). To the extent that there may be name changes for any of the carriers in the future, Applicants will provide the appropriate notifications of such changes to affected customers.

<sup>10</sup> In view of the current rapidly changing communications market, any provider must constantly review its pricing strategies and product mix to respond appropriately to marketplace demands. The rates, terms, and conditions will not change as a result of the Transaction and will be the same immediately after the Transaction as immediately before the Transaction. Prices and product mix necessarily will change over time in the normal course of business and pursuant to applicable regulatory and legal processes.

<sup>11</sup> See 47 C.F.R. § 63.03; *Regulatory Treatment of LEC Provision Of Interexchange Services Originating In The LEC's Local Exchange Area and Policy And Rules Concerning The Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756, 15761-64 ¶¶ 5-9 (1997) (establishing criteria for independent ILECs to be eligible for nondominant regulatory treatment).

a public interest harm” and “unlikely to raise public interest concerns.”<sup>12</sup> The Applicants’ combined market share will fall well below that threshold.<sup>13</sup>

2. Applicants Have Only *De Minimis* ILEC-CLEC Overlaps and No ILEC-ILEC Adjacencies

With respect to ILEC markets, the Commission has routinely found that where mergers between non-RBOCs result in *de minimis* overlaps and no, or only minimal, adjacencies between ILEC markets where the adjacent exchanges are very small, “no harm to competition is likely to occur.”<sup>14</sup> As neither PAETEC nor its subsidiaries are ILECs in any of their markets, the

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<sup>12</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5533 ¶ 30 (2002) (“Domestic Streamlining Order”) (citing to U.S. Dept. of Justice and Federal Trade Commission Horizontal Merger Guidelines, § 1.51 n.18).

<sup>13</sup> Commission data indicates that in 2009 U.S. telecommunications carriers reported over \$98 billion in gross interstate revenues. Telecommunications Industry Revenues: 2009, FCC Wireline Competition Bureau, at Table 7 (May 2011). In 2009, the combined interstate revenues of Windstream and PAETEC only totaled approximately \$ 1.436 billion (approximately 1.5 percent of the total gross interstate revenues for all U.S. carriers). Even assuming a substantial decline in total industry interstate revenues since 2009, the combined operations would still readily fall below 10 percent of the total. With the combined companies’ minimal share of total industry interstate revenues, it is safe to presume that the combined companies have less than 10 percent of the interstate interexchange market. Similarly, for 2009, the Commission reported \$13.34 billion in total gross international revenues for U.S. Carriers. Telecommunications Industry Revenues: 2009, FCC Wireline Competition Bureau, at Table 7 (May 2011). In 2009, Windstream and PAETEC had a combined \$ 38.1 million in international revenues (0.3 percent of the total). Even assuming a substantial decline in total U.S. Carrier international revenues since 2009, the combined companies still only hold a minimal share of the international market.

<sup>14</sup> See *Joint Applications of Global Crossing Ltd. and Citizens Communications Co.*, 16 FCC Rcd 8507, 8510-11 ¶¶ 7-9 (CCB, CSB, WTB 2001) (“*Global Crossing-Citizens*”) (granting transfer of control involving ILECs with adjacent exchanges where merger would provide service efficiencies); *Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd.*, 16 FCC Rcd 15293, 15296-98 ¶ 8-9 (CCB, WTB 2001) (“*TDS-Chorus*”) (granting transfer of control involving an ILEC and in-region provider of local exchange and exchange access services where transaction overall resulted in pro-competitive benefits). The Commission approved Windstream’s acquisitions of CT Communications, D&E Communications, Lexcom, Iowa Telecom, NuVox, and Q-Comm in light of these precedents. See Public Notice, 25 FCC Rcd 16099 (WCB 2010) (“*Windstream-Q-Comm*”) (citing *TDS-Chorus*); Public Notice, 25 FCC Rcd 1268 (WCB 2010) (“*Windstream-Nuvox*”) (citing *TDS-Chorus*); Public Notice, 25 FCC Rcd 5456 (WCB 2010) (“*Windstream-Iowa*”) (citing *Global Crossing-Citizens*); Public Notice, 24 FCC Rcd 13672 (WCB 2009) (“*Windstream-Lexcom*”) (citing *Global Crossing-Citizens* and *TDS-Chorus*); Public Notice, 24 FCC Rcd 10148 (WCB 2009) (“*Windstream-D&E*”) (citing *Global Crossing-Citizens*); Public Notice, 22 FCC Rcd 15145 (WCB 2007) (“*Windstream-CTC*”) (citing *Global Crossing-Citizens* and *TDS-Chorus*). See also *Applications Filed for the Transfer of Control of Embarq Corporation to Century Tel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd, 8741, 8749-51 ¶¶ 16-19 (2009) (“*Embarq-CenturyTel*”) (citing *TDS-Chorus* in “find[ing] that the proposed transaction is unlikely to harm competition or potential competition in those local markets where the Applicants currently compete”); *Madison River Communications Corp.*, Public Notice, 22 FCC Rcd 625 (2007) (stating that transferee provided competitive access service in transferor’s ILEC territory in one state) (“*Madison River*”), granted, Public Notice, 22 FCC Rcd 3584 (WCB 2007) (“*Madison River Grant*”).



Transaction involves no ILEC adjacencies.<sup>15</sup> Moreover, the Transaction results in only *de minimis* ILEC-CLEC overlaps in six discrete markets where Applicants would continue to face strong competition as a combined company.<sup>16</sup> These overlaps, which affect less than 0.3 percent of PAETEC’s lines ([[REDACTED]]) out of ([[REDACTED]]),<sup>17</sup> are:

**Syracuse, NY Market (4 rate centers):**

- The Cazenovia, NY rate center, in which PAETEC provides ([[REDACTED]]) business lines and Windstream’s ILEC subsidiary maintains ([[REDACTED]]) business lines and ([[REDACTED]]) total lines.
- The Fulton, NY rate center, in which PAETEC provides ([[REDACTED]]) business lines and Windstream’s ILEC subsidiary maintains ([[REDACTED]]) business lines and ([[REDACTED]]) total lines.
- The Marcellus, NY rate center, in which PAETEC provides ([[REDACTED]]) business line and Windstream’s ILEC subsidiary maintains ([[REDACTED]]) business lines and ([[REDACTED]]) total lines.
- The Munnsville, NY rate center, in which PAETEC provides ([[REDACTED]]) business lines and Windstream’s ILEC subsidiary maintains ([[REDACTED]]) business lines and ([[REDACTED]]) total lines.

**Buffalo, NY Market (1 rate center):**

- The Jamestown, NY rate center, in which PAETEC provides ([[REDACTED]]) business lines and Windstream maintains ([[REDACTED]]) business lines and ([[REDACTED]]) total lines.

**Charlotte, NC Market (5 rate centers):**

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<sup>15</sup> PAETEC is a CLEC in markets adjacent to certain Windstream ILEC markets in a number of geographic areas. As the Commission explained in its *Domestic Streamlining Order*, public interest concerns under the Commission’s streamlining framework are raised in markets where there are *ILEC-ILEC* adjacencies. These concerns are not present where, as here, PAETEC is not an ILEC and its adjacent markets are “geographic areas served by a dominant local exchange carrier” not a party to the transaction. *See Domestic Streamlining Order*, 17 FCC Rcd at 5533-34 ¶¶ 31-32.

<sup>16</sup> There is one additional ILEC-CLEC overlap market, Jacksonville, FL, where PAETEC offers service but has no customers currently.

<sup>17</sup> Applicants use “[[ . . . ]]” to identify confidential and proprietary information provided pursuant to the Applicants’ Request for Confidential Treatment filed contemporaneously with this application.

- The Concord, NC rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.
- The Harrisburg, NC rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.
- The Kannapolis, NC rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.
- The Matthews, NC rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.
- The Mooresville, NC rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.

**Atlanta, GA Market (3 rate centers):**

- The Dalton, GA rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.
- The Jasper, GA rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.
- The Monroe, GA rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.

**Louisville, KY Market (1 rate center):**

- The Elizabethtown, KY rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.

**Winchester, KY Market (2 rate centers):**

- The Lexington, KY rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.

- The Versailles, KY rate center, in which PAETEC provides [[REDACTED]] business lines and Windstream’s ILEC subsidiary maintains [[REDACTED]] business lines and [[REDACTED]] total lines.

The existing wireline competitors in each of the above rate centers are identified in **Exhibit E** attached hereto.

The Commission has uniformly approved similar non-RBOC transactions involving a limited number of overlapping and/or adjacent exchanges affecting a limited number of access lines.<sup>18</sup> This Transaction clearly meets this standard.<sup>19</sup> Among Windstream’s more than 1,000 ILEC exchanges, there are only a handful of *de minimis* ILEC-CLEC overlaps resulting from this Transaction, and there are no ILEC-ILEC adjacencies.<sup>20</sup> Importantly, the combined company will face significant competition in the enterprise market.<sup>21</sup>

**D. International Section 214 Public Interest Considerations**

Approval of the Transaction (i) will promote and preserve competition in the international telecommunications marketplace and (ii) will ensure that Windstream has the necessary authority to continue to offer seamless international services to existing PAETEC customers. The Transaction poses no risk of anticompetitive impact on the U.S. international telecommunications marketplace. Applicants together hold only a tiny share of the international

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<sup>18</sup> See, e.g., *TDS-Chorus*, 16 FCC Rcd at 15297-99 ¶¶ 9-10; *Windstream- Nuvox*, 25 FCC Rcd at 1268; *Madison River*, 22 FCC Rcd at 625 and *Madison River Grant*, 22 FCC Rcd at 3584.

<sup>19</sup> See *Global Crossing-Citizens*, 16 FCC Rcd at 8507 ¶ 7.

<sup>20</sup> In contrast, *Global Crossing-Citizens* involved ILEC-ILEC adjacencies in four states, and also involved 71 exchanges ranging from a couple of hundred to nearly 300,000 access lines. See *Global Crossing-Citizens*, 16 FCC Rcd at 8510 ¶ 7; *Global Crossing Ltd. And Citizens Communications Co. Ex Parte Presentation*, CCB Pol. No. 00-1, at 5-6 and Attachment C. Windstream’s acquisition of CT Communications entailed many adjacencies as well as a similar number of ILEC-CLEC overlaps (eight total) and the Bureau found that the Commission’s rationale from *Global Crossing-Citizens* and *TDS-Chorus* supported approval of that transaction. See *Windstream-CTC*, 22 FCC Rcd at 15145. See also *Windstream-D&E*, 24 FCC Rcd at 10148; *Windstream-Lexcom*, 24 FCC Rcd at 13672; *Windstream-NuVox*, 25 FCC Rcd at 1268.

<sup>21</sup> See *Embarq-CenturyTel*, 24 FCC Rcd at 8741 ¶ 19 (stating that “given the enhanced revenue opportunities in serving enterprise customers, . . . competitive LECs are more likely to target such customers when entering an area”).

telecommunications market, and therefore the Applicants would have no ability to adversely affect competition.<sup>22</sup>

In addition, the Commission’s principal concern for “the exercise of foreign market power in the U.S. market” is that such market power “could harm U.S. consumers through increases in prices, decreases in quality, or reductions in alternatives in end user markets.”<sup>23</sup> As the Commission explained further, “generally, this risk occurs when a U.S. carrier is affiliated with a foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S. market.”<sup>24</sup> As discussed herein, Windstream does not currently have and will not acquire through this Transaction any affiliations with foreign carriers with market power.<sup>25</sup> Thus, consumers will not be adversely affected by virtue of the Transaction.

#### **IV. SECTION 63.24 INFORMATION**

In accordance with Section 63.24(e) of the Commission’s rules, 47 C.F.R. § 63.24(e), the Applicants submit the following information in support of the instant application. Information is provided responsive to the provisions of Section 63.18 of the rules, paragraphs (a) through (p), as applicable.

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<sup>22</sup> See *supra* note 13 (describing the Commission’s international revenue data).

<sup>23</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23951-54 ¶ 144-46 (1997).

<sup>24</sup> See *id.* at 23991 ¶ 221.

<sup>25</sup> As described above, Intellifiber, a PAETEC subsidiary, holds a BITS license, granted by the CRTC, to provide international service in Canada, and is registered with the CRTC as a non-facilities-based reseller of telecommunications services.

(a) **Name, address, and telephone number**

Transferor:

PAETEC Holding Corporation  
One PAETEC Plaza  
600 Willowbrook Office Park  
Fairport, NY 14450  
(585) 340-2822 (Tel)  
(585) 340-2563 (Fax)

Authorized Carriers (international and/or domestic), with FRN Numbers:

PAETEC Corp.	FRN: 0015455868
PaeTec Communications, Inc.	FRN: 0011017795
PaeTec Communications of Virginia, Inc.	FRN: 0016991374
McLeod USA Telecommunications Services L.L.C.	FRN: 0003716073
US LEC LLC	FRN: 0003721396
US LEC Communications, LLC	FRN: 0008775157
US LEC of Alabama, LLC	FRN: 0004987806
US LEC of Florida, LLC	FRN: 0004987814
US LEC of Georgia, LLC	FRN: 0004987848
US LEC of Maryland, LLC	FRN: 0004987798
US LEC of North Carolina, LLC	FRN: 0004987707
US LEC of Pennsylvania, LLC	FRN: 0004987715
US LEC of South Carolina, LLC	FRN: 0004987780
US LEC of Tennessee, LLC	FRN: 0004987723
US LEC of Virginia, LLC	FRN: 0004987764
Cavalier Telephone, LLC	FRN: 0003757275
Cavalier Telephone Mid-Atlantic, LLC	FRN: 0015799133
Talk America, Inc.	FRN: 0004319430
Talk America of Virginia, Inc.	FRN: 0015669492
LDMI Telecommunications, Inc.	FRN: 0004371043
Network Telephone Corp.	FRN: 0004071262
The Other Phone Company, Inc.	FRN: 0004346706
Intellifiber Networks, Inc.	FRN: 0013102439

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Transferee:

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**(b) Citizenship**

Transferor:

PAETEC Holding Corporation is a Delaware corporation.

Authorized Carriers (international and/or domestic):

- PAETEC Corp. and PaeTec Communications, Inc. are Delaware corporations.
- PaeTec Communications of Virginia, Inc., Talk America of Virginia, Inc., and Intellifiber Networks, Inc. are Virginia corporations.
- McLeodUSA Telecommunications Services L.L.C. is an Iowa limited liability company.
- US LEC Communications, LLC, US LEC of Georgia, LLC, US LEC of South Carolina, LLC, US LEC of Tennessee, LLC, US LEC of Virginia, LLC, and Cavalier Telephone Mid-Atlantic, LLC are Delaware limited liability companies.
- US LEC LLC, US LEC of Alabama, LLC, US LEC of Florida, LLC, US LEC of Maryland, LLC, US LEC of North Carolina, LLC, and US LEC of Pennsylvania, LLC are North Carolina limited liability companies.
- Cavalier Telephone, LLC is a Virginia limited liability company.
- Talk America, Inc. is a Pennsylvania corporation.
- LDMI Telecommunications, Inc. is a Michigan corporation.
- Network Telephone Corp. and The Other Phone Company, Inc., are Florida corporations.

Transferee:

Windstream is a Delaware corporation.

(c) **Contact Information (Answer to IBFS Main Form Question 10)**

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mwalker@wbklaw.com

**(d) International Section 214 Authorizations (Answer to IBFS Main Form Question 10)**

Authorized Carriers:

<b>Carrier</b>	<b>International Section 214 Authorization</b>
<p>PAETEC Corp. The following subsidiaries of PAETEC Corp. operate under its International Section 214 Authorization:</p> <ul style="list-style-type: none"> <li>• PAETEC Communications, Inc.</li> <li>• PAETEC Communications of Virginia, Inc.</li> </ul>	<p>Global Facilities-Based/Global Resale Services, FCC File No. ITC-214-19980925-00658</p>
<p>McLeodUSA Telecommunications Services, L.L.C.</p>	<p>Global Resale Services, FCC File No. ITC-214-19930827-00153 (Old FCC File No. ITC-93-311)</p>
<p>US LEC of North Carolina LLC</p>	<p>Global Resale Services, FCC File No. ITC-214-19970220-00101</p>
<p>US LEC of Georgia LLC US LEC of Tennessee LLC US LEC of Virginia, LLC US LEC of Florida, LLC US LEC of South Carolina, LLC</p>	<p>Global Resale Services, FCC File No. ITC-214-19970929-00589</p>
<p>US LEC LLC The following subsidiaries of US LEC LLC operate under its International Section 214 Authorization:</p> <ul style="list-style-type: none"> <li>• US LEC Communications LLC</li> <li>• US LEC of Alabama, LLC</li> <li>• US LEC of Maryland, LLC</li> <li>• US LEC of Pennsylvania, LLC</li> </ul>	<p>Global or Limited Global Facilities-Based and Resale Services, FCC File No. ITC-214-19990303-00104</p>
<p>Talk America, Inc.</p>	<p>Resell Service of Other Common Carriers to Provide Switched Service from the United States to International Points, FCC File No. ITC-214-19960119-00025 (Old File No. ITC-96-053)</p>
<p>LDMI Telecommunications, Inc.</p>	<p>Resell Service of Common Carriers to International Points, FCC File No. ITC-214-19940517-00169 (Old File No. ITC-94-330)</p>
<p>Network Telephone Corp.</p>	<p>Global or Limited Global Resold International Services, FCC File No. ITC-214-19981228-00911</p>
<p>The Other Phone Company, Inc.</p>	<p>Global or Limited Global Resold International Services, FCC File No. ITC-214-19980501-00289 (Old File No. ITC-98-336)</p>



<b>Carrier</b>	<b>International Section 214 Authorization</b>
Intellifiber Networks, Inc.	Global and Limited Global Facilities-Based and Resold Services, FCC File No. ITC-214-20020730-00389

Transferor:

PAETEC holds no international Section 214 authorizations in its own right. PAETEC’s subsidiaries hold or operate under the international Section 214 authorizations listed above.

Transferee:

Windstream holds no international Section 214 authorizations in its own right.<sup>26</sup>

**(h) Ten Percent or Greater Interest Holders/Interlocking Directorates (Answer to IBFS Main Form Questions 11 and 12)<sup>27</sup>**

To its knowledge Windstream is, and will remain post-closing, a publicly traded company with no 10 percent or greater interest holders.

Windstream currently has no interlocking directorates with a foreign carrier. Except for an interlocking directorate with Intellifiber (*see p. 4 supra*), Windstream will not have any such interlocking directorates after consummation of the Transaction.

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<sup>26</sup> Windstream’s authorized subsidiaries provide international telecommunications services pursuant to the following international Section 214 authorizations: File Nos. ITC-214-2006-0816-00433; ITC-214-20000719-00451; ITC-214-19981110-00835; ITC-214-200I0802-00418; ITC-214-20060501-00261; ITC-214-1993040S-00054; ITC-214-19970707-00382; ITC-214-19930302-00003; ITC-214-20000627-00408; ITC-214-19961219-00634; ITC-214-20080709-00316; ITC-214-20010501-00266; ITC-214-20010823-00464; ITC-214-20050906-00360; ITC-214-19960725-00339; ITC-214-20010501-00265; ITC-214-19990323-00165; ITC-214-19960826-00406; ITC-214-19960826-00407; and ITC-214-19940224-00080.

<sup>27</sup> Although the Commission’s rules for combined domestic and international applications require this information only for the assignee/transferee, *see* 47 C.F.R. §§ 63.04(b), 63.18(h), 63.24(e)(2), Applicants are providing ownership information for both parties.

The PAETEC Licensees are each indirectly wholly owned by PAETEC. *See* Exhibit B, hereto. The following entities currently hold a ten percent (10%) or greater direct or indirect interest in PAETEC Holding Corp.:

Name: Columbia Wanger Asset Management, LLC (“CWAM”)  
Address: 227 West Monroe Street, Suite 3000  
Chicago, IL 60606  
Citizenship: U.S.  
Principal Business: Investments  
% Interest: 10.1% (indirectly in PAETEC)<sup>28</sup>

Name: Columbia Management Investment Advisor, LLC  
 (“CMIA”)  
Address: 100 Federal Street  
Boston, MA 02110  
Citizenship: U.S.  
Principal Business: Investment  
% Interest: 10.1% (indirectly in PAETEC as sole owner of CWAM)<sup>29</sup>

Name: Ameriprise Financial, Inc. (“Ameriprise”)  
Address: 1099 Ameriprise Financial Center  
Minneapolis, MN 55474  
Citizenship: U.S.  
Principal Business: Financial Services  
% Interest: 10.1% (indirectly in PAETEC as the 100% direct owner of  
CMIA)<sup>30</sup>

Ameriprise is a publicly traded corporation (NYSE: AMP). To Applicant’s knowledge, no person or entity directly or indirectly owns or controls a ten percent (10%) or more interest in Ameriprise.

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<sup>28</sup> CWAM does not own any equity in PAETEC. Rather, CWAM is an investment management company for its clients, various pensions and funds (the “CWAM Clients”), that directly own stock in PAETEC. No individual client, however, holds ten percent (10%) or more of the stock of PAETEC. In its capacity as an investment management company, CWAM assigns a portfolio manager or managers to each CWAM Clients and the portfolio manager(s) makes the investment decisions for the CWAM Client(s) that the portfolio manager is responsible for. Robert Mohn, a U.S. citizen, is the portfolio manager or co-manager for every CWAM Client that holds PAETEC stock and, in that capacity, may be considered to have control of 10.1% of the stock of PAETEC. Mr. Mohn’s business address is the same as CWAM’s. No other portfolio manager manages CWAM Clients that collectively hold ten percent (10%) or more of the stock of PAETEC.

<sup>29</sup> CMIA is the sole member of CWAM.

<sup>30</sup> Ameriprise is the sole member of CMIA.

Since CWAM does not itself own or control any of the equity of PAETEC, PAETEC does not believe that CWAM, CMIA or Ameriprise is considered to own or control ten percent (10%) or more of PAETEC and do not need to be reported under the FCC's ownership attribution guidelines but is reporting these entities out of an abundance of caution.

PAETEC Holding Corp. is a publicly held corporation. Except as stated above, to PAETEC's knowledge, no other person or entity directly or indirectly owns or controls a ten percent (10%) or more interest in PAETEC.

**(i) Foreign Carrier Affiliation Certification (Answer to IBFS Main Form Question 14)**

Windstream certifies that following consummation of the transaction, (i) it will not be a foreign carrier within the meaning of 63.09(d) of the Commission's Rules, 47 C.F.R. §63.09(d); and (ii) it will become affiliated, within the meaning of the Commission's Rules, with Intellifiber, a foreign carrier in Canada. *See p. 4 supra.*

**(j) Foreign Carrier and Destination Countries (Answer to IBFS Main Form Questions 14-17)**

Windstream certifies that through the acquisition of control of the PAETEC Licensees, it does not seek to provide international telecommunications services to any country where (i) Windstream is a foreign carrier; (ii) Windstream controls a foreign carrier, except in Canada, where Windstream will control Intellifiber upon completion of the Transaction; (iii) any entity that owns more than 25 percent of Windstream or controls Windstream, controls a foreign carrier in that country; or (iv) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate more than 25 percent of Windstream and are parties to, or the beneficiaries of, a contractual relationship affecting the provision or marketing of international basic telecommunications services in the United States.

**(k) WTO Membership of Destination Countries (Answer to IBFS Main Form Questions 14-17)**

Canada is a member of the World Trade Organization.

**(l)-(m) Nondominant Regulatory Classification (Answer to IBFS Main Form Questions 14-17)**

Windstream qualifies for a presumption of non-dominant treatment on the US-Canada route post-closing pursuant to Section 63.10(a)(3) of the Commission's Rules because its future foreign carrier affiliate in Canada, Intellifiber, lacks a 50 percent market share in the international transport and local access markets on the foreign end of the route and thus lacks sufficient market power on the foreign end to adversely affect competition in the U.S. market. As noted previously, Intellifiber holds a BITS license in Canada to provide international service and is registered as a non-facilities-based reseller of telecommunications services with the CRTC.

**(n) Special Concessions Certification (Answer to IBFS Main Form Question 21)**

Windstream certifies that it has not agreed to accept special concessions directly or indirectly from any foreign country 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) Federal Benefits/Anti-Drug Abuse Act of 1988 Certification (Answer to IBFS Main Form Question 25)**

Applicants certify pursuant to Sections 1.2001 through 1.2003 of the rules, 47 C.F.R. § 1.2001-1.2003, that no party to the application is subject to a denial of Federal Benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

**(p) Eligibility for Streamlined Processing (Answer to IBFS Main Form Question 20)**

Applicants respectfully submit that this Application is eligible for streamlined processing with respect to the international Section 214 authorizations held by the PAETEC Licensees

pursuant to Section 63.12(a)-(b) of the Commission's Rules, 47 C.F.R. §63.12(a)-(b). Post-closing, Windstream will be affiliated with a foreign carrier in Canada, but as demonstrated in item (m) above, Windstream qualifies for a presumption of non-dominance under Section 63.10(a)(3) on this route. On all other routes, Windstream will not be affiliated with any foreign carrier.

**V. TRANSFER OF CONTROL OF DOMESTIC SECTION 214 AUTHORITY**

Pursuant to Section 63.04(b) of the rules, 47 C.F.R. § 63.04(b), information responsive to Section 63.04(a)(6)-(a)(12) of the rules is provided in **Exhibit A**.

**VI. CONCLUSION**

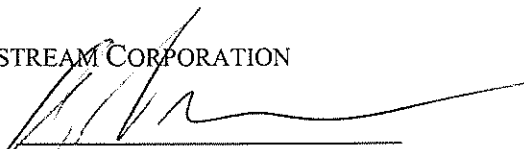
For the foregoing reasons, Applicants request expedited Commission consent to the transfer of control of the identified PAETEC subsidiaries to Windstream in connection with the Transaction described herein.

**REDACTED – FOR PUBLIC INSPECTION**

Respectfully submitted,

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August 19, 2011

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Respectfully submitted,

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**EXHIBIT A**

**Transfer of Control of Domestic Section 214 Authority  
Information Responsive to Section 63.04(a)(6)-(a)(12) of the Rules**

**1. Description of Transaction (§ 63.04(a)(6))**

The Transaction is described in Section II.

**2. Description of Geographic Service Area and Services in Each Area (§ 63.04(a)(7))**

Applicants' wireline domestic interstate and international services are described in detail in Sections I and III. PAETEC and Windstream subsidiaries both presently offer domestic interstate and international telecommunications services in their service territories, and Windstream subsidiaries of the combined companies will continue to offer such services after consummation of the merger.

**3. Streamlined Processing (§ 63.04(a)(8))**

Applicants do not seek streamlined processing of the domestic interstate section 214 application.

**4. Other Related Applications (§ 63.04(a)(9))**

Not applicable.

**5. Statement of Imminent Business Failure (§ 63.04(a)(10))**

Not applicable.

**6. Separately Filed Waiver Requests (§ 63.04(a)(11))**

Not applicable.

**7. Public Interest Statement (§ 63.04(a)(12))**

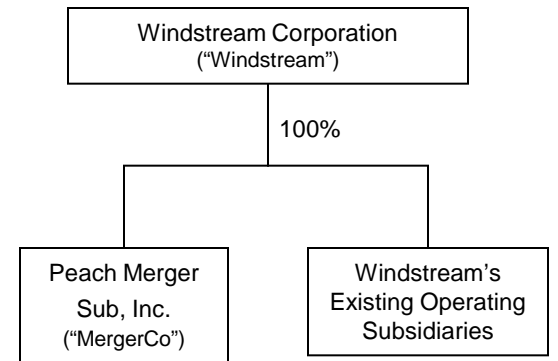
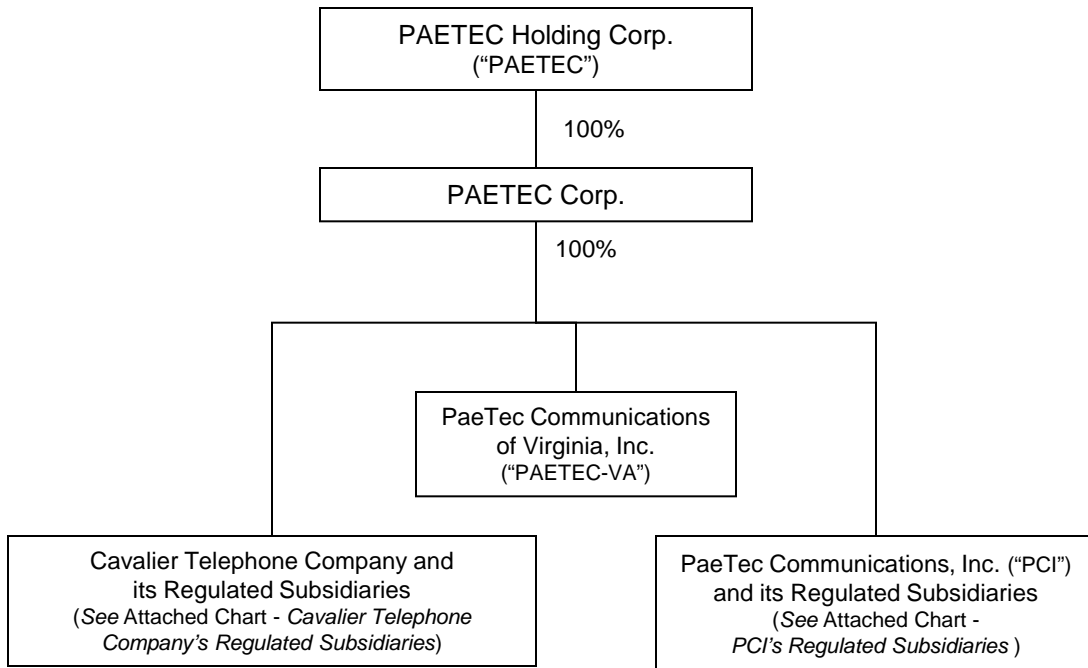
See Section III.



**EXHIBIT B**

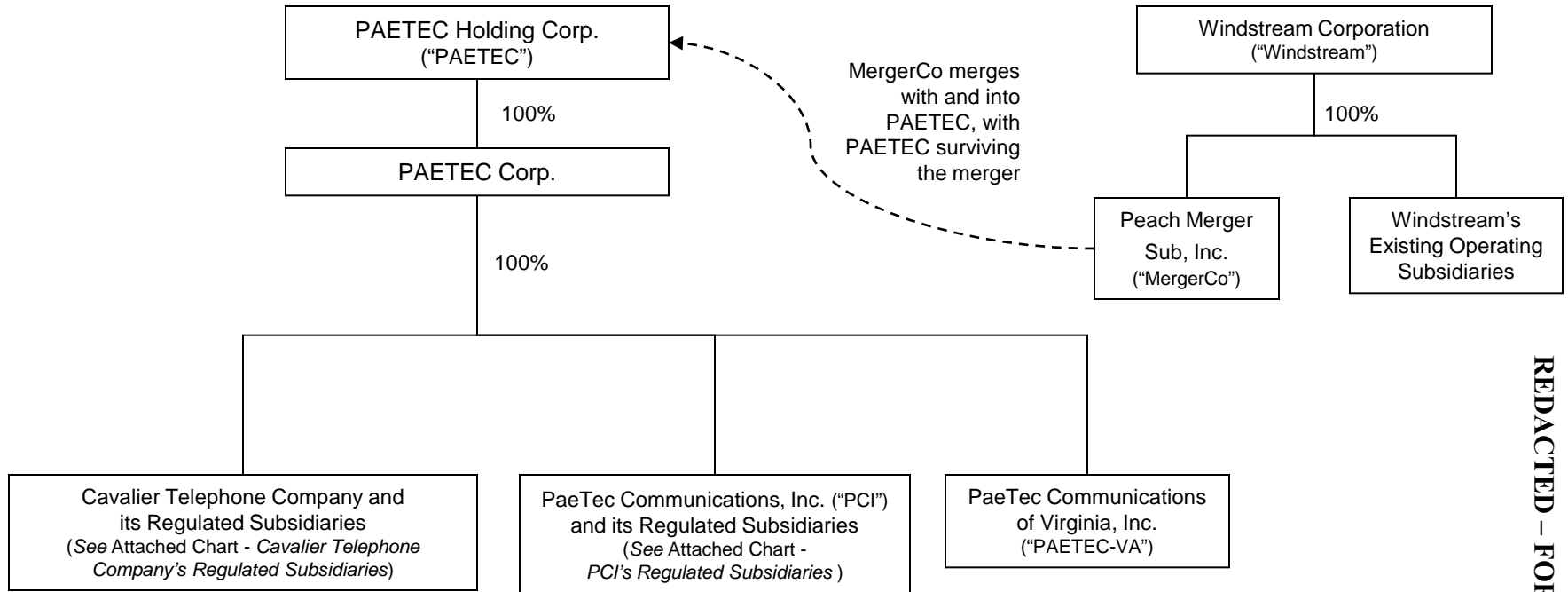
**Organization Charts Illustrating the Transaction**

# Pre-Transaction Corporate Structure of PAETEC and Windstream



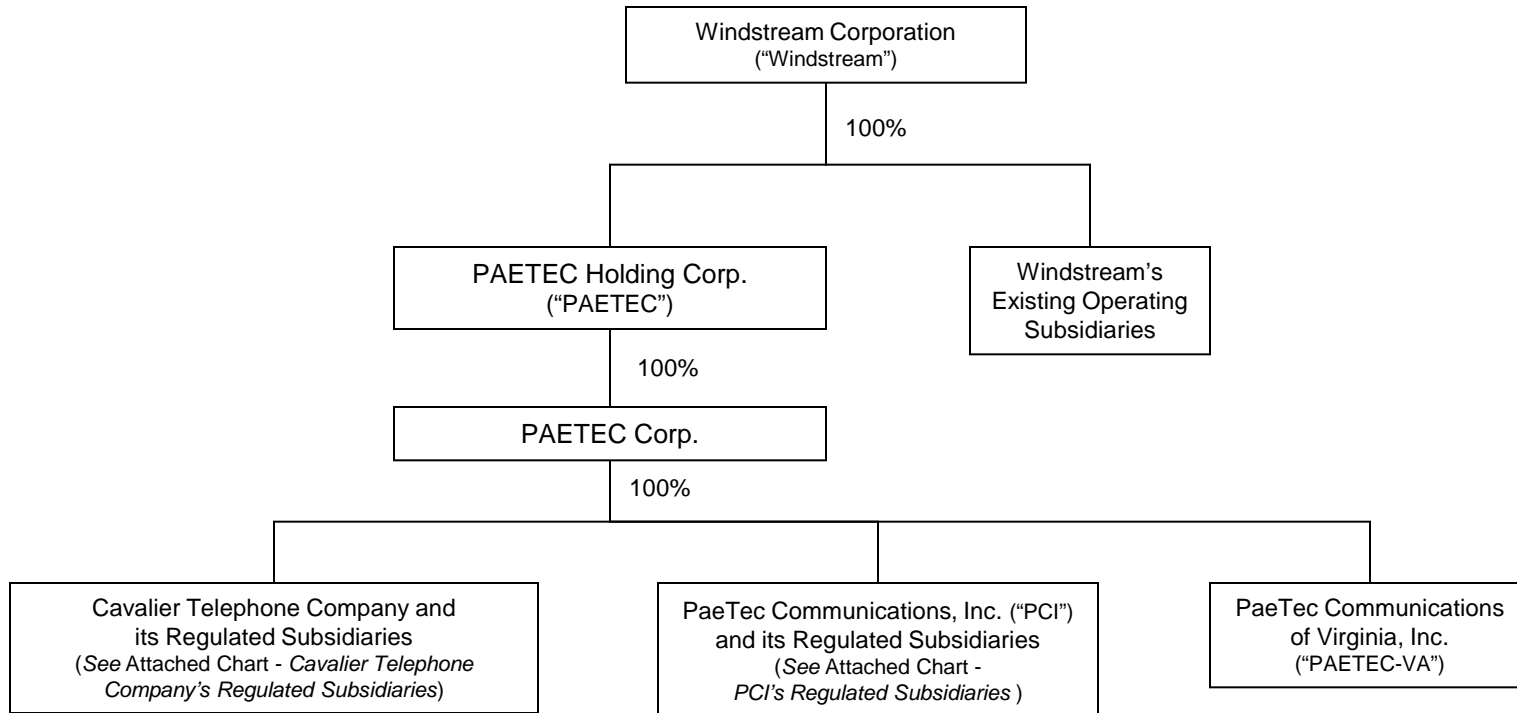
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# Illustration of the Transaction

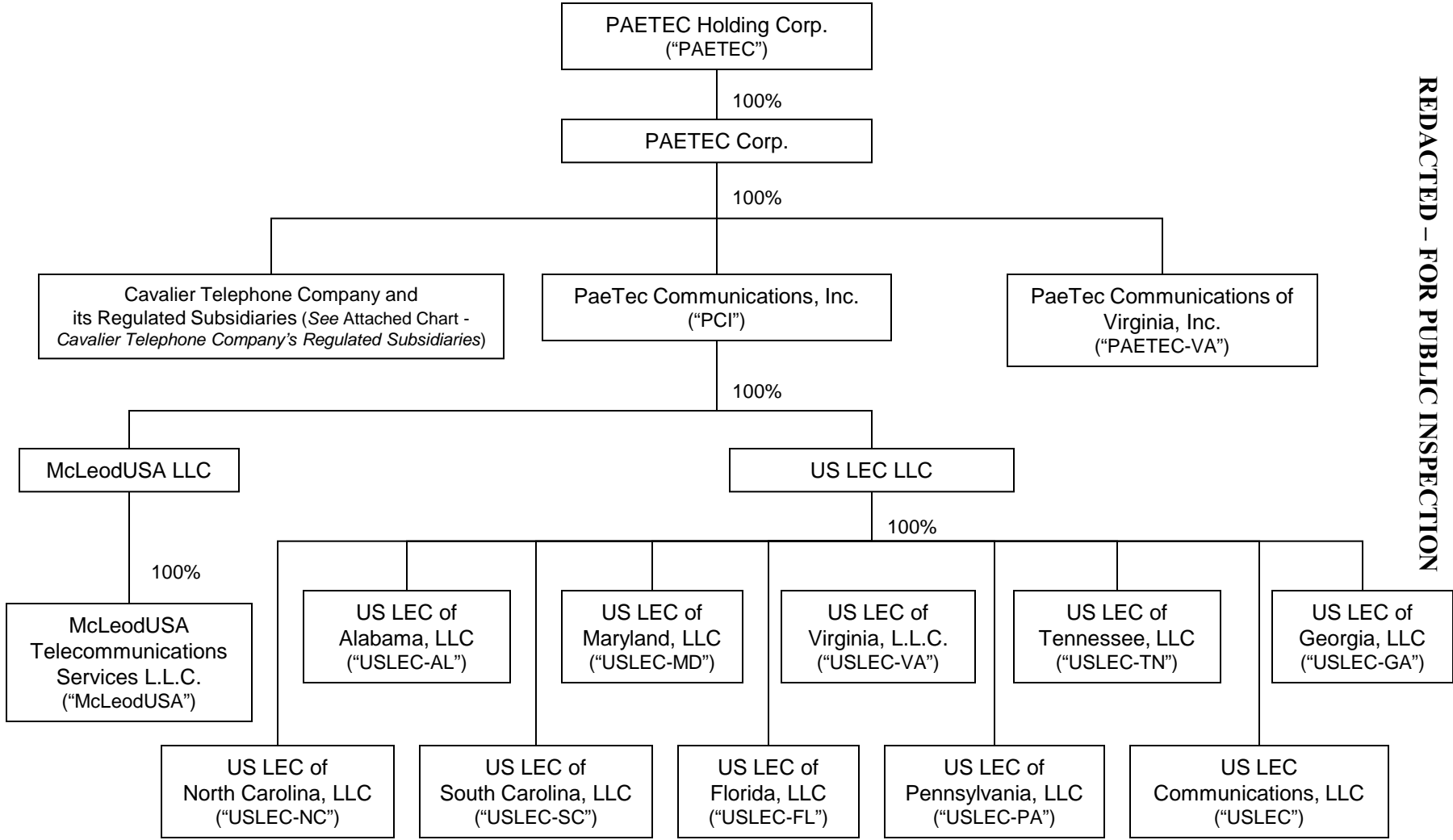


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# Post-Transaction Corporate Structure of PAETEC and Windstream

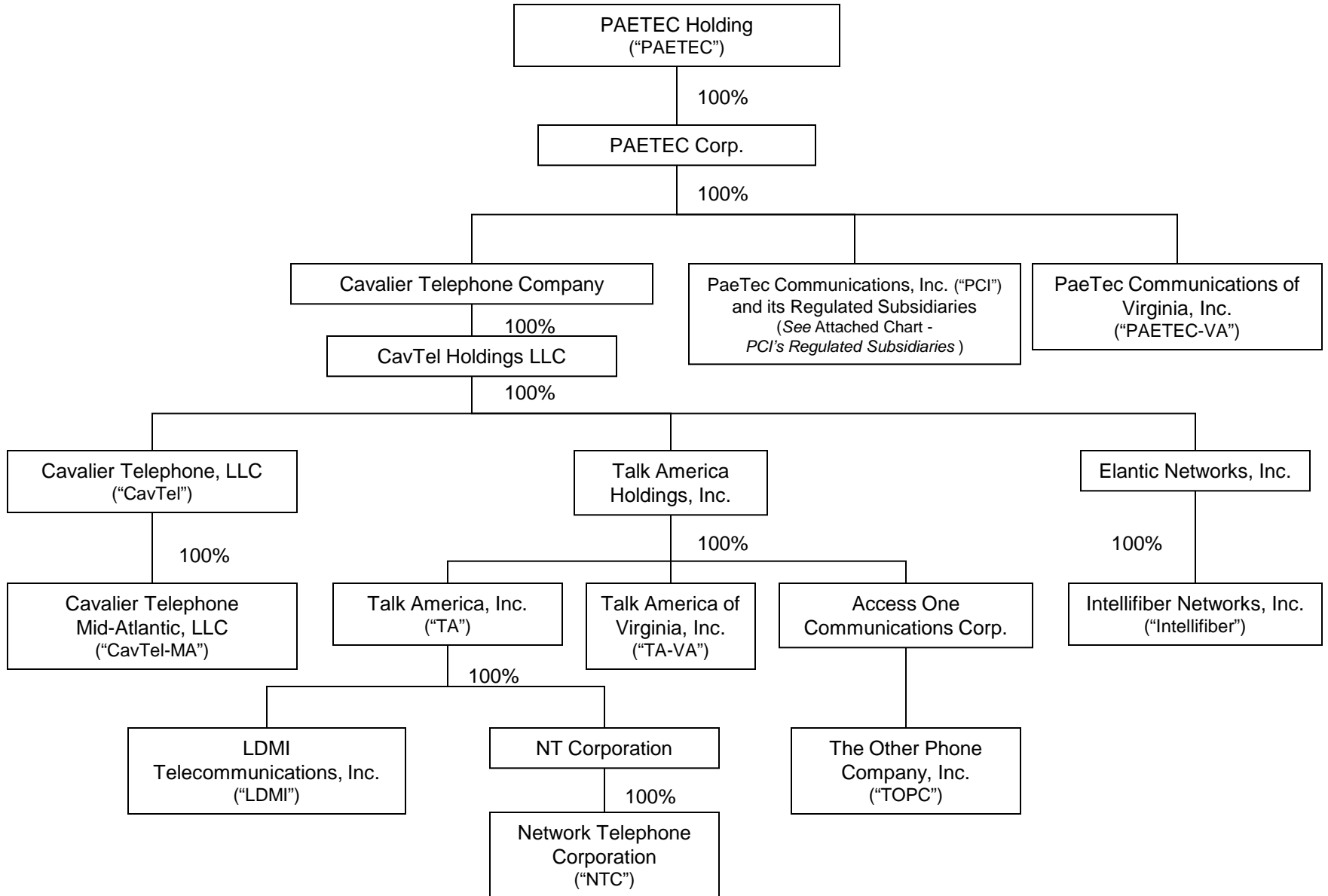


# PaeTec Communications, Inc.'s Regulated Subsidiaries



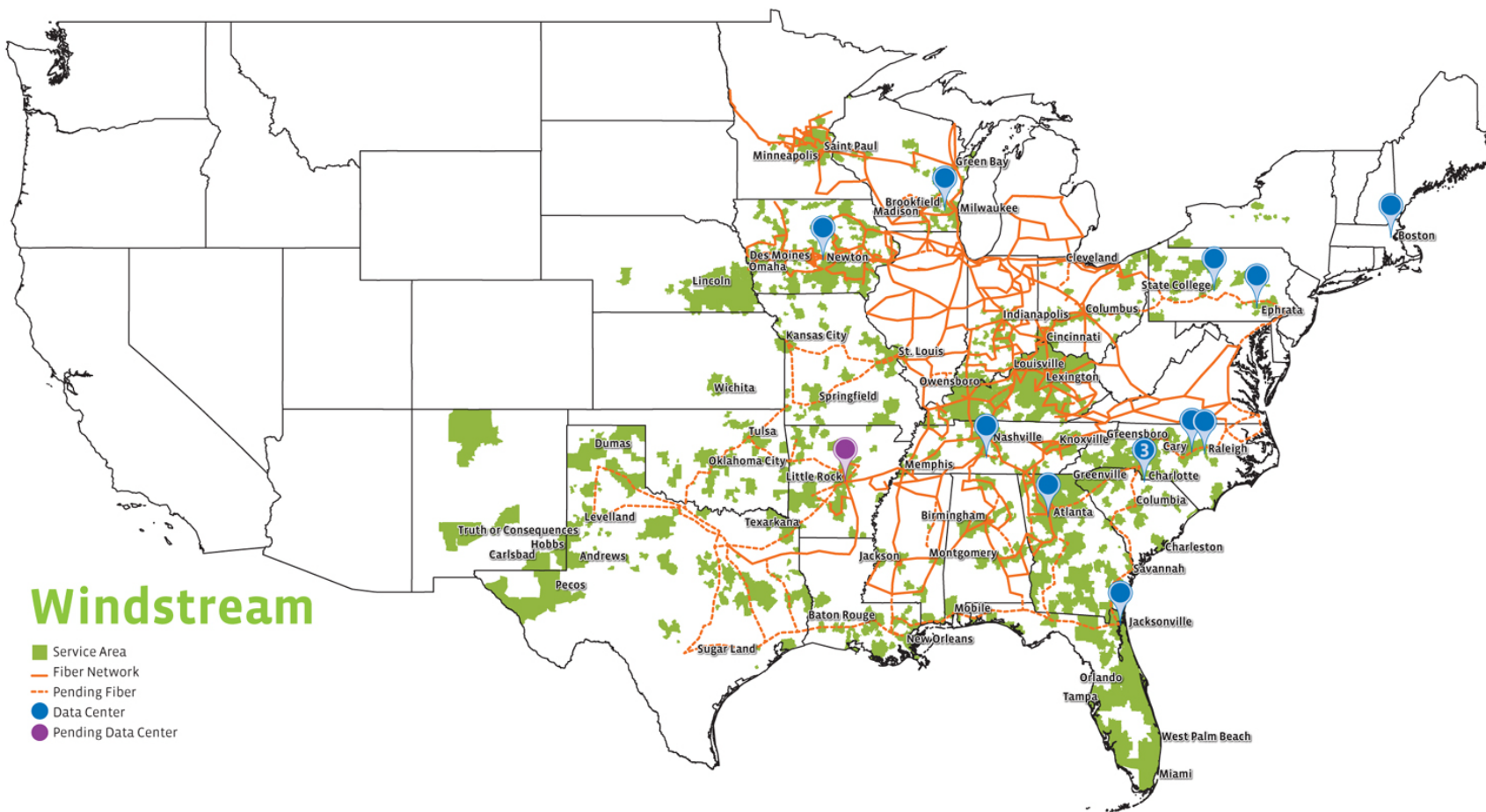
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# Cavalier Telephone Company's Regulated Subsidiaries



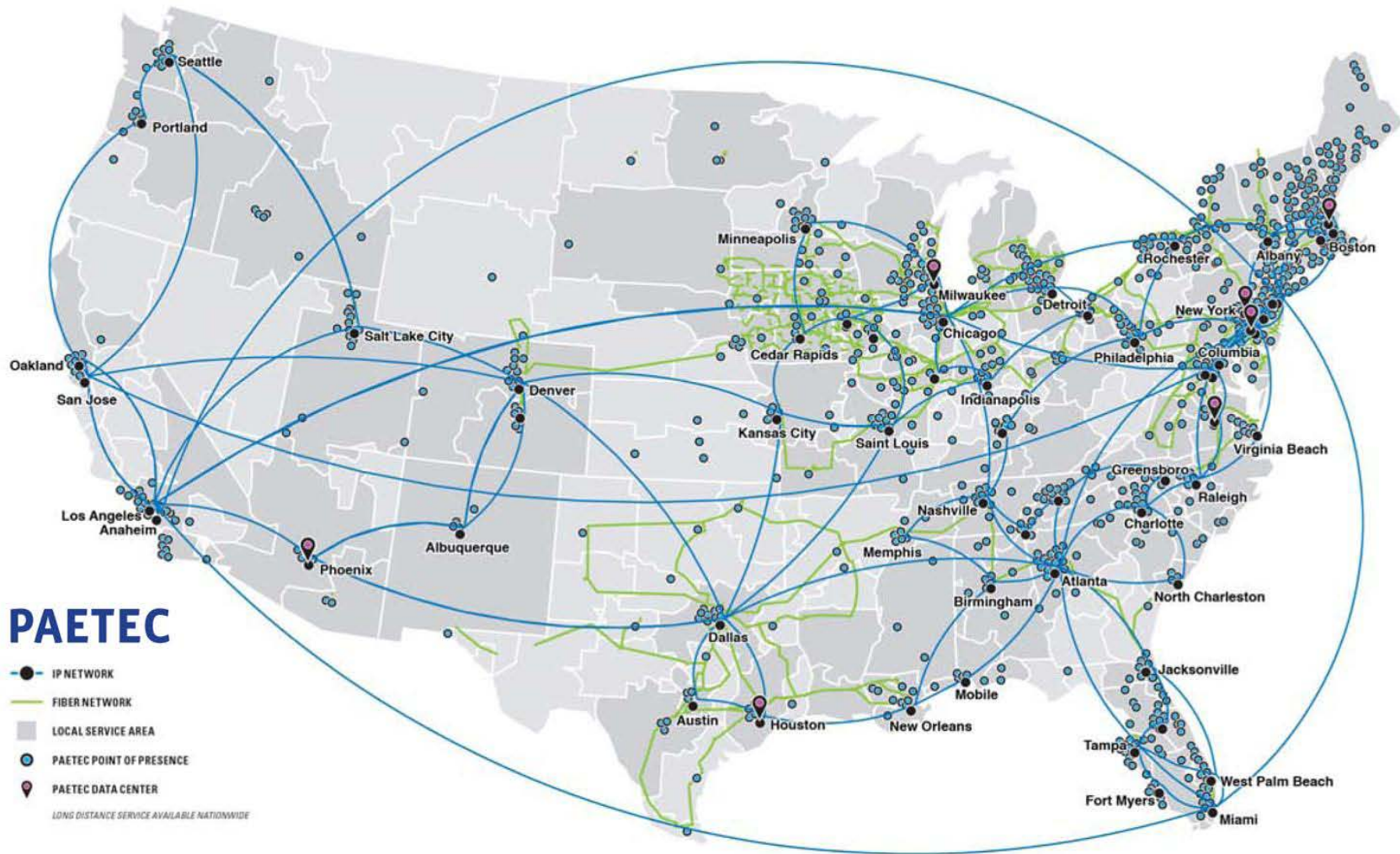
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# Exhibit C Windstream Service Area Map



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## Exhibit D PAETEC Network Map





**Exhibit E  
Existing Wireline Competitors by Rate Center  
In the ILEC-CLEC Overlapping Markets**

RATE CENTER	COMPETITOR
<b>Syracuse, NY Market</b>	
Cazenovia	Time Warner Rescom of NY, LLC
Fulton	Time Warner Rescom of NY, LLC
Marcellus	Time Warner Rescom of NY, LLC
Munnsville	Time Warner Rescom of NY, LLC
<b>Buffalo, NY Market</b>	
Jamestown	Time Warner Rescom of NY, LLC; Cost Plus Communications, LLC-NY; Level 3 Communications, LLC-NY; DFT Local Service Corp., d/b/a/ DFT Select One-NY
<b>Charlotte, NC Market</b>	
Concord	Sprint Communications Company, L.P.- NC; Bandwidth.com CLEC LLC-NC; Level 3 Communications, LLC-NC; Time Warner Communications AXS-NC- Charlotte; Madison River Comm., LLC d/b/a CenturyLink- NC; TCG of the Carolinas, Inc.-NC; Verizon Business
Harrisburg	Sprint Communications Company, L.P.- NC; Bandwidth.com CLEC LLC-NC; Level 3 Communications, LLC-NC; Time Warner Communications AXS-NC- Charlotte; TCG of the Carolinas, Inc.-NC; Verizon Business
Kannapolis	Sprint Communications Company, L.P.- NC; Bandwidth.com CLEC LLC-NC; Level 3 Communications, LLC-NC; Time Warner Communications AXS-NC- Charlotte; Madison River Comm., LLC d/b/a CenturyLink- NC; Verizon Business
Matthews	Sprint Communications Company, L.P.- NC; Bandwidth.com CLEC LLC-NC; Level 3 Communications, LLC-NC; Time Warner Communications AXS-NC- Charlotte; Madison River Comm., LLC d/b/a CenturyLink- NC; TCG of the Carolinas, Inc.-NC; Verizon Business
Mooreville	Sprint Communications Company, L.P.- NC; Bandwidth.com CLEC LLC-NC; Level 3 Communications, LLC-NC; Time Warner Communications AXS-NC- Charlotte; TCG of the Carolinas, Inc.-NC; Verizon Business
<b>Atlanta, GA Market</b>	
Dalton	Southern Communications Services; Level 3 Communications, LLC-GA; Verizon Business; Board of Water, Light & Sinking Fund Communications, d/b/a Dalton; Charter FiberLink-Georgia LLC-GA
Jasper	Southern Communications Services; Ellijay Telephone Company

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RATE CENTER	COMPETITOR
Monroe	Southern Communications Services; Comcast Phone of Georgia, LLC-GA; Verizon Business; Broadriver Communication Corporation; Peerless Network of Georgia, LLC-GA;
<b>Louisville, KY Market</b>	
Elizabethtown	Comcast Phone of Georgia, LLC-GA; Bandwidth.Com CLEC, LLC-KY; Verizon Business; Level 3 Communications, LLC-KY; Aero Communications, Inc.-KY; ALEC, Inc., KY; Bluegrass Telephone Company, Inc.-KY; Brandenburg Telephone Co.
<b>Winchester, KY Market</b>	
Lexington	Level 3 Communications, LLC-KY; Touchtone Communications, Inc. d/b/a ALEC, Inc.-KY; Verizon Business; Gearheart Communications Company, Inc. d/b/a Coalfields Telephone; Time Warner Telecom of Kentucky, LLC-KY; Aero Communications, Inc.-KY; AT&T Local; Insight Phone of Kentucky, LLC-KY
Versailles	Level 3 Communications, LLC-KY; Touchtone Communications, Inc. d/b/a ALEC, Inc.-KY.