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DOCKET FILE COPY ORIGINAL

September 18, 2009

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

Re: *Application for Commission Consent to Transfer of Control of Section 214-Authorized Interstate Carriers from Lexcom, 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 Lexcom, Inc. ("Lexcom," FRN 0004291951) from Lexcom 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

040422404/339001

# US BANK/FCC SEP 21 2009

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

## FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE FORM 159

Approved by OMB  
3060-0589  
Page No. 1 of 2

(1) LOCKBOX # <b>979091</b>	SPECIAL USE ONLY
	FCC USE ONLY

### SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Wilkinson Barker Knauer, LLP</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$1,015.00</b>
(4) STREET ADDRESS LINE NO. 1 <b>2300 N Street, NW</b>		
(5) STREET ADDRESS LINE NO. 2 <b>Suite 700</b>		
(6) CITY <b>Washington</b>	(7) STATE <b>DC</b>	(8) ZIP CODE <b>20037</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>202-783-4141</b>	(10) COUNTRY CODE (if not in U.S.A.)	

### FCC REGISTRATION NUMBER (FRN) REQUIRED

(11) PAYER (FRN) <b>0003775731</b>	(12) FCC USE ONLY
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IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)  
COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(13) APPLICANT NAME <b>Windstream Corporation</b>		
(14) STREET ADDRESS LINE NO. 1 <b>4001 Rodney Parham Rd.</b>		
(15) STREET ADDRESS LINE NO. 2		
(16) CITY <b>Little Rock</b>	(17) STATE <b>AR</b>	(18) ZIP CODE <b>72212</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>501-748-7000</b>	(20) COUNTRY CODE (if not in U.S.A.)	

### FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN) <b>0014400220</b>	(22) FCC USE ONLY
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COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>CUT</b>	(25A) QUANTITY <b>1</b>
(26A) FEE DUE FOR (PTC) <b>\$1,015.00</b>	(27A) TOTAL FEE <b>\$1,015.00</b>	FCC USE ONLY
(28A) FCC CODE 1	(29A) FCC CODE 2	

(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	

### SECTION D - CERTIFICATION

#### CERTIFICATION STATEMENT

I, \_\_\_\_\_, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

### SECTION E - CREDIT CARD PAYMENT INFORMATION

MASTERCARD \_\_\_\_\_ VISA \_\_\_\_\_ AMEX \_\_\_\_\_ DISCOVER \_\_\_\_\_

ACCOUNT NUMBER \_\_\_\_\_ EXPIRATION DATE \_\_\_\_\_

I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

FEDERAL COMMUNICATIONS COMMISSION <b>REMITTANCE ADVICE (CONTINATION SHEET)</b> FORM 159-C Page No <b>2</b> of <b>2</b>		SPECIAL USE  FCC USE ONLY
USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT <b>SECTION 6B - ADDITIONAL APPLICANT INFORMATION</b>		
(13) APPLICANT NAME <b>Lexcom, Inc.</b>		
(14) STREET ADDRESS LINE NO. 1 <b>124 East Main Street</b>		
(15) STREET ADDRESS LINE NO. 2 <b>200 N. State Street</b>		
(16) CITY <b>Lexington</b>	(17) STATE <b>NC</b>	(18) ZIP CODE <b>27293 0808</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>336-249-5765</b>		(20) COUNTRY CODE (if not in U.S.A.)
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>		
(21) APPLICANT (FRN) <b>0004291951</b>		(22) FCC USE ONLY
<b>COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET</b>		
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE	(25A) QUANTITY
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE	FCC USE ONLY
(28A) FCC CODE 1	(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	
(23C) CALL SIGN/OTHER ID	(24C) PAYMENT TYPE CODE	(25C) QUANTITY
(26C) FEE DUE FOR (PTC)	(27C) TOTAL FEE	FCC USE ONLY
(28C) FCC CODE 1	(29C) FCC CODE 2	
(23D) CALL SIGN/OTHER ID	(24D) PAYMENT TYPE CODE	(25D) QUANTITY
(26D) FEE DUE FOR (PTC)	(27D) TOTAL FEE	FCC USE ONLY
(28D) FCC CODE 1	(29D) FCC CODE 2	
(23E) CALL SIGN/OTHER ID	(24E) PAYMENT TYPE CODE	(25E) QUANTITY
(26E) FEE DUE FOR (PTC)	(27E) TOTAL FEE	FCC USE ONLY
(28E) FCC CODE 1	(29E) FCC CODE 2	
(23F) CALL SIGN/OTHER ID	(24F) PAYMENT TYPE CODE	(25F) QUANTITY
(26F) FEE DUE FOR (PTC)	(27F) TOTAL FEE	FCC USE ONLY
(28F) FCC CODE 1	(29F) FCC CODE 2	

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

In the Matter of )  
)  
LEXCOM, INC., ) File No. ITC-T/C-\_\_\_\_\_  
Transferor )  
) WC Docket No. \_\_\_\_\_  
and )  
)  
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), Lexcom, Inc. ("Lexcom" 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 Lexcom and its authorized subsidiaries from Lexcom to Windstream. Both Lexcom 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 domestic Section

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<sup>1</sup> Lexcom's wholly-owned subsidiary Lexcom Long Distance LLC provides international telecommunications services pursuant to International Section 214 Authorization File No. ITC-214-19930302-00003. Windstream's authorized subsidiaries provide international telecommunications services pursuant to the following international Section 214 authorizations:

214 supplement, containing the information required by 47 C.F.R. § 63.04, is attached hereto as Exhibit A. The international Section 214 application is eligible for streamlined processing pursuant to Section 63.12 of the Commission's Rules.<sup>2</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, and video services through a partnership with DISH. Windstream's markets are primarily located in rural areas in 16 states.<sup>3</sup> In North Carolina, Windstream North Carolina, Inc. and Windstream Concord Telephone, Inc. provide incumbent local exchange ("ILEC") service to approximately 277,014 access lines,<sup>4</sup> and Windstream Communications, Inc. ("Windstream Communications") provides long distance

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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. The Commission has also approved the transfer of control of D&E Communications, Inc. and its international Section 214-authorized subsidiary to Windstream. See Public Notice, DA 09-1694, File No. ITC-T/C-20090521-00234 (IB rel. July 30, 2009) (File No. ITC-214-19970707-00382).

<sup>2</sup> 47 C.F.R. § 63.12.

<sup>3</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.

<sup>4</sup> All access line figures herein are as of August 31, 2009.

services throughout various markets in North Carolina as well as competitive local exchange (“CLEC”) service to 50,432 access lines in North Carolina.<sup>5</sup>

**B. LEXCOM, INC.** (FRN 0004291951). Lexcom, Inc. is a North Carolina corporation headquartered in Lexington, North Carolina. Through its subsidiaries, Lexcom offers its customers local and long distance telephone services, high-speed Internet services, cable television services,<sup>6</sup> and resold wireless services. Lexcom subsidiaries have nearly 23,000 total access lines (all of which are ILEC access lines) and 8,685 broadband customers, all in central North Carolina. Lexcom holds, directly or indirectly, a 100 percent interest in the following subsidiaries, each of which is organized under the laws of North Carolina:

- Lexcom Telephone Company (FRN 0001959758) (“Lexcom Telco”), a rural ILEC (as defined at Section 3(37) of the Act) in its respective local exchange area and a Federal cost company.
- Lexcom Long Distance LLC (FRN 0004291969), which is authorized to provide domestic and international interexchange services, as well as intrastate long distance service and competitive access (“CAP”) services throughout North Carolina.

Lexcom serves the exchanges of Lexington, Welcome, and Southmont, all located in and around Davidson County, North Carolina. Lexcom does not maintain any CLEC operations.<sup>7</sup>

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<sup>5</sup> A Windstream subsidiary also provides some cable television services to approximately 1,300 subscribers in North Carolina, but those facilities are not located near Lexcom’s service territory.

<sup>6</sup> These services are provided over a cable system overbuild. As such, the Cable-Telco buy-out restrictions set forth in Section 652(a) of the Communications Act of 1934, as amended, do not apply. See *Applications of Ameritech Corp. and SBC Communications Inc.*, Memorandum Opinion and Order, 14 FCC Rcd. 14712, 14944 ¶¶ 563-64 (1999) (“[S]ection 652 is not applicable” to an ILEC when it is “overbuilding incumbent cable operators in its telephone service region.”).

<sup>7</sup> In addition, Lexcom subsidiaries Lexcom Cable Services LLC (FRN 0004292637), which provides cable television and Internet access services, and Lexcom Wireless Services, LLC (FRN 0005063391), which resells commercial mobile radio services, are subject to the Transaction. Neither of these entities holds international or domestic interstate section 214 authorization subject to the requirements of the Part 63 rules.

## II. DESCRIPTION OF THE TRANSACTION

On September 8, 2009, Lexcom and Windstream signed a Share Exchange Agreement (the “Agreement”) providing for Windstream’s acquisition of all of the shares of Lexcom (the “Transaction”). As a result of the Transaction, Lexcom shall continue as a surviving corporation of the share exchange 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 Lexcom upon consummation of the Transaction, such transfer of control will result in a substantial change in the ultimate control over Lexcom 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>8</sup> The first step in the public interest analysis is an evaluation of the Transferee’s qualifications. In evaluating the Transferee’s qualifications, “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>9</sup> Windstream is legally, technically and financially qualified with regard to the instant transfer of control applications.

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<sup>8</sup> 47 U.S.C. §§ 214, 310(d).

<sup>9</sup> *Id.* § 310(d).

**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>10</sup> Lexcom's markets in North Carolina share the same rural characteristics of Windstream's existing ILEC footprint and, like Windstream's acquisition of CT Communications, Inc. in North Carolina in 2007 and its pending acquisition of D&E Communications, combining Lexcom with Windstream will enable Windstream to offer, and Lexcom to continue to offer, a broad range of high quality services to Lexcom'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 North Carolina in particular. With the Transaction, Windstream will serve nearly 23,000 additional local exchange customers and 8,685 additional broadband customers – additions that will increase Windstream's presence in North Carolina to over 350,000 access lines. Lexcom will realize significant synergies and efficiencies by operating as part of Windstream's expanded operations. Windstream will increase Lexcom's ability to deploy and maintain innovative and advanced telecommunications offerings, benefiting consumers and serving the public interest, convenience, and necessity.

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<sup>10</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.

The efficiencies and economics 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, Lexcom will have greater access to new technologies and facilities as a subsidiary of Windstream than Lexcom would have standing alone. For example, the combined company will be better able to make advanced services available throughout Lexcom's markets, as well as other company-wide initiatives/products. Post-merger Windstream also will be positioned to secure more favorable discounts than Lexcom alone with respect to purchases of new equipment.

The Transaction will enable Lexcom'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 Lexcom. Windstream has deployed broadband services throughout nearly all of its markets, and Lexcom has deployed broadband services throughout its own. Because the combined enterprise will be able to achieve greater economies of scale and scope than Lexcom would have operating independently, Applicants expect that the Transaction will facilitate future deployment and availability of higher broadband speeds into the future. Lexcom customers will also benefit from the expanded resources Windstream will make available for

new business opportunities; expanded and enhanced 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 Transaction Will be Seamless to Subscribers**

But for a brand name change, the Transaction will be seamless to Lexcom customers. The Transaction will not adversely affect – and if anything, will improve – the already high level and quality of service that Lexcom customers currently receive. The Transaction itself will not otherwise adversely affect the rates for service that customers currently experience<sup>11</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**

Lexcom and Windstream presently have a miniscule share of the domestic interstate interexchange market and are regulated as nondominant in that market.<sup>12</sup> The Commission has

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<sup>11</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>12</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*

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 a public interest harm” and “unlikely to raise public interest concerns.”<sup>13</sup> The Applicants’ combined market share will fall well below that threshold.<sup>14</sup>

## 2. Applicants Have Only One *De Minimis* ILEC-CLEC Overlap 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 minimal adjacencies between markets where the adjacent exchanges are very small, “no harm to competition is likely to occur.”<sup>15</sup> Moreover, where rural and less populated areas are involved, the Commission has

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*Interstate, Interexchange Marketplace*, 12 FCC Rcd. 15756, ¶ 163 (1997) (establishing that independent ILECs must meet separation requirements to be eligible for nondominant regulatory treatment).

<sup>13</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>14</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. But as Windstream’s total 2008 revenues for *all* of its services – including local voice, broadband, and long distance voice – 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 international resale revenues – a figure that *excludes* the over \$8 billion of international revenues generated by facilities-based services. See *id.* at Tables 6-4 and 6-5.

<sup>15</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 and its pending acquisition of D&E Communications in light of these precedents. See Public Notice,

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>16</sup>

The Transaction results in one *de minimis* ILEC-CLEC overlap in the Lexington, North Carolina exchange, where Lexcom Telco maintains 18,271 access lines, and Windstream Communications maintains four access lines for voice service only. Lexcom is not authorized to operate as a CLEC.

Moreover, the Transaction involves only three exchanges where there are ILEC adjacencies, all of which are in North Carolina and affect a *de minimis* number of subscribers. Specifically, Windstream’s Denton exchange is adjacent to Lexcom Telco’s Lexington and Southmont exchanges. The Lexington exchange has 18,271 access lines; the Southmont exchange has 2,140 access lines; and the Denton exchange has 3,161 access lines. The combined company will face competition in all three exchanges. In Denton, Windstream faces direct competition by Time Warner Cable Information Services (“Time Warner”).<sup>17</sup> In the Lexington

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WC Docket No. 09-79, DA 09-1729 (WCB rel. July 31, 2009) (“*Windstream-D&E*”) (citing *Global Crossing-Citizens* in concluding that the transfer of control of CTC to Windstream “will serve the public interest, convenience and necessity”); 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*”).

<sup>16</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, North Carolina – indicates that the Commission’s extensive merger analysis previously employed in BOC-related mergers is inapplicable here.

<sup>17</sup> Lexcom’s cable television overbuild includes 156 cable television (93 of whom also subscribe to cable modem Internet access service) in the Denton exchange, but Lexcom currently provides no CLEC or competing telecommunications or VoIP services in that service territory.

and Southmont exchanges, Lexcom faces direct competition by Time Warner as well. Both companies also compete with a number of wireless carriers in their markets, including AT&T Wireless, Verizon Wireless, Sprint/Nextel, and T-Mobile, and face potential competition from adjacent ILEC operators, including AT&T and Randolph Telephone.<sup>18</sup>

The Commission has historically expressed some concern regarding a reduction in the number of potential competitive entrants when large Regional Bell Operating Companies (“RBOCs”) with adjacent markets merge their operations.<sup>19</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>20</sup> This Transaction clearly falls

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<sup>18</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 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 National Center for Health Statistics at the Centers for Disease Control 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>19</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>20</sup> See, e.g., *Windstream-D&E* at 1; *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).

into the latter category.<sup>21</sup> There is only one *de minimis* ILEC-CLEC overlap, affecting one of the exchange areas involved in the Transaction. With respect to adjacencies, only three ILEC 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.

#### **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 Lexcom 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>23</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

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

<sup>22</sup> There is only one *de minimis* overlap associated with the Transaction, and only three 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; see also *Windstream-D&E* at 1.

<sup>23</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>24</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>25</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:

Lexcom, Inc.  
200 N. State Street  
Lexington, NC 27293-0808  
Tel: (336) 249-5765  
Fax: (336) 249-5819

###### Authorized Carriers (with FRN Information):

Lexcom Long Distance LLC (FRN 0004291969)

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<sup>24</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>25</sup> *See id.*

Transferee:

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

**(b) Citizenship**

Transferor:

Lexcom, Inc. is a North Carolina Corporation.

Authorized Carriers:

Lexcom Long Distance LLC is a North Carolina limited liability company

Transferee:

Windstream is a Delaware Corporation.

**(c) Contact Information**

For the Transferor and Authorized Carriers:

Richard G. Reese  
President  
Lexcom, Inc.  
200 N. State Street  
Lexington, NC 27293-0808  
Tel: (336) -249-5765  
Fax: (336) 249-5819  
Email: [rgreese@lexcominc.net](mailto:rgreese@lexcominc.net)

*With a copy to:*

Howard S. Shapiro  
Bennet & Bennet, PLLC  
4350 East-West Highway  
Suite 201  
Bethesda, MD 20814  
Tel: (202) 551-0017  
Fax: (202) 371-1558  
Email: [hshapiro@bennetlaw.com](mailto:hshapiro@bennetlaw.com)

For the Transferee:

Eric N. 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:

Lexcom Long Distance LLC – File No. ITC-214-19930302-00003

Transferor:

Lexcom, Inc. holds no international Section 214 authorization in its own right.

Transferee:

Windstream Corporation 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 and its subsidiaries 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 Commission's 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 Lexcom and its subsidiaries to Windstream in connection with the Transaction described herein.

Respectfully submitted,

**WINDSTREAM CORPORATION**

**LEXCOM, 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: \_\_\_\_\_

Richard G. Reese  
President  
Lexcom, Inc.  
200 N. State Street  
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Tel: (336) 249-5765  
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Kenneth D. Patrich  
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*Its Attorneys*

Of Counsel:

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4350 East-West Highway  
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Bethesda, MD 20814  
Tel: (202) 551-0017

*Its Attorney*

September 18, 2009

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*Its Attorney*

September 18, 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. Lexcom 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 Lexcom 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**

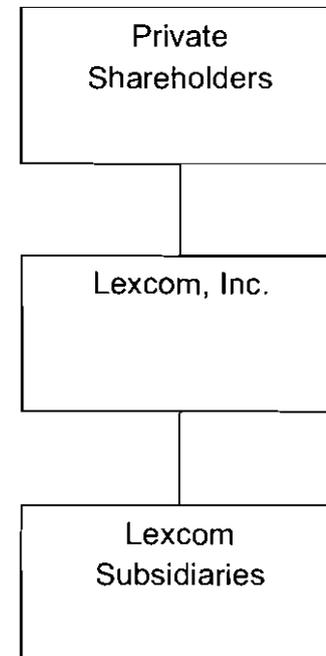
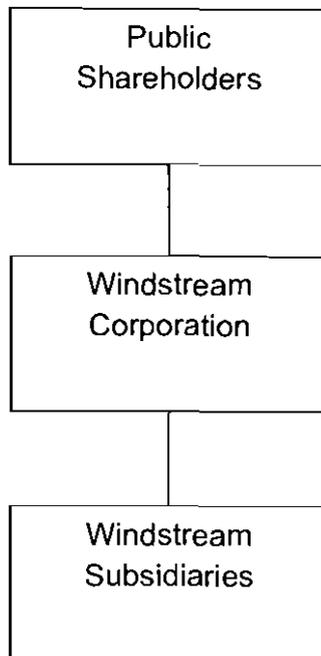
## Corporate Structure Chart

September 18, 2009

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

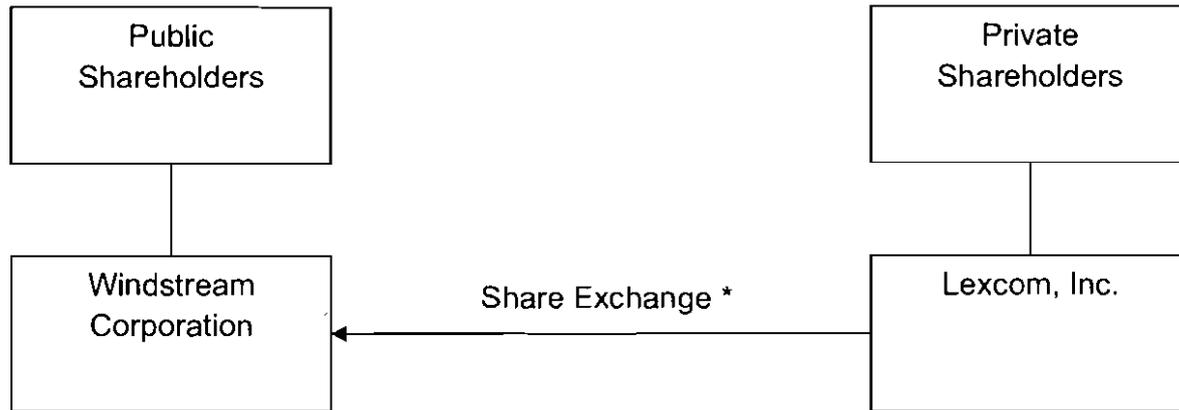
### Step 1

Pre-Transaction



## Corporate Structure Chart

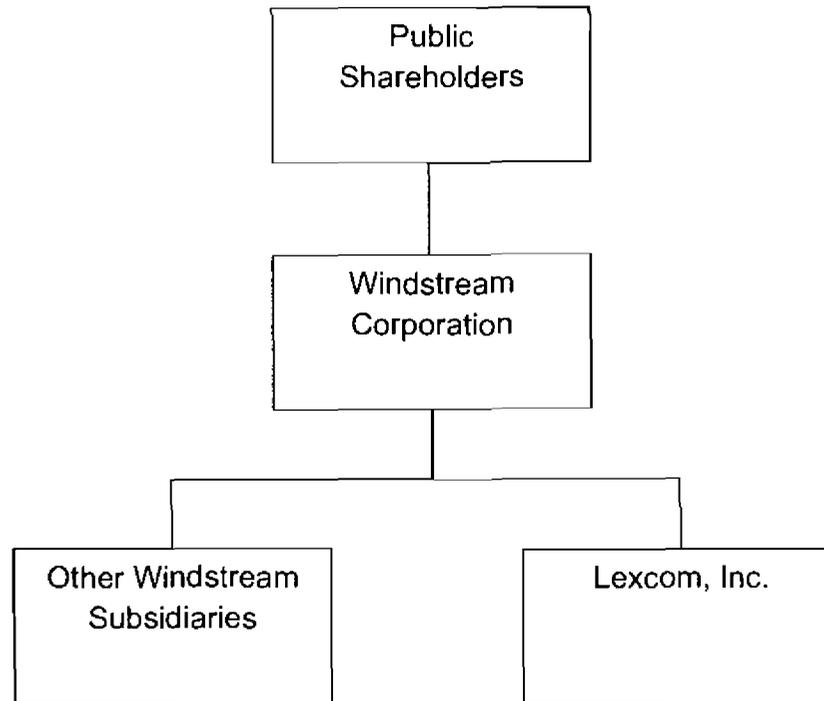
Step 2 Transaction



\* Windstream Corporation acquires stock of Lexcom, Inc.

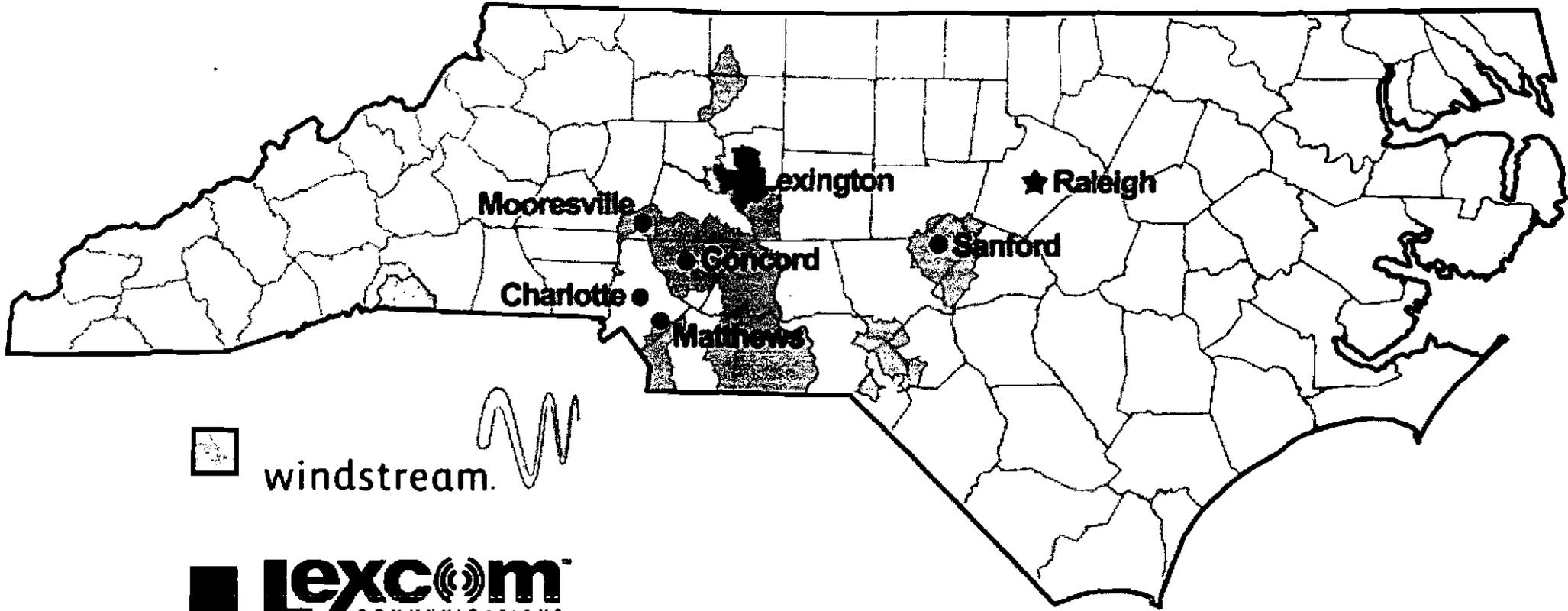
## Corporate Structure Chart

Step 3 Post-Transaction



**EXHIBIT C**

**Service Area Coverage Map**



windstream.



**Lexcom**  
COMMUNICATIONS