

WINDSTREAM CORP  
Form S-8  
December 02, 2011  
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As filed with the Securities and Exchange Commission on December 2, 2011

Registration No. 333-\_\_\_\_\_

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, DC 20549

**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

**WINDSTREAM CORPORATION**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State of Incorporation)

**4001 Rodney Parham Road**

**20-0792300**  
(I.R.S. Employer Identification No.)

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**Little Rock, Arkansas 72212**

**(Address, including zip code, of**

**Registrant's principal executive offices)**

**PAETEC Holding Corp. 2011 Omnibus Incentive Plan**

**PAETEC Holding Corp. 2007 Omnibus Incentive Plan**

**PAETEC Corp. 2001 Stock Option and Incentive Plan**

**US LEC Corp. 1998 Omnibus Stock Plan**

**McLeodUSA Incorporated 2006 Omnibus Equity Plan**

**(Full title of the plan)**

**John P. Fletcher**

**Executive Vice President, General Counsel and Secretary**

**Windstream Corporation**

**4001 Rodney Parham Road**

**Little Rock, Arkansas 72212**

**Tel: (501) 748-7000**

**Fax: (501) 748-7400**

**(Name, address and telephone number,**

**including area code, of agent for service)**

**With a copy to:**

**Daniel L. Heard**

**Kutak Rock LLP**

**124 West Capitol Avenue**

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Suite 2000

Little Rock, Arkansas 72201

Tel: (501) 975-3000

Fax: (501) 975-3001

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. (Check one):

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	Registered (1)(4)	Proposed	Proposed	Amount of
		Maximum	Maximum	
	Amount	Offering	Aggregate	Registration
	to be	Price Per	Offering	Fee
	Share	Price		
Common Stock, \$0.0001 par value	3,934,258	\$ 10.04(2)	\$ 39,499,950.32(2)	\$ 4,526.69(2)
Common Stock, \$0.0001 par value	4,513,031	\$ 11.13(3)	\$ 50,230,035.03(3)	\$ 5,756.36(3)
<b>Totals</b>	<b>8,447,289</b>		<b>\$ 89,729,985.35</b>	<b>\$ 10,283.05</b>

(1) This registration statement (this Registration Statement) registers the issuance of 8,447,289 shares (the Shares) of the common stock, \$0.0001 par value, of Windstream Corporation, a Delaware corporation (the Registrant). The Shares represent the aggregate number of shares subject to outstanding stock options and restricted stock units under the PAETEC Holding Corp. 2011 Omnibus Incentive Plan (the 2011 Plan), the PAETEC Holding Corp. 2007 Omnibus Incentive Plan (the 2007 Plan), the PAETEC Corp. 2001 Stock Option and Incentive Plan (the 2001 Plan), the US LEC Corp. 1998 Omnibus Stock Plan (the 1998 USLEC Plan), and the McLeodUSA Incorporated 2006 Omnibus Equity Plan (the 2006 Plan) of PAETEC Holding Corp. (collectively, the Plans) assumed by the Registrant in connection with its acquisition of PAETEC Holding Corp., a Delaware corporation (PAETEC), pursuant to an Agreement and Plan of Merger dated as of July 31, 2011 (the Merger Agreement). The Shares consist of approximately 642,275 shares under the 2011 Plan, 2,283,899 shares under the 2007 Plan, 1,263,114 shares under the 2001 Plan, 417,529 shares under the 1998 USLEC Plan, and 213,246 shares under the 2006 Plan. The Shares also represent 3,627,226 shares available for issuance pursuant to the 2011 Plan. The number of Shares subject to outstanding awards or available for issuance

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under the Plans as of the closing of the transactions contemplated by the Merger Agreement and registered hereunder and the applicable exercise price have been calculated pursuant to the exchange ratio set forth in the Merger Agreement.

- (2) Estimated solely for purposes of calculating the registration fee computed in accordance with Rule 457(h) under the Securities Act of 1933, as amended (the Securities Act ), based on the weighted average exercise price of outstanding options to purchase 3,934,258 shares of the common stock of the Registrant.
- (3) Estimated solely for purposes of calculating the registration fee in accordance with paragraphs (c) and (h) of Rule 457 under the Securities Act. The fee with respect to 4,513,031 shares of common stock of the Registrant issuable upon the vesting of restricted stock units and available for issuance under the 2011 Plan is based on the average of the high and low sale prices of the Registrant's common stock as reported by the NASDAQ Global Select Market on November 25, 2011.
- (4) Pursuant to Rule 416 under the Securities Act, this Registration Statement covers, in addition to the number of Shares stated above, such additional shares to be offered or issued to prevent dilution as a result of future stock dividends or stock splits.

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**EXPLANATORY NOTE**

On July 31, 2011, the Registrant, Peach Merger Sub, Inc., a wholly owned subsidiary of the Registrant (Merger Sub), and PAETEC entered into the Merger Agreement, pursuant to which, among other things, Merger Sub would be merged with and into PAETEC (the Merger). On November 30, 2011, upon the consummation of the Merger, the separate corporate existence of Merger Sub ceased. In connection with the Merger, certain restricted stock units and options to acquire PAETEC common stock granted under the Plans outstanding as of the effective time of the Merger (the Effective Time) were assumed by the Registrant and converted at the Effective Time into restricted stock units and options to purchase shares of common stock, \$0.0001 par value, of the Registrant (the Registrant Common Stock). The Registrant also assumed the remaining shares available for issuance under the 2011 Plan and intends to make future grants under such plan. This Registration Statement registers the aggregate number of shares of Registrant Common Stock that may be issued pursuant to such assumed options and restricted stock units and that are available for future grants under the 2011 Plan.

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PART I

The information required by Items 1 and 2 of Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under the Securities Act and the explanatory note to this Registration Statement. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the Plans covered by this Registration Statement as required by Rule 428.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant are incorporated herein by reference as of their respective dates of filing with the Securities and Exchange Commission (the "SEC"):

- (a) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2010, filed with the SEC on February 22, 2011.
- (b) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2011, June 30, 2011 and September 30, 2011, filed with the SEC on May 5, 2011, August 5, 2011 and November 4, 2011, respectively.
- (c) The Registrant's Current Reports on Form 8-K filed with the SEC on January 7, 2011 (two reports), January 25, 2011, February 8, 2011, February 14, 2011, March 2, 2011, March 3, 2011, March 14, 2011, March 15, 2011, March 18, 2011, March 30, 2011, April 27, 2011, August 1, 2011, August 2, 2011 (other than Item 7.01), August 11, 2011, September 21, 2011, October 14, 2011, November 7, 2011, November 8, 2011, November 22, 2011, and December 2, 2011, as well as Windstream's Amendment No. 1 to Current Report on Form 8-K/A as filed with the SEC on August 2, 2011.
- (d) The description of the Registrant's Common Stock contained in the Registration Statement on Form 8-A filed with the SEC on December 8, 2009 pursuant to Section 12 of the Securities Exchange Act of 1934 (the "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 reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereunder have been sold or which deregisters all securities then remaining unsold hereunder shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

**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 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

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As permitted by the Delaware General Corporation Law, the Registrant's Amended and Restated Certificate of Incorporation eliminates the personal liability of its directors for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Registrant or its stockholders, (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends and stock purchases) or (d) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended to authorize further elimination or limiting of directors' personal liability, then the Amended and Restated Certificate provides that the personal liability of directors will be eliminated or limited to the fullest extent provided under the Delaware General Corporation Law.

As permitted by the Delaware General Corporation Law, the Registrant's Amended and Restated Certificate of Incorporation and its Bylaws provide that (a) the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to certain very limited exceptions, (b) the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law, (c) the Registrant 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 Delaware General Corporation Law, subject to certain conditions and (d) the rights conferred by the Amended and Restated Certificate of Incorporation and Bylaws are not exclusive.

The Delaware General Corporation Law authorizes a corporation to indemnify its directors and officers provided that the corporation shall not eliminate or limit the liability of a director as follows:

- (a) for any action brought by or in the right of a corporation where the director or officer is adjudged to be liable to the corporation, except where a court determines the director or officer is entitled to indemnity;
- (b) for acts or omissions not in good faith or which involve conduct that the director or officer believes is not in the best interests of the corporation;
- (c) for knowing violations of the law;
- (d) for any transaction from which the directors derived an improper personal benefit; and
- (e) for payment of dividends or approval of stock repurchases or redemptions leading to liability under Section 174 of the Delaware General Corporation Law.

The Delaware General Corporation Law 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.

The Registrant maintains a director and officer insurance policy which insures the directors and officers of the Registrant against damages, judgments, settlements and costs incurred by reason of certain wrongful acts committed by such persons in their capacities as directors and officers.

### **Item 7. Exemption from Registration Claimed.**

Not applicable.

### **Item 8. Exhibits.**

See Index to Exhibits following signature pages.

### **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:



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(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 the 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;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) above 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 SEC pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this 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 any employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this 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 SEC such indemnification is against public policy as expressed in the 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.

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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 this 2nd day of December, 2011.

WINDSTREAM CORPORATION

By /s/ Jeffery R. Gardner  
Jeffery R. Gardner

President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

Name	Title	Date
<u>/s/ Jeffery R. Gardner</u>		
Jeffery R. Gardner	President and Chief Executive Officer; Director (Principal Executive Officer)	December 2, 2011
<u>/s/ Anthony W. Thomas</u>		
Anthony W. Thomas	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	December 2, 2011
<u>/s/ John C. Eichler</u>		
John C. Eichler	Corporate Controller (Principal Accounting Officer)	December 2, 2011
*		
Carol B. Armitage	Director	December 2, 2011
*		
Samuel E. Beall, III	Director	December 2, 2011
*		
Dennis E. Foster	Director	December 2, 2011
*		
Francis X. Frantz	Director	December 2, 2011
*		
Jeffrey T. Hinson	Director	December 2, 2011
*		
Judy K. Jones	Director	December 2, 2011
*	Director	December 2, 2011

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William A. Montgomery

\*

Alan L. Wells

Director

December 2, 2011

- \* The undersigned, by signing his name hereto, executes this Registration Statement pursuant to powers of attorney executed by the above-named persons and filed with the Securities and Exchange Commission as an Exhibit to this Registration Statement.

/s/ John P. Fletcher  
John P. Fletcher  
Attorney-in-Fact

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INDEX TO EXHIBITS

The following exhibits are filed with this Registration Statement:

(5) OPINION RE LEGALITY

\*5.1 Opinion of Kutak Rock LLP.

(23) CONSENTS OF EXPERTS AND COUNSEL

\*23.1 Consent of PricewaterhouseCoopers LLP, independent registered public account firm.

\*23.2 Consent of Kutak Rock LLP (contained in their opinion filed as Exhibit 5.1).

(24) POWERS OF ATTORNEY

\*24.1 Powers of Attorney of each person whose signature on this Registration Statement was signed by another pursuant to a power of attorney.

(99) ADDITIONAL EXHIBITS

99.1 PAETEC Holding Corp. 2011 Omnibus Incentive Plan. (incorporated by reference to Exhibit 10.1 to PAETEC Holding Corp.'s Current Report on Form 8-K filed with the SEC on June 3, 2011).

99.2 PAETEC Holding Corp. 2007 Omnibus Incentive Plan, as amended (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by PAETEC Holding Corp. with the SEC on May 20, 2008).

99.3 PAETEC Corp. 2001 Stock Option and Incentive Plan (incorporated by reference to Exhibit 10.10.1 to the Registration Statement on Form S-4 filed by PAETEC Holding Corp. with the SEC on November 13, 2006 (SEC File No. 333-138594)).

99.4 Form of US LEC Corp. 1998 Omnibus Stock Plan, as amended (incorporated by Exhibit (d) Schedule TO filed by US LEC Corp. with the SEC on February 23, 2006 (File No. 005-54177)).

99.5 McLeodUSA Incorporated 2006 Omnibus Equity Plan (incorporated by reference to Exhibit 10.1 to Registration Statement on Form S-8 filed by PAETEC Holding Corp. with the SEC on February 8, 2008 (SEC File No. 333-149130)).

\* Filed Herewith

