

WINDSTREAM HOLDINGS, INC.

Form S-8

March 06, 2014

Registration No. 333 _____

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S 8
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
(Address of Principal Executive Offices) (Zip Code)

WINDSTREAM 401(k) PLAN
(Full title of the plan)

John P. Fletcher
Executive Vice President, Secretary & General Counsel
Windstream Holdings, Inc.
4001 Rodney Parham Road
Little Rock, Arkansas 72212
(Name and address of agent for service)

(501) 748-7000
(Telephone number, including area code, of agent for service)

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

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered ⁽¹⁾⁽²⁾ | Proposed Maximum Offering Price Per Share ⁽³⁾ | Proposed Maximum Aggregate Offering Price ⁽³⁾ | Amount of Registration Fee |
|--------------------------------------|---|--|--|----------------------------|
| Common Stock, \$.0001 Par Value | 15,000,000 | \$7.98 | \$119,700,000 | \$15,418 ⁽³⁾ |

(1) Pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described above.

(2) Pursuant to Rule 416(a) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of shares of Common Stock that may be offered or sold as a result of any adjustments based on stock splits, stock dividends or similar events provided under the employee benefit plan described above.

(3) Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(c) and (h) under the Securities Act of 1933, as amended, based upon the average of the high and low sales prices of the shares of the registrant's Common Stock as reported on the NASDAQ Global Select Market on March 3, 2014.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information required in Part I of Form S-8 will be sent or given to employees participating in the Windstream 401(k) Plan (the "Plan") as specified by Rule 428(b)(1) promulgated under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with Rule 428 and the requirements of Part I of Form S-8, such documents are not being filed with the Securities and Exchange Commission (the "Commission") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 promulgated under the Securities Act. These documents and the documents incorporated herein by reference pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute the prospectus as required by Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed by Windstream Holdings, Inc. (the "Company") with the Commission are incorporated herein by reference:

- (a) The Company's annual report on Form 10-K for the fiscal year ended December 31, 2013, filed with the Commission on February 27, 2014;
- (b) The Plan's annual report on Form 11-K for the fiscal year ended December 31, 2012, filed with the Commission on June 21, 2013;
- (c) The Company's current report on Form 8-K filed with the Commission on February 14, 2014; and

The description of the Company's Common Stock contained in the Registration Statement on Form 8-A, filed with the Commission on December 8, 2009, pursuant to Section 12 of the Securities Exchange Act of 1934 (the (d) "Exchange Act"), as modified by the Company's Current Report on Form 8-K, filed with the Commission on February 19, 2010, and including any other amendment or report filed with the Commission for the purpose of updating such description.

All documents subsequently filed by the Company or the Plan pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement in a document incorporated or deemed to be incorporated by reference in this Registration Statement will be deemed to be modified or superseded to the extent that a statement contained in this Registration Statement or in any other later filed document that also is or is deemed to be incorporated by reference modifies or supersedes such statement. Any statement modified or superseded will not be deemed, except as so modified or superseded, to be a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 102 of the Delaware General Corporation Law, or the DGCL, as amended, allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. As permitted by the DGCL, the Company's Amended and Restated Certificate of Incorporation eliminates, to the fullest extent permitted by the DGCL, the personal liability of its directors for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended to authorize further elimination or limiting of directors' personal liability, then the Company's Amended and Restated Certificate of Incorporation provides that the personal liability of directors will be eliminated or limited to the fullest extent provided under the DGCL.

Section 145 of the DGCL provides, among other things, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding—other than an action by or in the right of the corporation—by reason of the fact that the person is or was a director, officer, agent, or employee of the corporation, or is or was serving at the corporation's request as a director, officer, agent or employee of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding. The power to indemnify applies (a) if such person is successful on the merits or otherwise in defense of any action, suit or proceeding or (b) if such person acting in good faith and in a manner he reasonably believed to be in the best interest, or not opposed to the best interest, of the corporation, and with respect to any criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful. The power to indemnify applies to actions brought by or in the right of the corporation as well but only to the extent of defense expenses, including attorneys' fees but excluding amounts paid in settlement, actually and reasonably incurred and not to any satisfaction of judgment or settlement of the claim itself, and with the further limitation that in such actions no indemnification shall be made in the event of any adjudication of liability to the corporation, unless the court believes that in light of all the circumstances indemnification should apply. The DGCL requires a corporation to indemnify a director or officer to the extent that the director or officer has been successful, on the merits or otherwise, in defense of any action, suit or proceeding for which indemnification is lawful.

As permitted by the DGCL, the Company's Amended and Restated Certificate of Incorporation provides that (a) the Company is required to indemnify its directors and officers to the fullest extent permitted by the DGCL, subject to certain very limited exceptions, (b) the Company may indemnify its other employees and agents as set forth in the DGCL, (c) the Company is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the DGCL, subject to certain conditions and (d) the rights conferred by the Amended and Restated Certificate of Incorporation are not exclusive.

The DGCL also provides corporations with the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation in a similar capacity for another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability as described above. The Company maintains a director and officer insurance policy which insures the directors and officers of the Company against damages, judgments, settlements and costs incurred by reason of certain wrongful acts committed by such persons in their capacities as directors and officers.

In addition, the Company has entered into separate indemnification agreements with certain of its current and former directors and executive officers. The indemnification agreements provide generally that the Company will indemnify and advance expenses to the fullest extent permitted by applicable law. Each director and executive officer party to an

indemnification agreement is entitled to be indemnified against all expenses, judgments, penalties and amounts paid in settlement actually and reasonably incurred.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See attached Exhibit Index following the signature page, which is incorporated herein by reference. The Company will submit or has submitted the Plan and any amendment thereto to the Internal Revenue Service (“IRS”) in a timely manner and has made or will make all changes required by the IRS in order to qualify the Plan.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant’s annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan’s annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Little Rock, State of Arkansas, on March 6, 2014.

WINDSTREAM HOLDINGS, INC.

By: /s/ Jeffery R. Gardner
 Name: Jeffery R. Gardner
 Title: President & Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|---|---------------|
| /s/ Jeffery R. Gardner Jeffery R. Gardner | President & Chief Executive Officer (Principal Executive Officer) and Director | March 6, 2014 |
| /s/ Anthony W. Thomas Anthony W. Thomas | Chief Financial Officer (Principal Financial Officer) | March 6, 2014 |
| /s/ John C. Eichler John C. Eichler | Controller (Principal Accounting Officer) | March 6, 2014 |
| * Carol B. Armitage | Director | March 6, 2014 |
| * Samuel E. Beall, III | Director | March 6, 2014 |
| * Dennis E. Foster | Director | March 6, 2014 |
| * Francis X. Frantz | Director | March 6, 2014 |
| * Jeffrey T. Hinson | Director | March 6, 2014 |
| * Judy K. Jones | Director | March 6, 2014 |
| * William A. Montgomery | Director | March 6, 2014 |
| * Alan L. Wells | Director | March 6, 2014 |

*By: /s/ John P. Fletcher
Name: John P. Fletcher
Title: Attorney-in-fact

The Plan. Pursuant to the requirements of the Securities Act of 1933, the administrator of the Plan has duly caused this Registration Statement to be signed on the Plan's behalf by the undersigned, thereunto duly authorized, in the City of Little Rock, State of Arkansas, on this 6th day of March, 2014.

BENEFITS COMMITTEE

/s/ Brent K. Whittington
Brent K. Whittington, Member

/s/ David Works
David Works, Member

/s/ Jennifer Gadberry
Jennifer Gadberry, Member

/s/ Anthony W. Thomas
Anthony W. Thomas, Member

EXHIBIT INDEX

The exhibits filed as a part of this registration statement are listed below:

| Number | Description |
|--------|---|
| 4.1 | Amended and Restated Certificate of Incorporation of Windstream Holdings, Inc. (incorporated herein by reference to Exhibit 3.1 to the Corporation's Current Report on Form 8-K filed August 30, 2013). |
| 4.2 | Second Amended and Restated Bylaws of Windstream Holdings, Inc. (incorporated herein by reference to Exhibit 3.1 to the Corporation's Current Report on Form 8-K filed February 14, 2014). |
| 4.3 | Windstream 401(k) Plan (January 1, 2011 Restatement) (the "Windstream 401(k) Plan") (incorporated by reference to Exhibit 4.3 to Windstream Corporation's, the Company's predecessor (the "Predecessor"), Registration Statement on Form S-8 (File No. 333-186780) filed on February 21, 2013). |
| 4.4 | Amendment No. 1 to the Windstream 401(k) Plan (incorporated by reference to Exhibit 4.4 to the Predecessor's Registration Statement on Form S-8 (File No. 333-186780) filed on February 21, 2013). |
| 4.5 | Amendment No. 2 to the Windstream 401(k) Plan (incorporated by reference to Exhibit 4.5 to the Predecessor's Registration Statement on Form S-8 (File No. 333-186780) filed on February 21, 2013). |
| 4.6 | Amendment No. 3 to the Windstream 401(k) Plan (incorporated by reference to Exhibit 4.6 to the Predecessor's Registration Statement on Form S-8 (File No. 333-186780) filed on February 21, 2013). |
| 4.7 | Amendment No. 4 to the Windstream 401(k) Plan (incorporated by reference to Exhibit 4.7 to the Predecessor's Registration Statement on Form S-8 (File No. 333-186780) filed on February 21, 2013). |
| 4.8 | Amendment No. 5 to the Windstream 401(k) Plan (incorporated by reference to Exhibit 4.8 to the Predecessor's Registration Statement on Form S-8 (File No. 333-186780) filed on February 21, 2013). |
| 4.9 | Amendment No. 6 to the Windstream 401(k) Plan (incorporated by reference to Exhibit 4.9 to the Predecessor's Registration Statement on Form S-8 (File No. 333-186780) filed on February 21, 2013). |
| 4.10 | Amendment No. 7 to the Windstream 401(k) Plan (incorporated by reference to Exhibit 4.10 to the Predecessor's Registration Statement on Form S-8 (File No. 333-186780) filed on February 21, 2013). |
| 4.11* | Amendment No. 8 to the Windstream 401(k) Plan |
| 4.12* | Amendment No. 9 to the Windstream 401(k) Plan |
| 4.13* | Amendment No. 10 to the Windstream 401(k) Plan |
| 5.1* | Opinion of Kutak Rock LLP |
| 23.1* | Consent of Kutak Rock LLP (contained in its opinion filed as Exhibit 5.1) |
| 23.2* | Consent of PricewaterhouseCoopers LLP |
| 24.1* | Powers of Attorney |

* Filed herewith.