

# BINGHAM

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September 28, 2011

**Via Overnight Delivery & Electronic Mail**

Chairman Mary W. Freeman  
c/o Sharla Dillon, Dockets and Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505  
Sharla.Dillon@tn.gov

**Re: Petition of First Communications, LLC, Globalcom, Inc., and Gores AC Holdings, LLC for Approval to Transfer Control**

Dear Chairman Freeman:

On behalf of First Communications, LLC, Globalcom, Inc., and Gores AC Holdings, LLC, enclosed for filing with the TRA are an original and four (4) copies of the above-referenced Petition. Also enclosed is a check in the amount of \$75.00 to cover the filing fee. A copy of this filing in Portable Document Format (PDF) is also being submitted via electronic mail.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Should you have any questions, please do not hesitate to contact Danielle Burt at (202) 373-6039.

Respectfully submitted,



Jean L. Kiddoo  
Danielle Burt

Counsel for Petitioners

Filed electronically in  
TRA Docket Room  
09/29/2011  
11-00165

Boston  
Frankfurt  
Hartford  
Hong Kong  
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New York  
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**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

In the Matter of the Petition of	)	
	)	
	)	
<b>First Communications, LLC,</b>	)	
<b>Globalcom, Inc.,</b>	)	Case No. _____
and	)	
<b>Gores AC Holdings, LLC</b>	)	
	)	
for Approval to Transfer Control	)	
	)	

**PETITION**

First Communications, LLC (“FCL”), Globalcom, Inc. (“Globalcom”), and Gores AC Holdings, LLC (“Gores”) (collectively, “Petitioners”), by their undersigned counsel and pursuant to Section 65-4-113 of the Tennessee Code and any other regulations deemed applicable, request approval from the Authority to consummate a transaction whereby Gores, an entity ultimately controlled by The Gores Group, LLC (“The Gores Group”), will acquire control of First Communications, Inc. (“FCI”), the parent company of FCL and Globalcom (“Operating Companies”), and indirectly acquire control of the Operating Companies.

In support of this Petition, Petitioners state:

**I. PETITIONERS**

**A. First Communications, Inc. and the Operating Companies**

FCI is a Delaware corporation and its headquarters are located at 3340 West Market Street, Akron, Ohio 44333. FCI, through its operating subsidiaries FCL, Globalcom, First Telecom Services, LLC and Xtension Services, Inc., provides local, private line, and/or long distance services to both business and residential customers in 49 states. Its services include, in

addition to traditional local and long distance services, toll-free services, conference calling packages, calling cards, Internet access and dedicated and private line services.

FCL, an Ohio limited liability company, is authorized in Tennessee to provide resold interexchange telecommunications services pursuant to authorization granted in Docket No. 06-00213 on October 16, 2006. Globalcom, an Illinois corporation, is authorized in Tennessee to provide resold interexchange telecommunications services pursuant to authorization granted in Docket No. 00-00541 on August 1, 2000. Further information regarding FCL and Globalcom and the services they provide has previously been submitted to the Authority and is therefore a matter of public record, and Petitioners request that it be incorporated herein by reference.

**B. Gores AC Holdings, LLC**

Gores is a limited liability corporation formed in Delaware with its principal office located at 10877 Wilshire Boulevard, 18th Floor, Los Angeles, California 90024. Gores is ultimately controlled by The Gores Group, and its managing member, Alec E. Gores.<sup>1</sup> The Gores Group is a private investment firm whose investment focus includes opportunities in the technology and telecommunications sectors. The Gores Group currently acts as managing member of the general partner of certain investment funds that together hold non-controlling ownership of 13.1 percent of the voting stock of FCI through Gores FC Holdings, LLC (“Gores FC Holdings”).

Gores is well-qualified managerially, technically and financially to own and control FCI and the Operating Companies. In particular, The Gores Group has created an internal operations team which has a history of enhancing the value and operations of its investment companies by focusing on customers and employees, supporting management with operational expertise and

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<sup>1</sup> A limited partnership, Gores Capital Partners III, L.P., owns 95% percent of Gores.

providing access to capital. In addition to the well-qualified management and operations teams of FCI and the Operating Companies that will remain with the companies following the transfer of control, The Gores Group and its affiliates also have an extensive background in acquiring and managing network services, software and computer hardware companies. Additional information regarding the management team assembled by The Gores Group is provided in Exhibit A.

Gores is financially qualified to take control of FCI and the Operating Companies. In addition to its own capital resources, through an established network of debt financing sources and investment partners, The Gores Group also provides access to capital for its portfolio companies.

## **II. DESIGNATED CONTACTS**

Inquiries or copies of any correspondence, orders, or other materials pertaining to this Petition should be directed to:

Jean L. Kiddoo  
Danielle C. Burt  
BINGHAM MCCUTCHEN LLP  
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Washington, DC 20006-1806  
Tel: (202) 373-6000  
Fax: (202) 373-6001  
Email: jean.kiddoo@bingham.com  
danielle.burt@bingham.com

With copies to:

Sandi Murphy  
Mary Cegelski  
First Communications, LLC  
3340 West Market Street  
Akron, OH 44333  
Tel: (330) 835-2272  
Fax: (330) 835-2330  
Email: smurphy@firstcomm.com  
mcegelski@firstcomm.com

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

Gores will acquire control of FCI and the Operating Companies by a combination of the exercise of the right to appoint a majority of the Board of Directors and/or the purchase/acquisition of voting securities of FCI either directly or through Gores FC Holdings, as a result of which Gores will directly or indirectly hold more than 50 percent of the voting securities of FCI. Accordingly, Petitioners seek authorization for the transfer of control of the Operating Companies to Gores. For the Authority's convenience, pre- and post-transaction illustrative charts are provided as Exhibit B.

Because the proposed transaction will be completed at the holding company level, Petitioners expect that the proposed transaction will be entirely transparent to customers of the Operating Companies. The proposed transaction will not result in any change to the day-to-day operations of the Operating Companies. Furthermore, the Operating Companies do not anticipate that the proposed transaction will have any effect on their rates, terms or conditions of service. As a result, the proposed transaction will not directly affect any end user customers of the Operating Companies or the services they currently receive.

### **IV. PUBLIC INTEREST CONSIDERATIONS**


Petitioners submit that the transfer of control transaction described herein will serve the public interest. Following consummation of the proposed transaction, the Operating Companies will have access to the financial and managerial oversight and expertise of Gores. Such support will strengthen the competitive position of the Operating Companies to the benefit of the telecommunications marketplace. Moreover, no existing or potential competitors will be eliminated as a result of the proposed transaction. Instead, the Operating Companies will continue to provide service to their customers, furthering the Authority's policies favoring competition and diversity of services.

The proposed transaction will be conducted in a manner that will be transparent to customers of the Operating Companies. The transfer of control of the Operating Companies will not result in a change of carrier for customers or any assignment of authorizations. In addition, the Operating Companies will continue to provide high-quality communications services to their customers without interruption and without immediate change in rates, terms or conditions. Accordingly, the transaction will be virtually transparent to customers, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers.

**V. CONCLUSION**

For the reasons stated above, Petitioners submit that the public interest, convenience and necessity will be furthered by grant of this Petition for the above-described transaction.

Respectfully submitted,



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Danielle C. Burt, Esq.  
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Email: danielle.burt@bingham.com

Counsel for Petitioners

Date: September 28, 2011

## **EXHIBITS**

- Exhibit A      -      Gores Group Management Biographies
- Exhibit B      -      Illustrative Corporate Structure Charts

## **EXHIBIT A**

### **Gores Group Management Information**

#### **Mark R. Stone, Senior Managing Director President Operations, The Gores Group**

Mr. Stone is a member of Gores' investment committee and is responsible for Gores' worldwide operations team, oversight of all Gores' portfolio companies and operational due diligence efforts. Mr. Stone is Executive Chairman or Chairman of the Board of several portfolio organizations, serves on the Board of Directors of several others, including First Communications, Inc., and occasionally performs interim CEO roles. Prior to joining Gores in 2005, Mr. Stone spent nearly a decade transforming businesses – as CEO of Sentient Jet, a provider of private jet services, CEO of Narus, a telecom software company, CEO of Sentex Systems, an access control and security company, and Corporate General Manager of Citysearch, a new media organization. Mr. Stone spent five years with The Boston Consulting Group ("BCG") as a member of their high technology and industrial goods practices and served in BCG's Boston, London, Los Angeles and Seoul offices. Mr. Stone earned a B.S. in Finance with Computer Science and Mathematics concentrations from the University of Maine and an M.B.A. in Finance from The Wharton School of the University of Pennsylvania.

#### **Steven C. Yager, Senior Managing Director President Mergers & Acquisitions, The Gores Group**

Mr. Yager is a member of Gores' investment committee and is responsible for originating and structuring transactions, and overseeing portfolio company exits. Prior to joining Gores, Mr. Yager served as the President and CEO of Artemis International Solutions (a Pre-GCP I portfolio company) from 1997 to 2002. At Artemis, he led a turnaround and restructuring initiative and was responsible for the acquisition of Software Productivity Research, Inc. as well as the sale of Artemis to Proha Oyj, a publicly-traded Finnish software company. He was subsequently responsible for the reverse merger of Artemis into Opus360 and served as Chairman until 2005. Mr. Yager also served as CEO of Aonix, and was responsible for the restructuring of that company. From 1994 to 1996, Mr. Yager served as the Executive Vice President of Business Development for Medaphis Physician Services. From 1985 to 1994, Mr. Yager worked at Executive Business Systems (Alec Gores' first company) and its acquiror, Contel Business Systems, as a General Manager. Prior to EBS, Mr. Yager worked at Burroughs from 1978 to 1985 in a variety of Sales and Marketing positions. Mr. Yager serves on the Boards of Directors of Siemens Enterprise Communications, National Envelope, Stock Building Supply and Sage Automotive. Mr. Yager earned a B.A. in Business Administration and Economics from the University of Michigan.

#### **Scott M. Honour, Senior Managing Director**

Mr. Honour is a member of Gores' investment committee and is responsible for originating and structuring transactions, and overseeing portfolio company exits. Prior to joining Gores, Mr. Honour led a career as an investment banker with a focus on private equity related transactions. From 2001 to 2002, Mr. Honour served as a Managing Director at UBS Warburg, where he was a financial sponsor coverage banker and oversaw the Transaction Development Group at UBS Warburg. Prior to joining UBS Warburg, Mr. Honour was an investment banker at



Donaldson, Lufkin & Jenrette ('DLJ'), where he executed a variety of mergers and acquisitions, high-yield financings, equity offerings and restructurings. Mr. Honour also served as a Vice President at DLJ Merchant Banking from 1995 to 1997. Prior to joining DLJ, Mr. Honour served as an analyst at Trammell Crow. Mr. Honour currently serves on the Boards of Directors of RealDolmen, First Communications and Westwood One. Mr. Honour earned a B.S. in Business Administration and a B.A. in Economics, cum laude, from Pepperdine University and an M.B.A. in Finance and Marketing from The Wharton School of the University of Pennsylvania

**Ashley W. Abdo, Managing Director**

Mr. Abdo is a member of Gores M&A team and is responsible for originating and structuring transactions, and overseeing portfolio company exits. While at Gores, Mr. Abdo has held multiple senior M&A and senior Operating roles in both the US and Europe. Mr. Abdo lead, as CEO, several restructurings of Gores portfolio companies including Select Business Solutions, Jamis Software and Real Software. As a part of these restructurings Mr. Abdo orchestrated both acquisitions and divestures as a means of transforming the businesses. After completing the turnaround and exit from Real Software in 2008, Mr. Abdo joined the M&A team in Europe followed by a transfer to Los Angeles in 2010. Prior to joining Gores, Mr. Abdo worked for Per-Se Technologies (formerly known as Medaphis). Mr. Abdo began his career in 1986 with VERSYSS, Inc., where he held various sales and management positions. Mr. Abdo has a B.S. in Finance from the University of Colorado.

**Eric R. Hattler, Managing Director and General Counsel**

Mr. Hattler is responsible for the legal aspects of the negotiation and execution of certain transactions. Prior to joining Gores, Mr. Hattler was an associate at Riordan & McKinzie (now part of Bingham McCutchen), a Los Angeles-based law firm specializing in complex corporate transactions, where he represented a number of private equity groups and emerging growth companies. From 1988 to 1989, Mr. Hattler served as a management consultant with A.T. Kearney, focusing on operational issues. Mr. Hattler earned a B.A. from Amherst College, and earned J.D. and M.B.A. degrees from the University of Chicago.

**Eric Harnish, Managing Director**

Mr. Harnish is responsible for portfolio company financial oversight and controls as well as leading financial due diligence activities. Prior to joining Gores, Mr. Harnish held senior executive positions in financial management with both Fortune 500 and start-up companies, including Executive VP and CFO with Maintenancenet, and Vice President of Finance/Divisional CFO with Gateway. Prior to Gateway, Mr. Harnish served in various financial management, marketing, and accounting capacities with Honeywell, and Deloitte & Touche. Mr. Harnish serves on the Boards of Directors of Avure Technologies, United Road Services and Sagem Communications. Mr. Harnish earned a B.S. in Finance from The University of Illinois and an M.B.A. from The University of Michigan.

**Michael Nutting, Managing Director, Head of Corporate Finance**

Mr. Nutting is responsible for leading all corporate finance transactions and capital markets activity for Gores portfolio companies, as well as managing the firm's relationships with corporate finance providers. Prior to joining Gores, Mr. Nutting was a Director in Investment Banking at Credit Suisse where he maintained primary coverage responsibilities and executed

financings, mergers and acquisitions, and other corporate transactions for financial sponsors and their portfolio companies. Prior to Credit Suisse, Mr. Nutting was an Associate in Investment Banking at Merrill Lynch and CIBC Oppenheimer. Mr. Nutting earned a B.A., cum laude, in Economics-Accounting from Claremont McKenna College and an M.B.A. from the UCLA Anderson School of Management. Mr. Nutting also holds the Chartered Financial Analyst (CFA) designation.

#### **Kurt Hans, Senior Vice President, Tax**

Mr. Hans leads the global tax function for Gores, including tax due diligence, legal structure optimization, tax-related agreement negotiation, and tax modeling. Mr. Hans is responsible for the tax compliance, tax audit, and tax planning functions of Gores' portfolio companies. Prior to joining Gores in 2004, Mr. Hans worked for Arthur Andersen and KPMG, where he specialized in mergers and acquisitions, international corporate taxation, and partnership taxation while serving the venture capital, technology and telecommunications industries. Mr. Hans earned a B.S. in Business Administration with concentrations in Accounting and Finance at Colorado State University and a Masters of Taxation at the University of Denver.

#### **Steven G. Eisner, Senior Vice President, Fund General Counsel**

Mr. Eisner is responsible for managing the legal affairs of the Gores private equity funds and for overseeing the legal affairs of the funds' portfolio companies. Mr. Eisner also oversees the insurance and risk management functions for the firm and its portfolio companies as well as the compliance function for the firm. Prior to joining Gores, Mr. Eisner served as Vice President of Development and Vice President of Legal Affairs at Ameristar Casinos, Inc., an owner and operator of regional casino entertainment properties throughout the United States. Mr. Eisner began his career with O'Melveny & Myers in Los Angeles working on mergers and acquisitions, corporate securities transactions and general corporate matters. Mr. Eisner earned a B.A. degree in Economics from The University of California Berkeley, with high honors, and a J.D. from The University of California Los Angeles School of Law, where he was elected to the Order of the Coif.

#### **Joe Awad, Vice President & Counsel**

Mr. Awad is involved in many of Gores' legal functions, including the negotiation and execution of acquisitions, divestitures, debt financings, and general corporate matters. Mr. Awad earned a B.S. in Biological Science from the University of California, Irvine, and a J.D. from Loyola Law School, Los Angeles.

#### **Desmond Nugent, Vice President**

Mr. Nugent is responsible for portfolio company financial oversight and controls as well as leading financial due diligence activities. Before joining Gores, Mr. Nugent was Vice President and Global Controller of TNS, a world leader in market research, global market information and business analysis. From 2004 to 2008, Mr. Nugent was Chief Financial Officer of AGB Nielsen Media Research, a global provider of television audience measurement services, based in Milan, Italy. Before 2004, Mr. Nugent was a director in the transaction services practice of PricewaterhouseCoopers, where he specialized in providing financial due diligence services with a focus on the technology and media industries. Mr. Nugent earned a B.A. in Accounting from The University of Ulster, a Post-Graduate Diploma in Accounting from The Queen's

University of Belfast and an M.B.A. from Columbia University. Mr. Nugent is a Certified Public Accountant.

**Jeremy D. Rossen, Vice President, Human Capital**

Mr. Rossen is responsible for human capital oversight for all portfolio companies and is a member of the operating due diligence team. Prior to joining Gores Partners in 2009, Mr. Rossen served as General Counsel of LRN Corporation, HELIO, and Somera Communications. Prior to that, Mr. Rossen was Senior Corporate Counsel for RealNames Corporation and served as a corporate and securities associate at Wilson Sonsini Goodrich and Rosati, a law firm specializing in serving the technology and growth business sector. Mr. Rossen holds a B.A. in Economics and a J.D. from the University of Pennsylvania.

**Daniel Abrams, Vice President, Fund Counsel**

Mr. Abrams is responsible for supporting the legal affairs of Gores' portfolio companies. Prior to joining Gores, Mr. Abrams was an associate at Manatt, Phelps & Phillips in Los Angeles where he worked on mergers and acquisitions, corporate securities transactions and other general corporate matters, including matters for Gores and its portfolio companies. Mr. Abrams began his career as a corporate and securities associate with DLA Piper in Washington, DC. Mr. Abrams earned a B.A. degree from Tufts University, and both a J.D., cum laude, and an M.B.A. degree from American University.

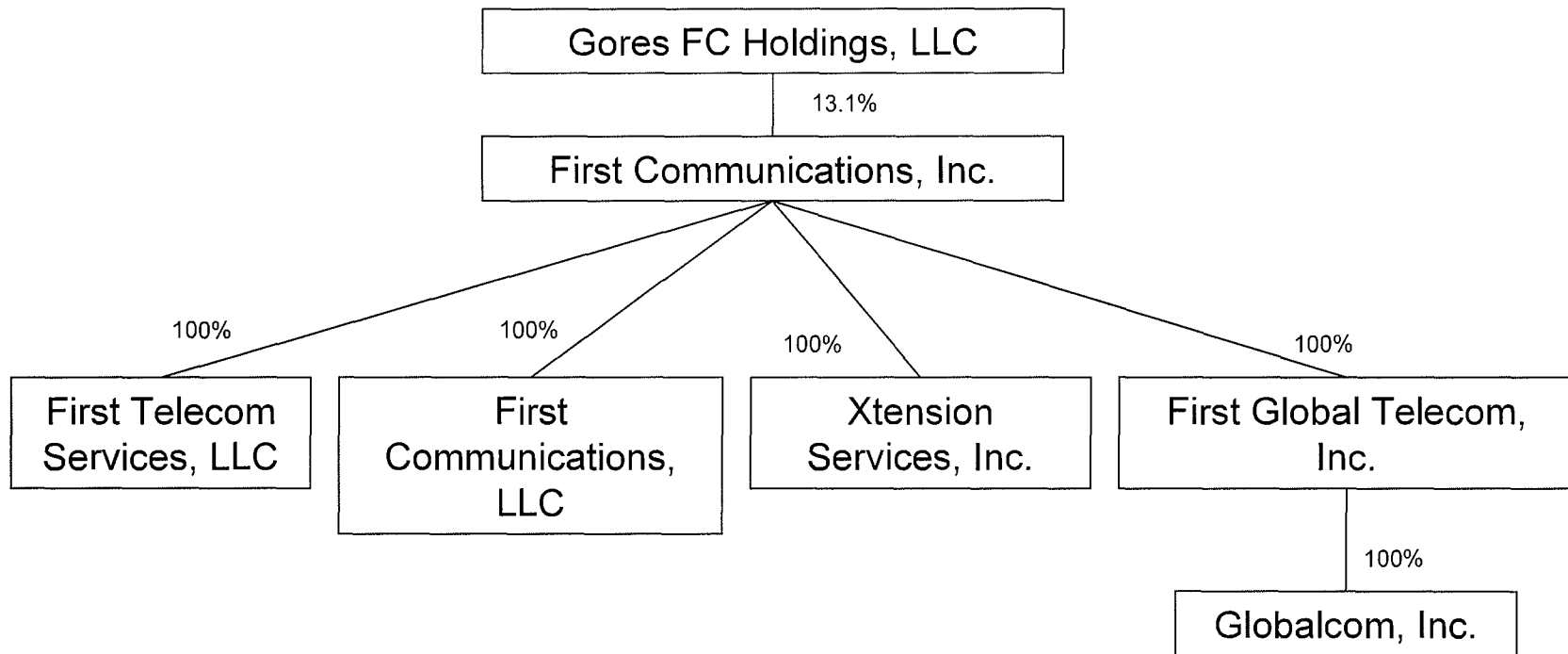
**James Oh, Vice President, Corporate Finance**

Mr. Oh is responsible for executing corporate finance and capital markets transactions for Gores portfolio companies, as well as maintaining relationships with the firm's corporate finance providers. Prior to joining Gores, Mr. Oh was a Vice President in the Loan Originations and Loan Sales & Syndications groups at Wells Fargo Capital Finance. In this capacity, Mr. Oh originated, structured, executed, and syndicated senior credit facilities for acquisitions, recapitalizations, growth capital, refinances, and working capital needs for financial sponsors and various companies across a variety of industries. Prior to Wells Fargo Capital Finance, Mr. Oh was an Associate at a private equity firm in Los Angeles and a Senior Associate in the Transaction Services Group at PricewaterhouseCoopers LLP. Mr. Oh earned a B.A. in International Economics from the University of California at Los Angeles. Mr. Oh is a Certified Public Accountant.

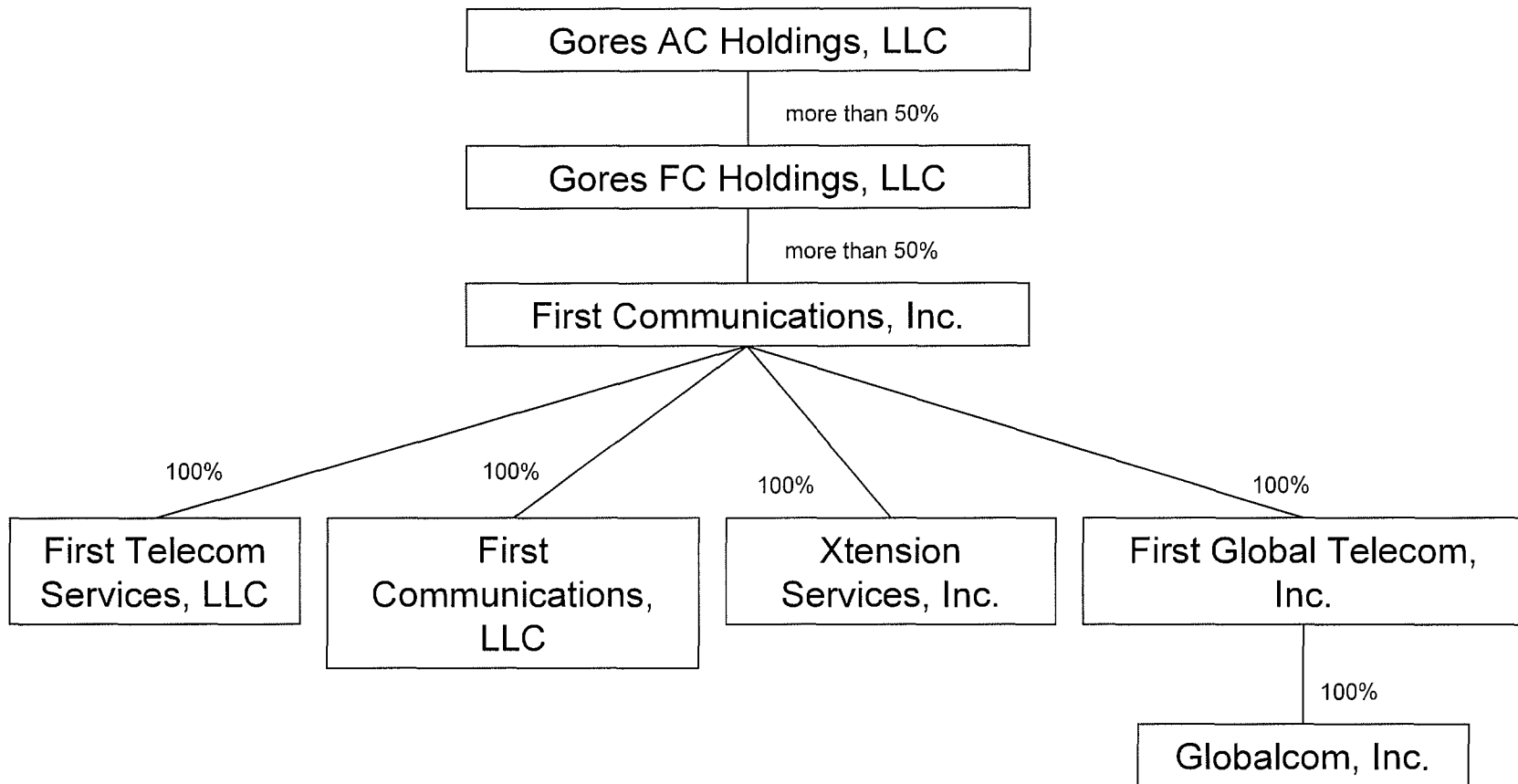
**EXHIBIT B**

**Illustrative Corporate Structure Charts**

**First Communications  
Pre-Transaction Illustrative Corporate Structure Chart**



# First Communications Post-Transaction Illustrative Corporate Structure Chart



**VERIFICATION**

STATE OF OHIO

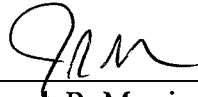
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COUNTY OF SUMMIT

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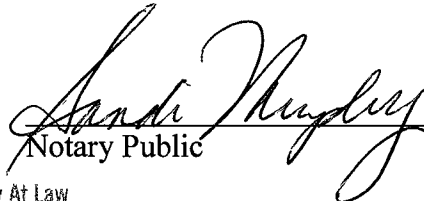
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I, Joseph R. Morris, state that I am President of First Communications, Inc.; that I am authorized to make this Verification on behalf of First Communications, Inc. and its subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.



Name: Joseph R. Morris  
Title: President

SWORN TO AND SUBSCRIBED before me on the 28 day of September, 2011.

  
Notary Public

SANDI R. MURPHY, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date.  
Section 147.03 R.C.

My commission expires: \_\_\_\_\_

**VERIFICATION**

STATE OF CALIFORNIA

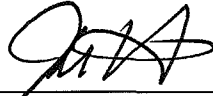
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COUNTY OF LOS ANGELES

§

I, Eric R. Hattler, state that I am Vice President for Gores AC Holdings, LLC; that I am authorized to make this Verification on behalf of Gores AC Holdings, LLC; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.



Name: Eric R. Hattler

Title: Vice President

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

}ss:

On September 26, 2011 before me, Tami Lynn McGuirt, Notary Public,  
personally appeared Eric R. Hattler

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he~~ executed the same in ~~her~~ authorized capacity, and that by ~~his~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.**

WITNESS my hand and official seal.

Signature \_\_\_\_\_

