WINDSTREAM HOLDINGS, INC.
Form S-3ASR
March 02, 2017

As filed with the Securities and Exchange Commission on March 2, 2017
Registration No. 333 _______
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM S 3
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
WINDSTREAM HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware	46-2847717
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

4001 Rodney Parham Road
Little Rock, Arkansas 72212
(501) 748-7000
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Kristi Moody, Esq.
Senior Vice President, General Counsel and Corporate Secretary
Windstream Holdings, Inc.
4001 Rodney Parham Road
Little Rock, Arkansas 72212
(501) 748-7000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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Approximate date of commencement of proposed sale to the public: From time to time on or after the effective date of this registration statement as determined by market conditions.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: o
If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: x
If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. x

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	x	Accelerated filer	¨
Non-accelerated filer	¨ (Do not check if a smaller reporting company)	Smaller reporting company	¨

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value $0.0001 per share	$25,000,000	$2,897.50(1)

(1) The registration fee is calculated in accordance with Rule 457(o) of the Securities Act of 1933, as amended.

PROSPECTUS
Up to $25,000,000
Windstream Holdings, Inc.
Common Stock

We have entered into an equity distribution agreement with Citigroup Global Markets Inc., as our sales agent, relating to the shares of our common stock, par value $0.0001 per share, offered by this prospectus. In accordance with the terms of the equity distribution agreement, we may, through our sales agent, offer and sell from time to time shares of our common stock having an aggregate offering price of up to $25,000,000.

Sales of our common stock, if any, under this prospectus may be made in sales deemed to be “at-the-market offerings” as defined in Rule 415 under the Securities Act of 1933, as amended, or the Securities Act, including by sales made directly on or through the NASDAQ Global Select Market, or NASDAQ, or another market for our common stock, sales made to or through a market maker other than on an exchange or otherwise, in negotiated transactions at market prices prevailing at the time of sale or at negotiated prices, or as otherwise agreed with the sales agent. Subject to the terms and conditions of the equity distribution agreement, the sales agent will use its reasonable efforts to sell on our behalf all of the designated shares. We may instruct the sales agent not to sell any shares if the sales cannot be effected at or above the price designated by us in any such instruction.

We also may sell shares of our common stock to the sales agent, as principal for its own accounts, at a price per share agreed upon at the time of sale. If we sell shares to the sales agent, as principal, we will enter into a separate terms agreement with the sales agent, and we will describe the agreement in a prospectus supplement or pricing supplement.

We will pay the sales agent a commission of up to 3.00% of the gross sales price per share sold through them as our agent under the equity distribution agreement. We intend to contribute the net proceeds from any sales under this prospectus to the Windstream Master Trust, which is a trust maintained in connection with the defined benefit pension plan sponsored by us. For additional information, see “Use of Proceeds” herein. In connection with the sale of shares of our common stock on our behalf, the sales agent may be deemed to be an “underwriter” within the meaning of the Securities Act, and the compensation paid to the sales agent may be deemed to be underwriting commissions or discounts.

Shares of our common stock trade on NASDAQ under the symbol “WIN.” On February 28, 2017, the last sale price of the shares as reported on NASDAQ was $7.47 per share.

Investing in our common stock involves risks. Please read “Risk Factors” beginning on page 6 of this prospectus.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Citigroup
The date of this prospectus is March 2, 2017

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ABOUT THIS PROSPECTUS

This prospectus is part of a "shelf" registration statement that we filed with the U.S. Securities and Exchange Commission, or the SEC, under the Securities Act. This prospectus does not contain all of the information included in the registration statement. For a more complete understanding of the offering of the shares, you should refer to the registration statement, including its exhibits. Under this "shelf" registration process, we may, from time to time, until the registration statement is withdrawn from registration by us, sell the common stock being offered pursuant to this prospectus in one or more offerings. A prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the additional information described under the heading "Where You Can Find More Information" below.

You should rely only on the information contained in this prospectus or any related prospectus supplement, including the content of all documents now or in the future incorporated by reference into the registration statement of which this prospectus forms a part. Neither we nor the sales agent have authorized anyone to provide you with any information other than the information contained in or incorporated by reference in this prospectus, in any prospectus supplement, in any related free-writing prospectus we prepare or authorize and in the documents incorporated by reference herein. We and the sales agent take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are not making an offer of the shares of our common stock to be sold under this prospectus in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this prospectus or any related prospectus supplement is accurate as of any date other than the date on the front cover of this prospectus or the related prospectus supplement, or that the information contained in any document incorporated by reference is accurate as of any date other than the date of the document incorporated by reference. Other than as required by law, we undertake no obligation to publicly update or revise such information, whether as a result of new information, future events or any other reason.

Unless the context requires otherwise, the words "we," "Company," "Windstream," "us" and "our" refer to Windstream Holdings, Inc. and its consolidated subsidiaries.

SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

The statements contained in or incorporated by reference in this prospectus or any prospectus supplement include certain forward-looking statements. We claim the protection of the safe-harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 for any statements contained in or incorporated by reference in this prospectus and any prospectus supplement. Forward-looking statements are subject to uncertainties that could cause actual future events and results to differ materially from those expressed in the forward-looking statements. Forward-looking statements include, but are not limited to, statements regarding the anticipated benefits of the merger with EarthLink, including future financial and operating results, projected synergies in operating and capital expenditures and the timing of achieving the synergies reduction in net leverage, and improvement in our ability to compete; our expectation to return a portion of our cash flow to stockholders through our dividend; expectations regarding our network investments to improve financial performance and increase market share; expectations regarding revenue trends, sales opportunities, improving margins in, and the directional outlook of, our business segments; network cost optimization; stability and growth in adjusted Operating Income Before Depreciation and Amortization; expected levels of support from universal service funds or other government programs; expected rates of loss of consumer households served or inter-carrier compensation; expected increases in high-speed Internet and business data connections, including increasing availability of higher Internet speeds and services utilizing next generation technology for customers; expectations regarding expanding enhanced services related to Internet speeds, IPTV and 1 Gbps services to more locations and expanding our fiber network; our expected ability to fund operations; expected required contributions to our pension plan and our ability to make contributions utilizing our common stock; the completion and benefits from network investments related to the Connect America Fund to fund the deployment of broadband services and capital expenditure amounts related to these investments; anticipated benefits of Project Excel to improve network capabilities and offer premium Internet speeds; anticipated capital expenditures and certain debt maturities from cash flows from operations; improving our debt profile and reducing interest costs; and expected effective federal income tax rates. These and other forward-looking statements are based on estimates, projections, beliefs, and assumptions that we believe are reasonable but are not guarantees of future events and results. Actual future events and our results may differ materially from those expressed in these forward-looking statements as a result of a number of important factors.

Factors that could cause actual results to differ materially from those contemplated in our forward-looking statements include, among others:

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- the cost savings and expected synergies from the merger with EarthLink may not be fully realized or may take longer to realize than expected;
- the integration of Windstream and EarthLink may not be successful, may cause disruption in relationships with customers, vendors and suppliers and may divert attention of management and key personnel;
- changes to our current dividend practice which is subject to our capital allocation policy and may be changed at any time at the discretion of our board of directors;
- further adverse changes in economic conditions in the markets served by us;
- the extent, timing and overall effects of competition in the communications business;
- our election to accept state-wide offers under the Federal Communications Commission’s Connect America Fund, Phase II, and the impact of such election on our future receipt of federal universal service funds and capital expenditures , and any return of support received pursuant to the program;
- the potential for incumbent carriers to impose monetary penalties for failure to meet specific volume and term commitments under their special access pricing and tariff plans, which Windstream uses to lease last-mile connections to serve its retail business data service customers, without further Federal Communications Commission action;
- the impact of new, emerging or competing technologies and our ability to utilize these technologies to provide services to our customers;
- for certain operations where we lease facilities from other carriers, adverse effects on the availability, quality of service, price of facilities and services provided by other carriers on which our services depend;
- unfavorable rulings by state public service commissions in current and further proceedings regarding universal service funds, inter-carrier compensation or other matters that could reduce revenues or increase expenses;
- material changes in the communications industry that could adversely affect vendor relationships with equipment and network suppliers and customer relationships with wholesale customers;
- our ability to make rent payments under the master lease to Communications Sales & Leasing, Inc., (now known as Uniti Group Inc.), which may be affected by results of operations, changes in our cash requirements, cash tax payment obligations, or overall financial position;
- unanticipated increases or other changes in our future cash requirements, whether caused by unanticipated increases in capital expenditures, increases in pension funding requirements, or otherwise;
- the availability and cost of financing in the corporate debt markets;
- the potential for adverse changes in the ratings given to our debt securities by nationally accredited ratings organizations;
- earnings on pension plan investments significantly below our expected long term rate of return for plan assets or a significant change in the discount rate or other actuarial assumptions;
- unfavorable results of litigation or intellectual property infringement claims asserted against us;
- the risks associated with non-compliance by us with regulations or statutes applicable to government programs under which we receive material amounts of end user revenue and government subsidies, or non-compliance by us, our partners, or our subcontractors with any terms of our government contracts;
- the effects of federal and state legislation, and rules and regulations, and changes thereto, governing the communications industry;

- continued loss of consumer households served and consumer high-speed Internet customers;
- the impact of equipment failure, natural disasters or terrorist acts;
- the effects of work stoppages by our employees or employees of other communications companies on whom we rely for service;
- those additional factors under “Risk Factors” in Item 1A of Part I of our Annual Report on Form 10-K for the year ended December 31, 2016, and in subsequent filings with the SEC at www.sec.gov.

In addition to these factors, actual future performance, outcomes and results may differ materially because of more general factors including, among others, general industry and market conditions and growth rates, economic conditions, and governmental and public policy changes

We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. The foregoing review of factors that could cause our actual results to differ materially from those contemplated in the forward-looking statements should be considered in connection with information regarding risks and uncertainties that may affect our future results included in this prospectus, in any prospectus supplement and in our other filings with the SEC at www.sec.gov.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere or incorporated by reference into this prospectus. Because it is a summary, it does not contain all of the information that you should consider before investing in our securities. You should read this entire prospectus carefully, including the section titled "Risk Factors," and the documents that we incorporate by reference into this prospectus, before making an investment decision.

Windstream Holdings, Inc.

We are a leading provider of advanced network communications and technology solutions for consumers, businesses, enterprise organizations and wholesale partners across the United States. We provide data, cloud solutions, unified communications and managed services to small business and enterprise clients. The Company also offers bundled services, including broadband, security solutions, voice and digital television to consumers. We also supply core transport solutions on a local and long-haul fiber-optic network spanning approximately 147,000 miles, including network assets acquired in the merger with Earthlink Holdings Corp., or EarthLink. For a further discussion of our business, we urge you to read our Annual Report on Form 10-K for the year ended December 31, 2016, incorporated by reference herein. See "Where You Can Find More Information" below.

We are incorporated in Delaware. Our principal executive offices are located at 4001 Rodney Parham Road, Little Rock, Arkansas 72212 and our telephone number is (501) 748-7000. Our website is located at www.windstream.com. Information on our website is not incorporated into, and does not otherwise form a part of, this prospectus.

Recent Developments

On February 27, 2017, we completed our merger with EarthLink, pursuant to the terms of the Agreement and Plan of Merger, or the Merger Agreement, dated November 5, 2016, whereby EarthLink merged into Europa Merger Sub, Inc., a wholly-owned subsidiary of of Windstream Services, LLC, or Windstream Services, and survived, and immediately following, merged with Europa Merger Sub, LLC, a wholly-owned subsidiary of Winstream Services, with Merger Sub surviving and changing its name to EarthLink Holdings, LLC. The merger transaction is referred to herein as the Merger. EarthLink Holdings, LLC is a direct, wholly-owned subsidiary of Windstream Services and provides data, voice and managed network services to retail and wholesale business customers and nationwide Internet access and related value-added services to residential customers. As a result of the Merger, we added approximately 700,000 customers and approximately 16,000 incremental route fiber miles. In the Merger, each share of EarthLink common stock was exchanged for 0.818 shares of our common stock. In the aggregate, we issued approximately 88 million shares of our common stock and assumed approximately $435 million of EarthLink's long-term debt, in a transaction valued at approximately $1.1 billion. Upon closing of the Merger, our stockholders own approximately fifty-one percent (51%) and EarthLink stockholders own approximately forty-nine percent (49%) of the combined company. As a result of the Merger, we have increased our operating scale and scope giving us the ability to offer customers expanded products, services and enhanced enterprise solutions over an extensive national footprint now spanning approximately 147,000 fiber route miles. We also expect to achieve operating and capital expenditure synergies in integrating EarthLink's operations into our existing business segment structure.

The Offering

Issuer	Windstream Holdings, Inc., a Delaware corporation
Common stock offered by us	Shares of common stock having an aggregate offering price of up to $25,000,000
Common stock outstanding prior to this offering	185,233,264 shares of common stock as of February 27, 2017, inclusive of the 87,979,024 shares issued in connection with the EarthLink acquisition.
Manner of offering	“At-the-market” offering that may be made from time to time through our sales agent, Citigroup Global Markets Inc. We also may sell shares of our common stock to the sales agent, as principal for its own account, at a price per share agreed upon at the time of sale. If we sell shares of common stock to the sales agent, as principal, we will enter into a separate terms agreement with the sales agent setting forth the terms of such transaction, and we will describe the agreement in a separate prospectus supplement or pricing supplement. See “Plan of Distribution” on page 13.
Use of proceeds	We intend to contribute the net proceeds from this offering to the Windstream Master Trust, which is a trust maintained in connection with the defined benefit pension plan sponsored by Windstream Holdings, Inc. See “Use of Proceeds” on page 7.
Listing	Our common stock is listed on NASDAQ under the symbol “WIN.”
Risk factors	An investment in our common stock involves various risks. Prospective investors should carefully consider the matters described in the section entitled “Risk Factors” and other information included or incorporated by reference in this prospectus.

Dividend policy	On January 15, 2017, we paid our previously declared quarterly dividend of $0.15 per share. On February 14, 2017, we announced a pro rata cash quarterly dividend of $0.15 per share on our common stock in anticipation of the closing of the transaction with EarthLink. Specifically, our board of directors declared a pre-closing dividend of $0.15 per share that will be prorated based on the number of days from the beginning of the quarter on January 1, 2017, up to the closing date of the Merger. The dividend will be paid as soon as practicable after the Merger closing date to our stockholders of record as of the last business day prior to the Merger closing date. Our board of directors also declared a post-closing dividend of $0.15 per share that will be prorated based on the number of days from and including the closing date of the Merger through the end of the quarter on March 31, 2017. The post-closing dividend will be paid on or about April 17, 2017, to our stockholders of record as of March 31, 2017. The pro rata dividend declarations were contingent on the Merger closing on or before March 31, 2017, and in light of the closing, will be paid. See "Price Range of Common Stock and Dividends" on page 8.
Transfer agent and registrar	Computershare Investor Services, LLC

RISK FACTORS

Investing in our common stock involves risk. In addition to the information presented in this prospectus and the risk factors in our most recent Annual Report on Form 10-K for the year ended December 31, 2016 and our other filings under the Securities Exchange Act of 1934, as amended, or the Exchange Act, that are incorporated by reference in this prospectus, you should consider carefully the following risk factors before deciding to purchase our common stock. See “Where You Can Find More Information” below.

You may experience future dilution as a result of future equity offerings or other equity issuances.

In order to raise additional capital, we may in the future offer and issue additional shares of our common stock or other securities convertible into or exchangeable for our common stock. We cannot assure you that we will be able to sell shares or other securities in any other offering at a price per share that is equal to or greater than the price per share paid by you, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders. The price per share at which we sell additional shares of our common stock or other securities convertible into or exchangeable for our common stock in future transactions may be higher or lower than the price per share in this offering paid by you.

The market price and trading volume of our common stock may fluctuate widely and the value of an investment in our common stock may decline.

The market price and trading volume of our common stock may fluctuate significantly from time to time as a result of many factors, including:

- a shift in our investor base;
- our quarterly or annual earnings, or those of comparable companies;
- our ability to obtain financing as needed;
- changes in laws and regulations affecting our business;
- changes in accounting standards, policies, guidance, interpretations or principles;
- investors’ perceptions of us and our prospects and of us and/or our industries’ risk and return characteristics relative to other investment alternatives;
- differences between actual financial and operating results and those expected by investors and analysts;
- changes in analyst reports, recommendations or earnings estimates regarding us, other comparable companies or our industries generally, and our ability to meet those estimates;
- actual or anticipated fluctuations in our financial and operating results;
- overall market fluctuations;
- general economic conditions and other external factors; and
- other factors described under “Special Note Regarding Forward-Looking Statements”.

Stock markets in general have experienced volatility that has often been unrelated to the operating performance of a particular company. These broad market fluctuations may adversely affect the trading price of our common stock. If the market price of our common stock declines, you may not realize any return on your investment in us and may lose some or all of your investment.

In connection with our acquisition of EarthLink on February 27, 2017, we issued a substantial number of shares of common stock and sales of such shares may adversely affect the market price of our common stock.

Pursuant to the Merger, we issued an aggregate of approximately 87,979,024 shares of our common stock. We are unable to predict the potential effects of such issuance of common stock on the trading activity and market price of our common stock. Sales by the former EarthLink stockholders of a substantial number of shares of our common stock in the public market, or the perception that such sales may occur, could have a material adverse effect on the market price of our common stock.

USE OF PROCEEDS

The amount of proceeds from this offering will depend upon the number of shares of our common stock sold and the market price at which they are sold. There can be no assurance that we will be able to sell any shares under or fully utilize the equity distribution agreement as a source of financing. We intend to contribute the net proceeds from this offering, after sales agent’s commissions and payment of our other offering expenses, to the Windstream Master Trust, which is a trust maintained in connection with the defined benefit pension plan sponsored by Windstream Holdings, Inc.

PRICE RANGE OF COMMON STOCK AND DIVIDENDS

Price Range of Common Stock and Dividends Declared

Our common stock is traded on NASDAQ under the symbol “WIN.” The following table reflects the range of high, low and closing prices of our common stock as reported by NASDAQ for each quarter in 2016 and 2015. The stock prices and dividends declared presented below have been adjusted for the one-for six reverse stock split of our common stock effected on April 26, 2015:

	High	Low	Dividend Declared
2016			
Fourth Quarter (ended December 31, 2016)...	$10.10	$6.63	$0.15
Third Quarter (ended September 30, 2016)..	$10.46	$8.13	$0.15
Second Quarter (ended June 30, 2015)...	$9.50	$7.18	$0.15
First Quarter (ended March 31, 2016)..	$8.35	$4.75	$0.15
2015 (1)			
Fourth Quarter (ended December 31, 2015)...	$7.76	$5.52	$0.15
Third Quarter (ended September 30, 2015)..	$8.09	$4.42	$0.15
Second Quarter (ended June 30, 2015)...	$50.82	$6.10	$0.50 (2)
First Quarter (ended March 31, 2015)..	$53.94	$43.38	$1.50

(1) On April 24, 2015, we completed the spin-off of Communications Sales & Leasing, Inc. (now known as Uniti Group Inc.). The closing price of our common stock on April 24, 2015 was $46.98, and the opening price on April 27, 2015, the first trading date following consummation of the spin-off, was $11.72.

(2) On April 24, 2015, we made a cash distribution of $0.3954 per share (or $0.0659 per share on a pre-spin-off/pre-reverse split basis) to our stockholders of record on April 10, 2015. On May 5, 2015, we declared a cash dividend of $0.1104 per share on our common stock, which is equivalent of a prorated per share quarterly dividend for the period beginning April 25, 2015 and ending June 30, 2015, which was payable on July 15, 2015 to stockholders of record on June 30, 2015.

As of February 23, 2017, the approximate number of holders of common stock, including an estimate for those holding shares in street name, was 174,479.

For a discussion of certain restrictions on our ability to pay dividends under Windstream Services’ debt instruments, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Financial Condition, Liquidity and Capital Resources” in the Financial Supplement to our Annual Report on Form 10-K for the year ended December 31, 2016.

Dividend Policy

On January 15, 2017, we paid our previously declared quarterly dividend of $0.15 per share. On February 14, 2017, we announced a pro rata cash quarterly dividend of $0.15 per share on our common stock in anticipation of the closing of the transaction with EarthLink. Specifically, our board of directors declared a pre-closing dividend of $0.15 per share that will be prorated based on the number of days from the beginning of the quarter on January 1, 2017, up to the closing date of the Merger. The dividend will be paid as soon as practicable after the Merger closing date to our stockholders of record as of the last business day prior to the Merger closing date. Our board of directors also declared a post-closing dividend of $0.15 per share that will be prorated based on the number of days from and including the closing date of the Merger through the end of the quarter on March 31, 2017. The post-closing dividend will be paid on or about April 17, 2017, to our stockholders of record as of March 31, 2017. The pro rata dividend declarations were contingent on the Merger closing on or before March 31, 2017, and in light of the closing, will be paid. Finally, our board of directors declared a quarterly dividend of $0.15 per share on our common stock payable to our stockholders of record as of March 31, 2017, and payable on or about April 17, 2017, in the event that the Merger did not occur in first quarter 2017. However, this dividend will not be paid, as the pre-closing and post-closing dividends are being paid. Our dividend practice can be changed at any time at the discretion of our board of directors. Accordingly, we cannot assure you we will continue paying dividends at the current rate. See "Risk Factors" in Item 1A of Part I of our Annual Report on Form 10-K for the year ended December 31, 2016, for more information concerning our dividend practice.

DESCRIPTION OF CAPITAL STOCK

The following summary description of our capital stock is qualified in its entirety by the Delaware General Corporation Law, or DGCL, and our charter. Our charter, including any amendments thereto, are incorporated by reference as exhibits to our Annual Report on Form 10-K for the year ended December 31, 2016 and on file with the SEC. See "Where You Can Find More Information" for information on how you can view these filings.

General

Under our charter, our total authorized capital stock consists of 33,333,333 shares of preferred stock, par value $0.0001 per share, and 375,000,000 shares of common stock, par value $0.0001 per share.

Preferred Stock

Our charter provides that preferred stock may be issued from time to time and in one or more series. Our board of directors is authorized to determine or alter the powers, preferences and rights (including voting rights), and the qualifications, limitations and restrictions granted to or imposed upon any wholly unissued series of preferred stock, and within the limitations or restrictions stated in any resolution or resolutions of our board of directors originally fixing the number of shares constituting any series of preferred stock, to increase or decrease (but not below the number of shares of any such series of preferred stock then outstanding) the number of shares of any such series of preferred stock, and to fix the number of shares of any series of preferred stock. In the event that the number of shares of any series of preferred stock is so decreased, the shares constituting such decrease will resume the status which such shares had prior to the adoption of the resolution originally fixing the number of shares of such series of preferred stock subject to the requirements of applicable law.

Common Stock

Under our charter, the holders of our common stock have one vote per share on all matters submitted to a vote of stockholders, except as otherwise provided by the DGCL or our charter and subject to the rights of holders of any outstanding preferred stock. Holders of our common stock will be entitled to receive dividends ratably, if any, as may be declared by our board of directors out of legally available funds, subject to any preferential dividend rights of any outstanding preferred stock. Upon our liquidation, dissolution or winding up, the holders of our common stock are entitled to receive ratably our net assets available after the payment or provision for payment of all debts and subject to the prior rights of any outstanding preferred stock. Our common stock has no preemptive rights, no cumulative voting rights and no redemption, sinking fund or conversion provisions.

To the greatest extent permitted by applicable DGCL, the shares of our common stock will be uncertificated, and transfer is reflected by book entry.

All rights, preferences and privileges of holders of our common stock stated in this summary are subject to the rights of holders of shares of any series of preferred stock which we may designate and issue in the future without further stockholder approval.

Anti-Takeover Effects of the DGCL and our Certificate of Incorporation and Bylaws

The DGCL, our charter and our bylaws contain a number of provisions which could have the effect of discouraging transactions that involve an actual or threatened change of control of us. In addition, provisions of our charter and our bylaws may be deemed to have anti-takeover effects and could delay, defer or prevent a tender offer or takeover attempts that a stockholder might consider in his, her or its best interest, including those attempts that might result in a premium over the market price of the shares held by our stockholders.

Rights Agreement

On September 17, 2015, our board of directors adopted a rights plan intended to avoid an "ownership change" within the meaning of Section 382 of the Internal Revenue Code, and thereby preserve the current ability of the Company to utilize certain net operating loss carryovers and other tax benefits of the Company and its subsidiaries. If we experience an "ownership change," as defined in Section 382 of the Internal Revenue Code, our ability to fully utilize the tax benefits on an annual basis will be substantially limited, and the timing of the usage of the tax benefits and such other benefits could be substantially delayed, which could therefore significantly impair the value of those assets. The rights agreement is intended to act as a

deterrent to any person or group acquiring “beneficial ownership” of 4.90% or more of the “outstanding shares” of common stock, par value $0.0001 per share, of us, without the approval of our board of directors.

As part of the rights agreement, our board of directors authorized and declared a dividend distribution of one right for each outstanding share of common stock to stockholders of record at the close of business on September 28, 2015. Each right entitles the holder to purchase from Windstream a unit consisting of one ten thousandth of a share, or a unit, of Series A Participating Preferred Stock, par value $0.0001 per share, of the Company at a purchase price of $32.00 per unit, subject to adjustment. Until a right is exercised, the holder will have no separate rights as a stockholder of the Company, including the right to vote or to receive dividends in respect of rights. The rights will expire on the earliest of (i) 5:00 P.M. New York City time on September 17, 2018, (ii) the time at which the rights are redeemed or exchanged pursuant to the rights agreement, (iii) the date on which our board of directors determines that the rights agreement is no longer necessary for the preservation of material valuable tax benefits or is no longer in the best interest of us and our stockholders and (iv) the beginning of a taxable year to which our board of directors determines that no tax benefits may be carried forward.

Concurrently with the execution of the Merger Agreement, we effected an amendment to the rights agreement to provide that, among other things, (i) neither EarthLink nor its controlled affiliates will be deemed an “Acquiring