

WC 09-79

US BANK/FCC MAY 22 2009

STAMP AND RETURN

WILKINSON ) BARKER ) KNAUER ) LLP

2300 N STREET, NW  
SUITE 700  
WASHINGTON, DC 20037  
TEL 202.783.4141  
FAX 202.783.5851  
www.wbklaw.com  
ROBERT G. MORSE  
202.383.3393  
rmorse@wbklaw.com

DOCKET FILE COPY ORIGINAL

May 21, 2009

Federal Communications Commission  
Wireline Competition Bureau  
P.O. Box 979091  
St. Louis, MO 63197-9000

Re: *Application to Transfer of Control of Domestic and International Section 214 Authorizations from D&E Communications, Inc. to Windstream Corporation*

To Whom It May Concern:

Enclosed please find an original and 5 copies of an application for Commission consent to the transfer of control of the Section 214-authorized subsidiaries of D&E Communications, Inc. ("D&E," FRN 0003773256) from D&E to Windstream Corporation (FRN 0014400220) pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214.

Pursuant to Section 63.04(b) of the rules, this application is submitted as a consolidated domestic and international Section 214 transfer of control application, and a copy has been filed concurrently with the International Bureau via the International Bureau Filing System. Enclosed is a completed FCC Form 159 and a check for \$1015.00, payable to the Federal Communications Commission.

Please contact Kenneth D. Patrich at (202) 783-4141 if there are questions concerning this application.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By: Robert G. Morse  
Robert G. Morse

Enclosures

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
D&E COMMUNICATIONS, INC.,	)	File No. ITC-T/C-_____
Transferor	)	
	)	
and	)	WC Docket No. _____
	)	
WINDSTREAM CORPORATION,	)	
Transferee	)	
	)	
Applications for Transfer of Control of	)	
Domestic and International Authorizations	)	
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), D&E Communications, Inc. ("D&E" or "Transferor,") and Windstream Corporation, ("Windstream" or "Transferee") (together "Applicants") seek consent of the Federal Communications Commission ("FCC" or the "Commission") for the transfer of ultimate control of D&E and its authorized subsidiaries from D&E to Windstream. Both D&E and Windstream have local exchange and non-dominant interexchange carrier subsidiaries authorized by the Commission to provide international and domestic interstate telecommunications services.<sup>1</sup> A

---

<sup>1</sup> D&E's wholly-owned subsidiary D&E Systems, Inc. provides international telecommunications services pursuant to an International Section 214 authorization granted by the Commission. File No. ITC-214-19970707-00382. Windstream's authorized subsidiaries provide international telecommunications services pursuant to the following International

Domestic Section 214 Supplement, containing the information required by 47 C.F.R. § 63.04, is attached hereto as Exhibit A.<sup>2</sup> The international section 214 application is eligible for streamlined processing pursuant to Section 63.12 of the Commission's Rules.<sup>3</sup> Applicants do not seek streamlined processing of the domestic section 214 application but, nonetheless, request expedited review and action.

## **I. THE APPLICANTS**

**A. WINDSTREAM CORPORATION (FRN 0014400220).** Windstream, a Delaware corporation headquartered in Little Rock, Arkansas, is a diversified communications and entertainment company that is publicly traded on the New York Stock Exchange ("NYSE"). Windstream, through its subsidiaries, provides local and long distance telephone services, to approximately three million residential and business access lines, broadband and high-speed data services to more than one million customers, as well as video services through a partnership with DISH. Windstream's markets are primarily located in rural areas in 16 states.<sup>4</sup> In Pennsylvania, Windstream Pennsylvania, LLC provides incumbent local exchange ("ILEC") service to approximately 195,000 access lines in 85 exchanges and Windstream Communications, Inc.

---

Section 214 authorizations: File Nos. ITC-214-2006-0816-00433; ITC-214-20000719-00451; ITC-214-19981110-00835; ITC-214-20010802-00418; and ITC-214-20060501-00261; and ITC-214-19930405-00054.

<sup>2</sup> D&E subsidiary D&E Investments, Inc. holds a number of 700 MHz licenses. An application seeking approval for the transfer of control of D&E Investments, Inc. is being concurrently filed with the Wireless Telecommunications Bureau. In addition, D&E Systems holds receive-only satellite earth station registrations that are used in connection with its cable television operations. Appropriate notifications for those registrations will be timely filed after consummation of the proposed Transaction.

<sup>3</sup> 47 C.F.R. § 63.12.

<sup>4</sup> These states are as follows: Alabama; Arkansas; Florida; Georgia; Kentucky; Mississippi; Missouri; Nebraska; North Carolina; New York; New Mexico; Ohio; Oklahoma; Pennsylvania; South Carolina; and Texas.

provides long distance services throughout Pennsylvania as well as competitive local exchange (“CLEC”) service in Verizon’s ILEC Clarion exchange.

**B. D&E COMMUNICATIONS, INC.** (FRN 0003773256). D&E Communications, Inc. is a Pennsylvania corporation headquartered in Ephrata, Pennsylvania that is publicly traded on the NASDAQ exchange. Through its subsidiaries, D&E offers its customers high-speed Internet services, local and long-distance telephone services, and in two markets, cable television services.<sup>5</sup> D&E subsidiaries have approximately 165,000 total access lines (118,000 ILEC access lines and 47,000 CLEC access lines) and 44,000 broadband customers, all in Pennsylvania. D&E holds, directly or indirectly, a 100 percent interest in the following subsidiaries, each of is a corporation organized under the laws of Pennsylvania, a rural ILEC (as defined at section 3(37) of the Act) in its respective local exchange area, and a Federal average schedule company:

- Denver and Ephrata Telephone and Telegraph Company (FRN 0003271871) (“D&E Telephone”) – providing service in portions of Berks, Lancaster, and Lebanon Counties;
- Buffalo Valley Telephone Company (FRN 0008343162) (“BVT”) – providing service in portions of Union, Northumberland, and Snyder Counties; and
- Conestoga Telephone and Telegraph Company (FRN 0005386172) (“CTC”) – providing service in portions of Berks, Chester, Lancaster, Lehigh, and Montgomery Counties.

In addition, D&E holds a direct 100 percent interest in D&E Systems, Inc. (FRN 0003735776) (“D&E Systems”), a Delaware corporation that is authorized to provide domestic interstate and international interexchange services, as well as intrastate long distance service and competitive access (“CAP”) services throughout Pennsylvania. D&E Systems is also authorized

---

<sup>5</sup> Windstream currently has no cable systems in Pennsylvania.

to provide CLEC services in territories served by Verizon and Embarq. D&E Systems currently provides CLEC and long distance services in a number of counties throughout Pennsylvania.<sup>6</sup> D&E Systems does not operate as a CLEC in *any* Windstream ILEC subsidiary territories. D&E Systems provides some long distance services, as well as very limited CAP services, in Windstream's Pennsylvania ILEC territory.

## II. DESCRIPTION OF THE TRANSACTION

On May 10, 2009, D&E, Windstream, and Delta Merger Sub, Inc. ("Delta"), a Delaware corporation and wholly owned subsidiary of Windstream, signed an Agreement and Plan of Merger (the "Agreement") providing for the merger of D&E and Delta. Pursuant to the terms of the Agreement, D&E will be merged with and into Delta, with Delta to be the surviving corporation following the closing of the merger and re-named D&E Communications, Inc. (the "Transaction"). As a result of the Transaction, the separate corporate existence of D&E will cease and Delta (re-named as D&E Communications, Inc.) shall continue as the surviving corporation of the merger as a wholly owned subsidiary of Windstream. Closing of the Transaction is contingent upon, among other things, receipt of the necessary regulatory approvals from the Commission and other governmental and shareholder approvals. Because the existing stockholders of Windstream will control Delta upon consummation of the Transaction, such

---

<sup>6</sup> D&E provides CLEC services in all or parts of the following counties: Allegheny; Beaver; Berks; Blair; Bucks; Cambria; Chester; Clarion; Clearfield; Clinton; Columbia; Cumberland; Dauphin; Delaware; Erie; Huntingdon; Jefferson; Lackawanna; Lancaster; Lebanon; Lehigh; Luzerne; Lycoming; McKean; Mifflin; Monroe; Montgomery; Montour; Northampton; Northumberland; Perry; Philadelphia; Schuylkill; Snyder; Westmoreland; and York. Long distance services are provided in all or parts of the following counties: Allegheny; Beaver; Berks; Blair; Bucks; Cambria; Carbon; Centre; Chester; Clarion; Clearfield; Clinton; Columbia; Cumberland; Dauphin; Delaware; Erie; Huntingdon; Indiana; Jefferson; Lackawanna; Lancaster; Lawrence; Lebanon; Lehigh; Luzerne; Lycoming; McKean; Mifflin; Monroe; Montgomery; Montour; Northampton; Northumberland; Perry; Philadelphia; Schuylkill; Snyder; Union; Washington; Westmoreland; and York.

transfer of control will result in a substantial change in the ultimate control over D&E subsidiaries holding Commission licenses and authorizations. Diagrams illustrating the Transaction are attached at Exhibit B.

### III. PUBLIC INTEREST STATEMENT

This Transaction will serve the public interest. Pursuant to Sections 310(d) and 214 of the Communications Act of 1934, as amended, control of the subject 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 this analysis is an evaluation of the Transferee’s qualifications. Pursuant to Section 310(d), “the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer... of the permit or license to a person other than the proposed transferee.”<sup>8</sup> Windstream is legally, technically and financially qualified with regard to the instant transfer of control applications.

#### A. Public Interest Benefits of the Merger

Commission approval of the Transaction would clearly serve the public interest. The telecommunications industry has been and continues to be subject to rapid technological advances, evolving consumer preferences, and dynamic change. The creation of Windstream in 2006 established an independent, stand-alone wireline-centric corporation that serves the public interest by focusing squarely on enhancing local wireline operations primarily in rural areas.<sup>9</sup> D&E’s markets in Pennsylvania share the same rural characteristics of Windstream’s existing

---

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

<sup>8</sup> *Id.* § 310(d).

<sup>9</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.

ILEC footprint and, like Windstream's acquisition of CT Communications, Inc. in North Carolina in 2007, combining D&E with Windstream will enable Windstream to offer, and D&E to continue to offer, a broad range of high quality services to D&E's local residential and business customers. A map of the Applicants' combined service area is attached hereto as Exhibit C.

The Transaction will enhance Windstream's ability to offer a wide range of quality communications and entertainment services to rural America in general and in Pennsylvania in particular. With the Transaction, Windstream will serve approximately 165,000 additional local exchange customers and 44,000 additional broadband customers, substantially increasing its presence in Pennsylvania to over 350,000 access lines. As a result, D&E will realize significant synergies and efficiencies operating as part of Windstream, which will increase its ability to deploy and maintain innovative and advanced telecommunications offerings, benefiting consumers and serving the public interest, convenience, and necessity.

The efficiencies and economies of scale resulting from the Transaction will improve the combined company's economic viability and, thus, its ability to continue to attract financing to invest in and offer new and innovative services, including those in rural areas. Enabling small and mid-sized ILECs to achieve these efficiencies and to expand their product offerings is publicly beneficial as these companies continue to face declines in access lines due to new competitive challenges, notably from wireless and cable operators. The Transaction will also provide the Applicants with access to each other's advanced network capabilities, technical and financial strengths, and complementary services, which together are expected to strengthen the Applicants' ability to invest in and expand their offerings and provide more advanced services to a broader customer base. After consummation of the Transaction, D&E will have greater access to new technologies and facilities as a subsidiary of Windstream than D&E would standing

alone. For example, the combined company will be better able to make DISH video services available throughout D&E's markets, as well as other company-wide initiatives/products. Post-merger Windstream also will be positioned to secure more favorable discounts than D&E alone with respect to purchases of new equipment.

The Transaction will enable D&E's customers to benefit from innovative products offered by both Applicants. Customers of the combined company can be expected to have an improved experience, as Windstream is able to enhance service delivery, product development, and customer interaction at D&E. Applicants are both leaders in broadband deployment; Windstream has deployed broadband services throughout nearly all of its markets, and D&E has deployed broadband services throughout its own. Because the combined enterprise will be able to achieve greater economies of scale and scope than D&E would have operating independently, Applicants expect that the Transaction will enable this trend to continue by facilitating the deployment and availability of higher broadband speeds into the future. D&E customers will also benefit from the expanded resources Windstream will make available for new business opportunities; expanding and enhancing existing services including, for business customers, access to the Windstream bundled packages with services such as Ethernet Internet Access; and new innovative customer premises equipment ("CPE").

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

But for a brand name change, the Transaction will be seamless to D&E customers. The Transaction will not adversely affect – and if anything, will improve – the already high level and quality of service that D&E customers currently receive. The Transaction itself will not

otherwise adversely affect the rates for service that customers currently experience<sup>10</sup> or how the Applicants conduct business with their customers.

**C. The Transaction Poses No Competitive Risks for the Domestic Interstate Market and Approval Is Consistent with Commission Precedent**

The transaction will not result in harm to competition in any relevant market and will yield tangible public interest benefits. Given the increasingly competitive nature of the interstate telecommunications market, the Applicants are seeking to complete the Transaction as soon as possible 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 Miniscule Share of the Domestic Interstate Interexchange Market**

D&E and Windstream presently have a miniscule 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

---

<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. While rates, terms, and conditions 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 standard regulatory and legal processes.

<sup>11</sup> See 47 C.F.R. § 63.01; *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, ¶ 163 (1997) (independent ILECs subject to nondominant regulatory treatment conditioned on separation requirements).

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 No ILEC-CLEC Overlaps and *De Minimis* Adjacencies

With respect to the Applicants’ ILEC markets, the Commission has found that where mergers between non-BOC ILECs result in *de minimis* overlaps and no or minimal adjacencies between markets where the adjacent exchanges are very small, “no harm to competition is likely to occur.”<sup>14</sup> Moreover, where rural and less populated areas are involved, the Commission has

---

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

<sup>13</sup> Commission data indicate that in 2006 U.S. telecommunications carriers reported over \$31 billion in interstate toll revenues. (Windstream expects that figure may have decreased somewhat in the years since.) As Windstream’s total 2008 revenues for *all* of its services – including local, broadband, and long distance – amount to about \$3 billion, it is safe to presume that its share of the interstate interexchange market falls well below 10 percent of the total. See *Trends in Telephone Service*, Industry Analysis and Technology Division, at Table 9-2 (WCB Aug. 2008) (“2008 Trends Report”). Similarly, with respect to international long distance service, for that same year the Commission reported that Windstream’s \$246 million in international resale revenues constituted only 4.04 percent of the total of *pure resale revenues* – a figure that *excludes* the over \$8 billion of revenues generated by facilities-based services. See *id.* at Tables 6-4 and 6-5.

<sup>14</sup> See *Joint Applications of Global Crossing Ltd. and Citizens Communications Co.*, 16 FCC Rcd. 8507, ¶ 9 (CCB, CSB, WTB 2001) (“*Global Crossing-Citizens*”). Indeed, the Commission has approved mergers between smaller ILECs where the mergers resulted in the loss of a competitor in an exchange area. See *Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd.*, 16 FCC Rcd. 15293, ¶¶ 8-9 (CCB, WTB 2001) (“*TDS-Chorus*”). The Commission approved Windstream’s acquisition of CT Communications in light of these precedents. See Public Notice, WC Docket No. 07-127, DA 07-3580 (WCB rel. Aug. 10, 2007) (citing *Global Crossing-Citizens* and *TDS-Chorus* in concluding that the transfer of control of CTC to Windstream “will serve the public interest, convenience and necessity”) (“*Windstream-CTC*”). See also *Madison River Communications Corp.*, Public Notice, WC Docket No. 07-03, DA 07-125, at 1-3 (rel. Jan. 19, 2007) (transferee provided competitive access service in transferor’s ILEC territory in one state) (“*Madison River*”), *granted*, Public Notice, DA 07-744 (rel. Feb. 20, 2007) (“*Madison River Grant*”).

found that such areas “are less attractive to new entrants” and, thus, concerns relating to the loss of potential competition are even less acute.<sup>15</sup>

First, as D&E is not authorized to operate as a CLEC in Windstream’s ILEC territories, the Transaction results in no ILEC-CLEC overlaps.<sup>16</sup> In addition, there is only one exchange in Pennsylvania (Clarion) involving overlap between D&E Systems (D&E’s CLEC subsidiary) and Windstream’s CLEC operations.

Moreover, the Transaction involves only 3 exchanges resulting in ILEC adjacencies, all of which are in Pennsylvania and affect a *de minimis* number of subscribers. Specifically, Windstream’s Watsonstown exchanges are adjacent to BVT’s Lewisburg and Mifflinburg exchanges. The combined company will face competition in all three exchanges. In Watsonstown, Windstream faces direct competition by CATV Service, Inc. Comcast, which operates in adjoining Windstream exchanges, has installed some facilities in Watsonstown as well. In the Lewisburg and Mifflinburg exchanges, D&E faces direct competition by Service Electric Telephone Company (the certificated CLEC providing service in partnership with the franchised CATV providers), as well as Level 3 and Core Communications. Both companies also compete with a number of wireless carriers in their markets, including AT&T Wireless, Verizon Wireless, Sprint/Nextel, and IMMIX Wireless.<sup>17</sup>

---

<sup>15</sup> See *Global Crossing/Citizens* at ¶ 7 (citing *Application of GTE Corp. and Bell Atlantic Corp.*, 15 FCC Rcd. 14032, 14095 ¶ 117 (2000)). Like the *Global Crossing/Citizens* transaction, the nature of the Transaction – involving exchanges in one state, Pennsylvania – indicates that the Commission’s extensive merger analysis previously employed in BOC-related mergers is inapplicable here.

<sup>16</sup> D&E Systems currently provides very limited private line service in Windstream’s ILEC territory via the purchase of Windstream’s special access services.

<sup>17</sup> See *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, ¶¶ 99, 105 (2007) (“acknowledg[ing] that mobile wireless services are in the relevant product market at least to some extent” with respect

The Commission has historically expressed some concern regarding a reduction in the number of potential competitive entrants when large RBOCs with adjacent markets merge their operations.<sup>18</sup> The Commission, however, has uniformly approved non-RBOC transactions involving a limited number of overlapping and/or adjacent exchanges affecting a limited number of access lines.<sup>19</sup> This Transaction clearly falls into the latter category.<sup>20</sup> None of the exchange areas involved in the Transaction have ILEC-CLEC overlaps. Moreover, D&E's exchanges are located in precisely the types of low-density and less populated rural areas the Commission has recognized "are less attractive to new entrants."<sup>21</sup> With respect to adjacencies, only 3 ILEC

---

to mass market services and finding that competitors for such services "include ... wireless carriers, to the extent consumers use their services as a replacement for local or long distance services."). Underscoring that wireless and wireline services are increasingly becoming substitutes for one another, the Centers for Disease Control National Center for Health Statistics recently announced that preliminary results from its July-December 2008 National Health Interview Survey found that "[m]ore than one of every five American homes (20.2%) had only wireless telephones (also known as cellular telephones, cell phones, or mobile phones) during the second half of 2008." See <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.htm>.

<sup>18</sup> See, e.g., *In re Applications of NYNEX Corp. and Bell Atlantic Corp.*, Memorandum Opinion and Order, 12 FCC Rcd. 19985, 19990-91 (1997); *Application of GTE Corp. and Bell Atlantic Corp.*, Memorandum Opinion and Order, 15 FCC Rcd. 14032, 14090-92 (2000); *Application of Ameritech Corp. and SBC Communications Inc.*, Memorandum Opinion and Order, 14 FCC Rcd. 14712, 14745 (1999).

<sup>19</sup> See, e.g., *Windstream-CTC* at 1; *Global Crossing/Citizens* at ¶¶ 1, 5-8; Public Notice, *Wireline Competition Bureau Grants Consent for Transfer of Control of Hartman Tel. Exchanges, Inc. to Randall J. Raile and Kacey L. Raile*, WC Docket No. 04-320, DA 04-3225, n.3 (WCB rel. Oct. 13, 2004); *TDS-Chorus*, 16 FCC Rcd. at 15297-99; *Madison River* at 1-3 and *Madison River Grant*; Public Notice, *Wireline Competition Bureau Grants Consent for Transfer of Control of Certain Affiliates of MJD Services Corp. to Golden West Telephone Properties, Inc.*, WC Docket No. 03-186, DA 03-3004, n.2 (WCB rel. Sept. 30, 2003); see also Public Notice, *Wireline Competition Bureau Grants Consent for Transfer of Control of Berkshire Tel. Co. to Fairpoint Communications, Inc.*, WC Docket No. 03-184, DA 05-1095, n.5 (WCB rel. Apr. 15, 2005).

<sup>20</sup> See *Global Crossing/Citizens* at ¶ 7.

<sup>21</sup> See *Global Crossing/Citizens* at ¶ 7.

exchange areas are affected.<sup>22</sup> As noted above, the Commission has consistently determined that adjacencies such as these do not raise public interest concerns and has routinely granted applications in these circumstances. Indeed, the combined company will be a more effective competitor in those markets where the Applicants have operated as CLECs.<sup>23</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 D&E customers. The Transaction poses no risk of anticompetitive impact on the U.S. international telecommunications marketplace. Applicants together hold only a miniscule share of the international telecommunications market and therefore the Applicants would have no ability to adversely affect competition.<sup>24</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

---

<sup>22</sup> There are no overlaps associated with the Transaction, and only 3 small ILEC exchanges with adjacencies. In contrast, *Global Crossing/Citizens* involved adjacencies in four states, and involved 71 exchanges ranging from a couple hundred to nearly 300,000 access lines. See *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 more adjacencies and even a few ILEC-CLEC overlaps, and the Bureau found that the Commission's rationale from the *Global Crossing/Citizens* and *TDS-Chorus* supported approval of that transaction. See *Windstream-CTC* at 1.

<sup>23</sup> See *TDS-Chorus*, 16 FCC Rcd. at 15298 (transaction will "increase competition by making [combined company] a stronger competitor to" the ILEC in the affected markets).

<sup>24</sup> See *supra* note 14 (describing Commission's international revenue data).

increases in prices, decreases in quality, or reductions in alternatives in end user markets.”<sup>25</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>26</sup> As discussed herein, Windstream does not currently have and will not acquire any affiliations with foreign carriers – with market power or otherwise – as a result of the Transaction. Thus, consumers will not be harmed by 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.

##### *Information for Transferor and Transferee*

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

Transferor:

D&E Communications, Inc.  
124 East Main Street  
Ephrata, PA 17522  
Tel: (717) 738-8606  
Fax: (717) 733-2364

---

<sup>25</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 (1997).

<sup>26</sup> *See id.*

Authorized Carriers (with FRN Information):

D&E Telephone Company (FRN 0003271871)  
Buffalo Valley Telephone Company (FRN 0008343162)  
Conestoga Telephone & Telegraph Co. (FRN 0005386172)  
D&E Systems, Inc. (FRN 0003735776)

Transferee:

Windstream Corporation  
4001 Rodney Parham Rd.  
Little Rock, AR 72212  
(501) 748-7000  
(501) 748-7996 (Fax)

**(b) Citizenship**

Transferor:

D&E Communications, Inc. is a Pennsylvania Corporation.

Authorized Carriers:

D&E Telephone Company is a Pennsylvania Corporation.  
Buffalo Valley Telephone Company is a Pennsylvania Corporation.  
Conestoga Telephone & Telegraph Co. is a Pennsylvania Corporation.  
D&E Systems, Inc. is a Delaware Corporation.

Transferee:

Windstream is a Delaware Corporation.

**(c) Contact Information**

For the Transferor and Authorized Carriers:

Leonard Beurer  
VP Regulatory and Carrier Relations  
124 East Main Street  
Ephrata, PA 17522  
Tel: (717) 738-8606  
Fax: (717) 733-2364  
Email: [lbeurer@decommunications.com](mailto:lbeurer@decommunications.com)

*With a copy to:*

Paul J. Feldman  
Fletcher, Heald & Hildreth PLC  
1300 North 17<sup>th</sup> Street 11<sup>th</sup> Floor  
Arlington, VA 22209  
Tel: (703) 812-0403  
Fax: (703) 812-0486  
Email: [Feldman@fhhlaw.com](mailto:Feldman@fhhlaw.com)

For the Transferee:

Eric Einhorn  
Vice President – Federal Government Affairs  
Windstream  
1101 17<sup>th</sup> Street, NW Suite 802  
Washington, DC 20036  
Tel: (202) 223-7668  
Fax: (202) 223-7669  
Email: [eric.n.einhorn@windstream.com](mailto:eric.n.einhorn@windstream.com)

*With a copy to:*

Kenneth D. Patrich  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW Suite 700  
Washington, DC 20037  
Tel: (202) 783-4141  
Fax: (202) 783-5851  
Email: [kpatrich@wbklaw.com](mailto:kpatrich@wbklaw.com)

**(d) International Section 214 Authorizations**

Authorized Carrier:

D&E Systems, Inc. – File No. ITC-214-19970707-00382<sup>27</sup>

Transferor:

D&E Communications, Inc. holds no international Section 214 authorization in its own right.

---

<sup>27</sup> This authorization was assigned on a *pro forma* basis from former D&E subsidiary CEI Networks, Inc. in 2006. See File No. ITC-ASG-20060118-00024.

Transferee:

Windstream holds no international Section 214 authorization in its own right.

*Information for Transferee*

**(h) Ten Percent or Greater Interest Holders**

Windstream will remain post-closing a publicly-traded company with no 10 percent or greater interest holders.

**(i) Foreign Carrier Affiliation Certification**

Windstream certifies that it will have no foreign carrier affiliations upon consummation of the transaction.

**(j) Foreign Carrier and Destination Countries**

Windstream certifies that upon consummation of the Transaction: (1) it will not be a foreign carrier; (2) it will not control any foreign carriers; (3) no entity that will own more than 25 percent of or control Windstream controls a foreign carrier; and (4) two or more foreign carriers (or parties that control foreign carriers) will not own, in the aggregate, more than 25 percent of Windstream.

**(k) WTO Membership of Destination Countries**

Not applicable.

**(l),(m) Nondominant Regulatory Classification**

Not applicable. As Windstream will have no foreign carrier affiliations, it is entitled to continued nondominant regulatory classification pursuant to Section 63.10(a)(1) of the rules, 47 C.F.R. § 63.10(a)(1).

**(n) Special Concessions Certification**

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**

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**

As Windstream is not a foreign carrier and does not have any foreign carrier affiliations, the instant application qualifies for streamlined processing pursuant to Section 63.12 of the rules, 47 C.F.R. § 63.12.

**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.

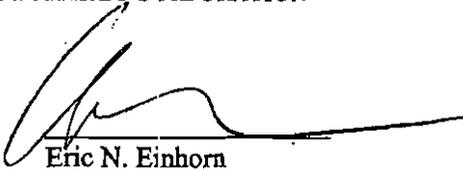
**VI. CONCLUSION**

For the foregoing reasons, Applicants request Commission consent to the transfer of control of D&E and its subsidiaries to Windstream in connection with the Transaction described herein.

Respectfully submitted,

**WINDSTREAM CORPORATION**

**D&E COMMUNICATIONS, INC.**

By: 

Eric N. Einhorn  
Vice President -  
Federal Governmental Affairs  
1101 17<sup>th</sup> Street, NW, Suite 802  
Washington, DC 20036  
Tel: (202) 223-7668  
Fax: (202) 223-7669

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

Leonard Beurer  
Vice President Regulatory and Carrier Relations  
124 East Main Street  
Ephrata, PA 17522  
Tel: (717) 738-8606  
Fax: (717) 733-2364

Of Counsel:

Bryan N. Tramont  
Kenneth D. Patrich  
Robert G. Morse  
WILKINSON BARKER KNAUER, LLP  
2300 N Street, NW  
Suite 700  
Washington, DC 20037  
(202) 783-4141

*Its Attorneys*

Of Counsel:

Paul J. Feldman  
Fletcher, Heald & Hildreth PLC  
1300 North 17<sup>th</sup> St. 11<sup>th</sup> Floor  
Arlington, VA 22209  
(703) 812-0403

*Its Attorney*

May 21, 2009

**VI. CONCLUSION**

For the foregoing reasons, Applicants request Commission consent to the transfer of control of D&E and its subsidiaries to Windstream in connection with the Transaction described herein.

Respectfully submitted,

**WINDSTREAM CORPORATION**

**D&E COMMUNICATIONS, INC.**

By:

\_\_\_\_\_  
Eric N. Einhorn  
Vice President –  
Federal Governmental Affairs  
1101 17<sup>th</sup> Street, NW, Suite 802  
Washington, DC 20036  
Tel: (202) 223-7668  
Fax: (202) 223-7669

By:

  
\_\_\_\_\_  
Leonard Beurer  
Vice President Regulatory and Carrier Relations  
124 East Main Street  
Ephrata, PA 17522  
Tel: (717) 738-8606  
Fax: (717) 733-2364

Of Counsel:

Bryan N. Tramont  
Kenneth D. Patrich  
Robert G. Morse  
WILKINSON BARKER KNAUER, LLP  
2300 N Street, NW  
Suite 700  
Washington, DC 20037  
(202) 783-4141

*Its Attorneys*

Of Counsel:

Paul J. Feldman  
Fletcher, Heald & Hildreth PLC  
1300 North 17<sup>th</sup> St. 11<sup>th</sup> Floor  
Arlington, VA 22209  
(703) 812-0403

*Its Attorney*

May 21, 2009

## **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. A map showing the parties' ILEC service areas is attached as Exhibit C hereto. D&E and Windstream subsidiaries both presently offer resold domestic interstate and international interexchange services in their service territories, and Windstream subsidiaries will continue to offer such services after consummation of the merger.

**3. Streamlined Processing (§ 63.04(a)(9))**

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

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

Related to the instant Application are applications to transfer control of D&E subsidiaries holding various Title III wireless licenses to Windstream.

**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**

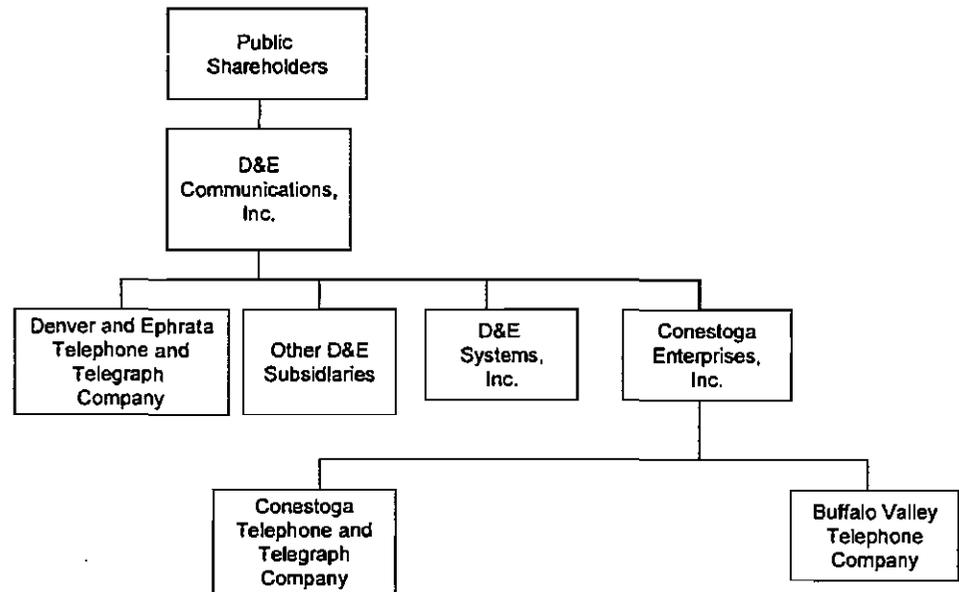
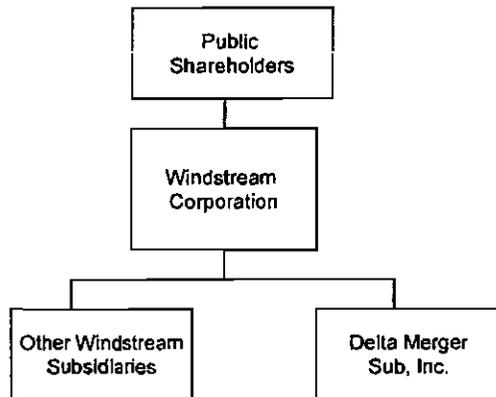
**Diagrams Illustrating the Transaction**

**Corporate Structure Chart  
May 10, 2009**

Step 1 Pre-Transaction

[Note: Charts do not reflect all subsidiaries, only applicable entities for purposes of this Application.]

Each of Windstream Corporation and D&E Communications, Inc. are separate, publicly traded corporations



Step 2 Transaction

D&E Communications, Inc. merges with and into Delta Merger Sub, Inc.  
With Delta Merger Sub surviving and being renamed D&E Communications, Inc.



Step 3 Post-Transaction

