

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee**

<b>In the Matter of the Joint Application of</b>	)	
	)	
<b>NUVOX, INC.,</b>	)	
	)	
<b>NUVOX COMMUNICATIONS, INC.</b>	)	<b>Docket No. ____</b>
	)	
<b>AND</b>	)	
	)	
<b>WINDSTREAM CORPORATION</b>	)	
	)	
<b>for Approval of a Transfer of Control of an</b>	)	
<b>Authorized Telecommunications Provider</b>	)	

**APPLICATION**

NuVox, Inc. (“NuVox”), NuVox Communications, Inc. (“NuVox Communications”) and Windstream Corporation (“Windstream”) (collectively, “Applicants”), by their counsel and pursuant to Tenn. Code Ann. § 65-4-113, hereby respectfully request authority from the Tennessee Regulatory Authority (“TRA” or “Authority”), to the extent it may be required, to consummate a merger transaction resulting in the transfer of control of NuVox Communications from its existing ultimate parent, NuVox, to Windstream. NuVox Communications is authorized as a competitive provider of telecommunications services in 16 contiguous Southeastern and Midwestern states, including in Tennessee. Windstream has subsidiary local exchange carrier operations in 16 states but is, itself, not a regulated entity and is participating in this Application solely in its capacity as an acquiring carrier in the merger transaction

described herein. Windstream's local exchange carrier subsidiaries do not operate in Tennessee.

As described more fully below, pursuant to the terms of an Agreement and Plan of Merger (“Agreement”) dated November 2, 2009 among Windstream, Night Merger Sub, Inc. (“Newco”), a direct, wholly-owned subsidiary of Windstream created for purposes of the merger, NuVox and the Stockholders’ Representative, Newco will merge with and into NuVox, with NuVox continuing as the surviving corporation (the “Transaction”). As a result of the Transaction, NuVox will become the direct, wholly-owned subsidiary of Windstream. Thus, Windstream will be the new ultimate parent company of NuVox Communications. This change in ultimate control does not involve a transfer of operating authority,<sup>1</sup> assets or customers, and the Transaction is expected to be seamless to end user customers. Immediately following consummation of the Transaction, NuVox Communications will continue to offer the same services, rates, terms and conditions pursuant to its existing authorization and the only change resulting from the Transaction will be that NuVox Communications will be ultimately owned by Windstream.

The closing of the Transaction is contingent upon receipt of the necessary regulatory approvals, among other things. Therefore, the Applicants request that the TRA grant all relief sought herein as expeditiously as possible so that the Applicants can close the Transaction as soon as practicable in order for the Applicants to meet critical

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<sup>1</sup> Because this change of control does not involve the transfer of a certificate or the assets of a regulated utility, Applicants do not believe that T.C.A. §65-4-113 is applicable to this transaction. Although the Applicants do not concede that the TRA has jurisdiction over this transaction, this filing contains the information described in T.C.A. §65-4-113 out of an abundance of caution.

business objectives. In support of this Application, the Applicants provide the following information:

**I. APPLICANTS**

**A. Windstream Corporation**

Windstream Corporation, a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212 (501) 748-7000, is an S&P 500 diversified communications and entertainment company that is publicly traded on the New York Stock Exchange. Windstream, through its subsidiaries, provides local and long distance telephone services, broadband and high-speed data services and video services to customers primarily in rural areas in 16 states.<sup>2</sup> Windstream's subsidiaries also offer a wide range of IP-based voice and data services and advanced phone systems and equipment to businesses and government agencies. Windstream's subsidiaries have approximately 3 million access lines and approximately \$3.1 billion in annual revenues. Windstream is ranked 4<sup>th</sup> in the 2009 BusinessWeek 50 ranking of the best performing U.S. companies. More information can be found at [www.windstream.com](http://www.windstream.com). As a publicly-traded company, there currently are no "10% or greater" shareholders of Windstream, and it is not anticipated that there will be any "10% or greater" shareholders of Windstream post-close. .

**B. NuVox, Inc. and NuVox Communications**

NuVox is a privately-held Delaware corporation headquartered at Two North Main Street, Greenville, South Carolina 29601. Through its operating subsidiaries,

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<sup>2</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..

NuVox has operations in 48 urban/suburban markets throughout 16 contiguous Midwestern and Southeastern states. The company is an integrated communications provider of voice and data telecommunications services with approximately 90,000 business customers. The operating subsidiary of NuVox in Tennessee, NuVox Communications, is a direct, wholly-owned subsidiary of Gabriel Communications Finance Company (“Gabriel”), a holding company that is a direct, wholly-owned subsidiary of NuVox. In Tennessee, NuVox Communications provides competitive local exchange and interexchange telecommunications services.<sup>3</sup>

NuVox’s largest operating subsidiary, NuVox Communications, Inc., provides interexchange and competitive local exchange telecommunications services in the following states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Other NuVox operating subsidiaries provide interexchange and competitive local exchange telecommunications services in the following states: Arkansas, Illinois, Indiana, Kansas, Missouri, Ohio and Oklahoma.<sup>4</sup> NuVox is also authorized by the Federal Communications Commission to provide domestic interstate and international telecommunications services.

Currently, there are two (2) investors that hold 10% or more of the total outstanding stock of NuVox: (1) M/C Venture Partners V, L.P. and its affiliates; and (2)

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<sup>3</sup> See Docket No. 99-00806, February 22, 2000, and Docket No. 04-00309, April 13, 2005.

<sup>4</sup> NuVox Communications of Arkansas, Inc., NuVox Communications of Illinois, Inc., NuVox Communications of Indiana, Inc., NuVox Communications of Kansas, Inc., NuVox Communications of Missouri, Inc., NuVox Communications of Ohio, Inc. and NuVox Communications of Oklahoma, Inc.

<sup>7</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.

NSHI Ventures LLC. No other person or entity currently holds 10% or more of the outstanding stock of NuVox.

A diagram showing the current corporate structure of NuVox is appended hereto as **Exhibit A**.

## II. DESIGNATED CONTACTS

The designated contacts for questions concerning this Application are:

FOR NUVOX AND NUVOX COMMUNICATIONS	FOR WINDSTREAM
<p>Henry Walker BRADLEY ARANT BOULT CUMMINGS LLP 1600 Division Street Suite 700 P.O. Box 340025 Nashville, TN 37203 Phone (615) 252-2363 Fax: (615) 252-6363 Email: <a href="mailto:hwalker@boultcummings.com">hwalker@boultcummings.com</a></p> <p>Brad E. Mutschelknaus Melissa Conway Kelley Drye &amp; Warren LLP 3050 K Street, NW, Suite 400 Washington, DC 20007 (202) 342-8552 (telephone) (202) 342-8451 (facsimile) <a href="mailto:mconway@kelleydrye.com">mconway@kelleydrye.com</a></p>	<p>Henry Walker BRADLEY ARANT BOULT CUMMINGS LLP 1600 Division Street Suite 700 P.O. Box 340025 Nashville, TN 37203 Phone (615) 252-2363 Fax: (615) 252-6363 Email: <a href="mailto:hwalker@boultcummings.com">hwalker@boultcummings.com</a></p> <p>Brad E. Mutschelknaus Melissa Conway Kelley Drye &amp; Warren LLP 3050 K Street, NW, Suite 400 Washington, DC 20007 (202) 342-8552 (telephone) (202) 342-8451 (facsimile) <a href="mailto:mconway@kelleydrye.com">mconway@kelleydrye.com</a></p>
<p>With a copy to:</p> <p>Susan Berlin VP, Senior Regulatory Counsel NuVox, Inc. Two North Main Street Greenville, South Carolina 29601 (864) 331-7323 (864) 672-5016 <a href="mailto:Sberlin@nuvox.com">Sberlin@nuvox.com</a></p>	<p>With a copy to:</p> <p>Kimberly K. Bennett Regulatory Legal Counsel Windstream Corporation 4001 Rodney Parham Road Little Rock, Arkansas 72212 (501) 748-6374 <a href="mailto:Kimberly.K.Bennett@winstream.com">Kimberly.K.Bennett@winstream.com</a></p>

### **III. DESCRIPTION OF THE TRANSACTION**

Pursuant to the terms of the Agreement, Windstream intends to acquire NuVox in a merger transaction valued at approximately \$643 million. Windstream expects to issue approximately 18.7 million fixed shares of stock valued at \$183 million, based on Windstream's closing stock price on November 2, 2009, and pay approximately \$280 million in cash as part of the Transaction. Windstream will also assume estimated net debt of approximately \$180 million. Windstream intends to finance the acquisition with existing cash and current capacity on its revolving credit agreement.

To accomplish the Transaction, Windstream's direct, wholly-owned merger subsidiary, Newco, will merge with and into NuVox, with NuVox continuing as the surviving corporation. As a result, NuVox will become a direct, wholly-owned subsidiary of Windstream. Thus, Windstream will be the new ultimate parent company of NuVox Communications.

The current customers of NuVox Communications will remain customers of NuVox Communications. Accordingly, the Transaction will be virtually transparent to customers, who will continue to enjoy the same rates, terms and conditions of service as they do prior to closing. The only change resulting immediately from the Transaction will be that NuVox Communications will be ultimately owned by Windstream, a widely-held public corporation. The closing of the Transaction will be contingent upon the receipt of the required regulatory approvals, among other things.

Windstream is well-qualified to become the new ultimate owner of NuVox Communications. As noted above, subsidiaries of Windstream currently provide telecommunications services in 16 states, including Tennessee. It is not anticipated,

however, that the day-to-day operations of NuVox Communications will change as a result of the Transaction. NuVox Communications will continue to have the managerial, technical and financial qualifications to provide quality telecommunications services to consumers in Tennessee. Many of the existing NuVox management personnel will remain in place, supported by experienced Windstream management. NuVox Communications will also be supported by the financial resources of Windstream. For additional detail on the financial and managerial qualifications of Windstream, please see [www.Windstream.com](http://www.Windstream.com).

A diagram showing the corporate structure of the combined companies post-Transaction is appended hereto as **Exhibit B**.

#### **IV. PUBLIC INTEREST STATEMENT**

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

TRA approval of the Transaction will clearly serve the public interest. The telecommunications industry has been and continues to be subject to rapid technological advances, evolving consumer preferences and dynamic changes. 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>7</sup> Combining NuVox Communications with Windstream will enable Windstream to offer, and NuVox Communications to continue to offer, a broad range of high quality services to Tennessee customers.

The Transaction will enhance Windstream's ability to offer a wide range of quality communications services across the nation and in Tennessee in particular. NuVox Communications will realize significant synergies and efficiencies by operating



as part of Windstream's expanded operations. Windstream will help ensure the continuation of NuVox Communications' 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 wherewithal 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 medium-sized carriers to achieve such efficiencies is publicly beneficial as these companies continue to face new competitive challenges. The Transaction will also provide each Applicant with access to both companies' advanced network capabilities, technical and financial strengths, and complementary services, which together are expected to strengthen the Applicants' ability to provide quality service. Post-close, NuVox Communications will have greater access to new technologies and facilities as a subsidiary of Windstream than NuVox Communications would have standing alone. For example, the combined company will be better able to make advanced services available throughout NuVox Communications' markets, as well as other company-wide initiatives/products.

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

The Transaction will be generally transparent to customers and at the time of the merger they will not experience any change in their services, rates, terms and conditions of such service. Any future changes in rates, terms and conditions of service will be made in accordance with applicable TRA requirements, and any future consolidation of the operations of NuVox Communications into or with other Windstream operating

companies, such that customers would see a change in their service provider, would be undertaken pursuant to the Authority's rules and notice requirements.<sup>8</sup>

**C. The Transaction Poses No Competitive Risks**

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 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.

Please note that NuVox is regulated as non-dominant in the domestic interstate interexchange market. The FCC has 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 harm to the public. The Applicants' combined market share will fall well below that threshold.

This Transaction will enhance competition because it will strengthen NuVox Communications and allow Windstream to expand and compete in areas outside its existing service territories. The Applicants emphasize that the Transaction will not have a negative impact on current Tennessee customers.

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<sup>8</sup> The contemplated transfer of control does not raise any slamming concerns or necessitate compliance with FCC or state procedures to notify customers prior to a carrier-to-carrier sale or transfer of subscribers as the contemplated Transaction does not involve any change in a customer's existing service provider. NuVox Communications' customers will remain with their company and will continue to be served under its existing authorization.

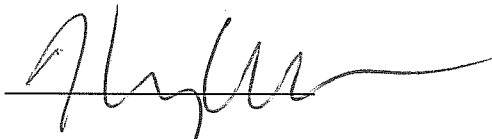
V. CONCLUSION

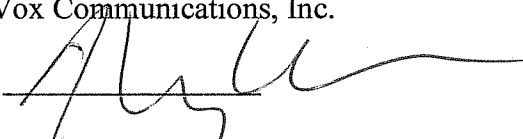
Based on the foregoing, the Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by grant of this Application.

Respectfully submitted,

Windstream Corporation

NuVox, Inc.

By:   
Henry Walker  
BRADLEY ARANT BOULT CUMMINGS  
LLP  
1600 Division Street  
Suite 700  
P.O. Box 340025  
Nashville, TN 37203  
Phone (615) 252-2363  
Fax: (615) 252-6363  
Email: [hwalker@boultcummings.com](mailto:hwalker@boultcummings.com)

NuVox Communications, Inc.  
By:   
Henry Walker  
BRADLEY ARANT BOULT CUMMINGS  
LLP  
1600 Division Street  
Suite 700  
P.O. Box 340025  
Nashville, TN 37203  
Phone (615) 252-2363  
Fax: (615) 252-6363  
Email: [hwalker@boultcummings.com](mailto:hwalker@boultcummings.com)

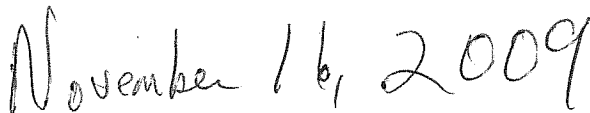
Brad E. Mutschelknaus  
Melissa S. Conway  
Kelley Drye & Warren LLP  
3050 K Street, NW  
Suite 400  
Washington, D.C. 20007  
Tel: (202) 342-8552  
Fax: (202) 342-8451  
[mconway@kelleydrye.com](mailto:mconway@kelleydrye.com)

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Kelley Drye & Warren LLP  
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Suite 400  
Washington, D.C. 20007  
Tel: (202) 342-8552  
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[mconway@kelleydrye.com](mailto:mconway@kelleydrye.com)

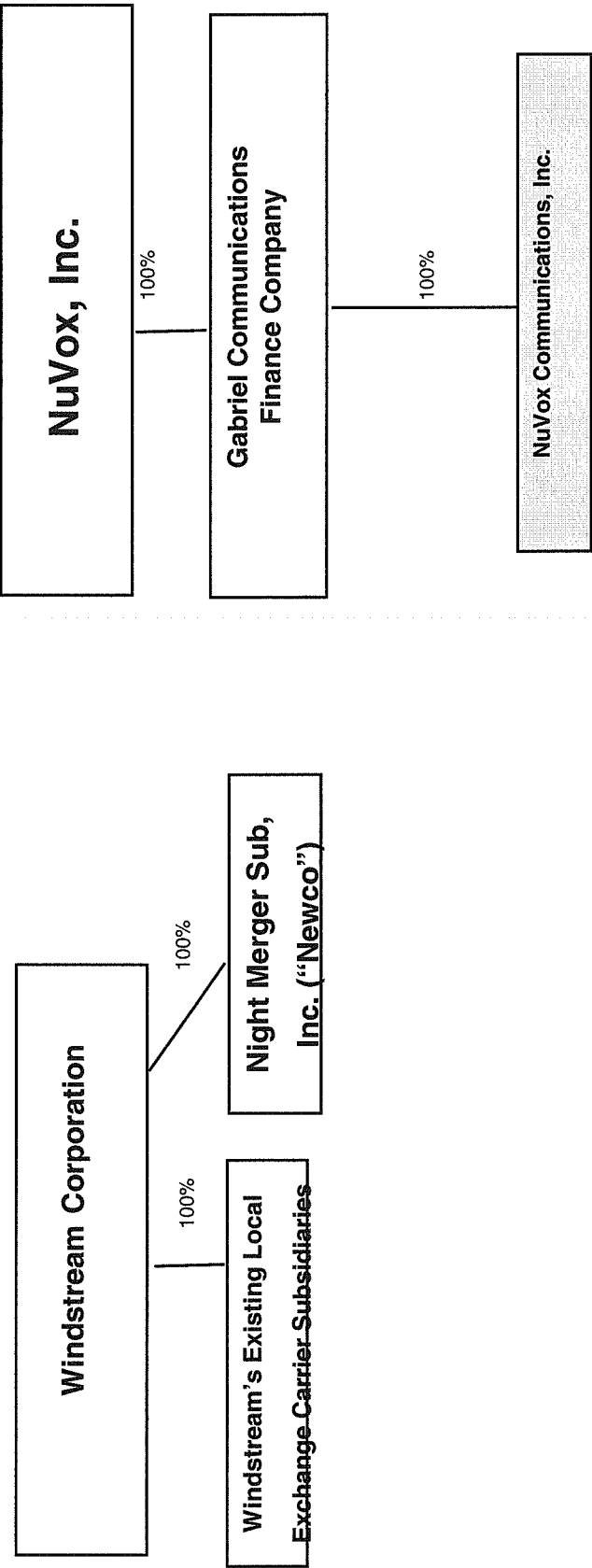
Its Counsel

Their Counsel

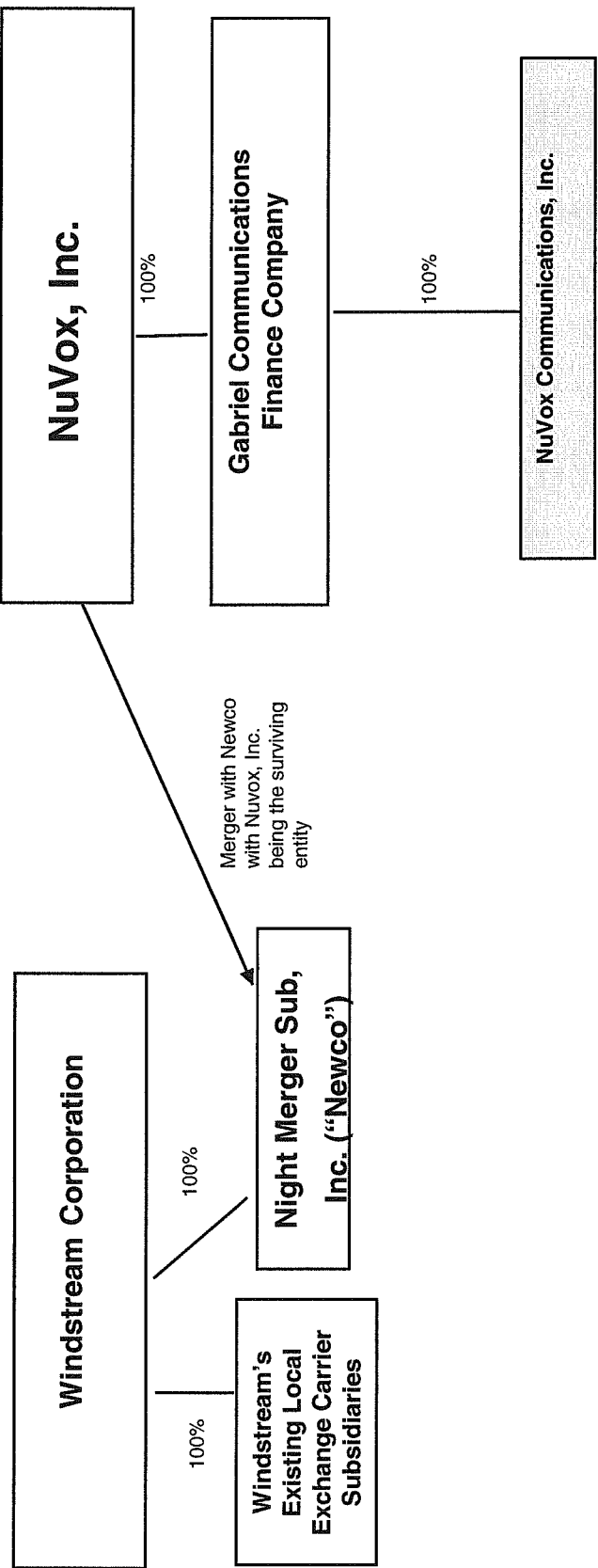
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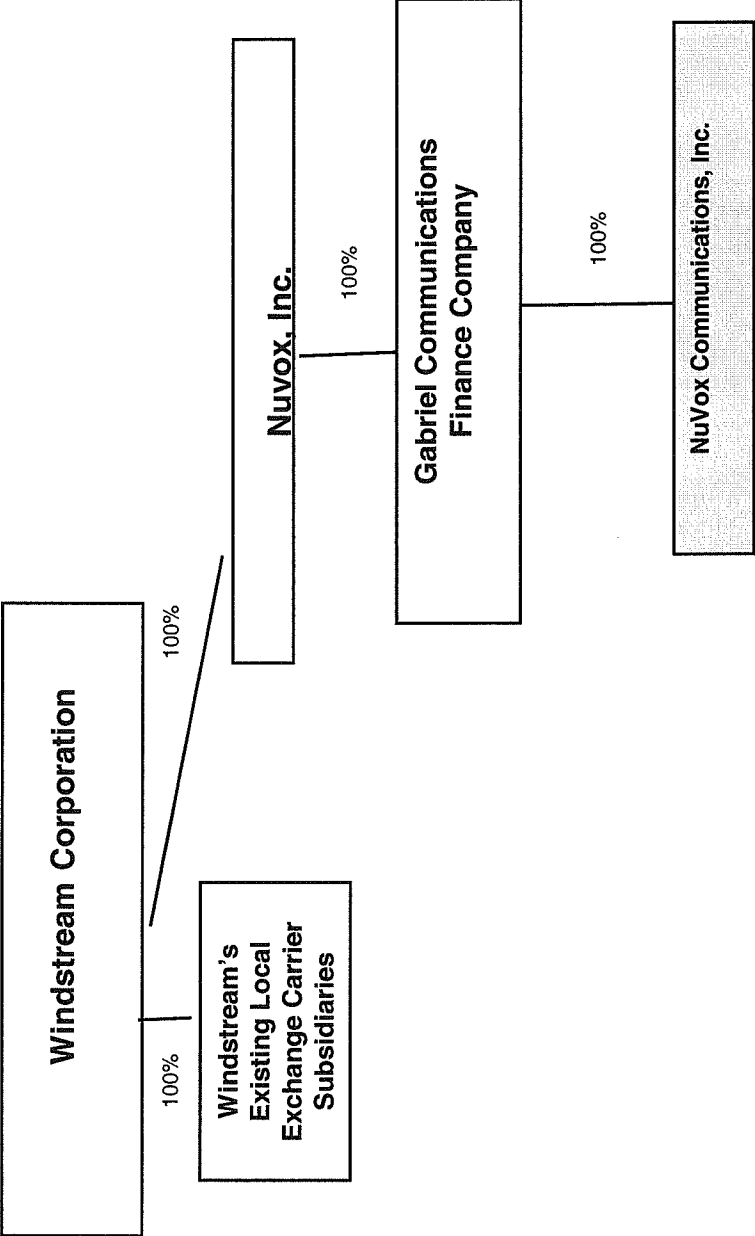
Existing Corporate Structures



Transaction



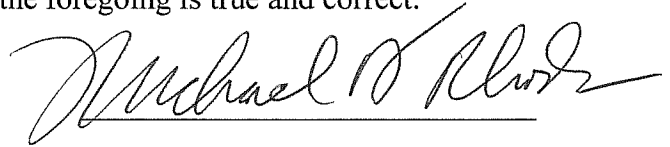
Post-Transaction Corporate Structure



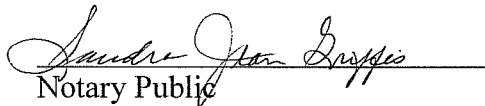
## VERIFICATION

I, Michael D. Rhoda, am Senior Vice President - Government Affairs of Windstream Corporation. I am authorized to represent it and its affiliates and to make this verification on their behalf. The statements in the foregoing document relating to Windstream Corporation and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

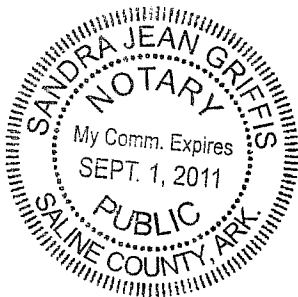
I declare under penalty of perjury that the foregoing is true and correct.



Subscribed and sworn to before me this 13<sup>th</sup> day of November 2009.

  
Notary Public

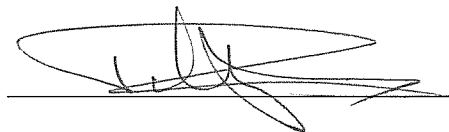
My Commission expires: September 1, 2011



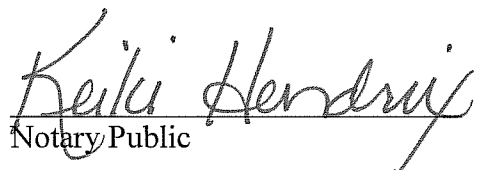
## VERIFICATION

I, Riley M. Murphy, am Executive Vice President and General Counsel of NuVox, Inc. I am authorized to represent it and its affiliates and to make this verification on their behalf. The statements in the foregoing document relating to NuVox, Inc. and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Subscribed and sworn to before me this 12<sup>th</sup> day of November 2009.

  
Notary Public

My Commission expires: 05.12.2014