Two Harbors Investment Corp.
Form 8-K
November 09, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 9, 2011

Two Harbors Investment Corp.
(Exact name of registrant as specified in its charter)

Maryland	001-34506	27-0312904
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

601 Carlson Parkway, Suite 150
Minnetonka, MN 55305
(Address of principal executive offices)
(Zip Code)

Registrant's telephone number, including area code: (612) 629-2500

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 7.01 Regulation FD

An investor presentation providing a business overview of Two Harbors Investment Corp. is attached hereto as Exhibit 99.1, and is incorporated herein by reference.

The information in Item 7.01 of this Current Report, including Exhibit 99.1 attached hereto, is furnished pursuant to Item 7.01 of Form 8-K and shall not be deemed "filed" for any other purpose, including for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liabilities of that Section. This information shall not be deemed to be incorporated by reference into any filing of the registrant under the Securities Act of 1933 or the Exchange Act regardless of any general incorporation language in such filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
99.1	Third Quarter 2011 Investor Presentation

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TWO HARBORS INVESTMENT CORP.

By: /s/ TIMOTHY W. O'BRIEN
Timothy O'Brien
Secretary and General Counsel

Date: November 9, 2011

.12 *Validity*. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, each of which shall remain in full force and effect. Upon the determination that any term or other provision is invalid or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Laws in an acceptable manner to the end that the Merger is consummated to the extent possible.

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9.13 *Captions*. The article, section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

9.14 *Specific Performance*. Notwithstanding anything in this Agreement to the contrary, the parties hereto agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that money damages would not be a sufficient remedy for any breach of this Agreement, and accordingly, the parties hereto shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

9.15 *WAIVER OF JURY TRIAL*. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTION OF THE PARENT, THE COMPANY OR NEWCO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

9.16 *Interpretation*. When a reference is made in this Agreement to an Article, a Section or an Exhibit, such reference shall be to an Article, a Section or an Exhibit of or to this Agreement unless otherwise indicated. The table of contents, index of defined terms and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Exhibit but not otherwise defined therein shall have the meaning assigned to such term in this Agreement. Whenever the words include , includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation . The words hereof , hereto , hereby , herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a wh and not to any particular provision of this Agreement. The term or is not exclusive. The word extent in the phrase to the extent shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply if . The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Any agreement, instrument or law defined or referred to herein means such agreement, instrument or Law as from time to time amended, modified or supplemented, unless otherwise specifically indicated. References to a Person are also to its permitted successors and assigns. Unless otherwise specifically indicated, all references to dollars and $ will be deemed references to the lawful money of the United States of America.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

D&E COMMUNICATIONS, INC.,

By: /s/ JAMES W. MOROZZI
Name: **James W. Morozzi**
Title: **President and Chief Executive Officer**

WINDSTREAM CORPORATION,

By: /s/ JEFFERY R. GARDNER
Name: **Jeffery R. Gardner**
Title: **President and Chief Executive Officer**

DELTA MERGER SUB, INC.,

By: /s/ JEFFERY R. GARDNER
Name: **Jeffery R. Gardner**
Title: **President and Chief Executive Officer**

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ANNEX B

[LETTERHEAD OF CREDIT SUISSE SECURITIES (USA) LLC]

May 10, 2009

Board of Directors

D&E Communications, Inc.

124 East Main Street

Ephrata, Pennsylvania 17522

Members of the Board:

You have asked us to advise you with respect to the fairness, from a financial point of view, to the holders of the common stock, par value $0.16 per share (D&E Common Stock), of D&E Communications, Inc. (D&E) of the Merger Consideration (as defined below) to be received by such holders pursuant to the terms of the Agreement and Plan of Merger, dated as of May 10, 2009 (the Merger Agreement), among Windstream Corporation (Windstream), Delta Merger Sub, Inc., a wholly owned subsidiary of Windstream (Merger Sub), and D&E. The Merger Agreement provides for, among other things, the merger of D&E with and into Merger Sub (the Merger) pursuant to which each outstanding share of D&E Common Stock will be converted into the right to receive (i) $5.00 in cash (the Cash Consideration) and (ii) 0.650 of a share of the common stock, par value $0.0001 per share (Windstream Common Stock), of Windstream (the Stock Consideration and, together with the Cash Consideration, the Merger Consideration).

In arriving at our opinion, we have reviewed the Merger Agreement and certain publicly available business and financial information relating to D&E and Windstream. We also have reviewed certain other information relating to D&E and Windstream, including financial forecasts relating to D&E and certain publicly available research analysts estimates relating to Windstream, provided to or discussed with us by D&E and Windstream, and have met with the managements of D&E and Windstream to discuss the businesses and prospects of D&E and Windstream, respectively. We also have considered certain financial and stock market data of D&E and Windstream, and we have compared that data with similar data for other publicly held companies in businesses we deemed relevant in evaluating D&E and Windstream, and we have considered, to the extent publicly available, the financial terms of certain other transactions which have been effected or announced. We also considered such other information, financial studies, analyses and investigations and financial, economic and market criteria which we deemed relevant.

In connection with our review, we have not independently verified any of the foregoing information and we have assumed and relied upon such information being complete and accurate in all material respects. With respect to the financial forecasts for D&E that we have used in our analyses, the management of D&E has advised us, and we have assumed, with your consent, that such forecasts have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of D&E as to the future financial performance of D&E. With respect to the publicly available research analysts estimates for Windstream that we have used in our analyses, we have reviewed and discussed such forecasts with the managements of D&E and Windstream and have assumed, with your consent, that such forecasts represent reasonable estimates and judgments with respect to the future financial performance of Windstream. We also have assumed, with your consent, that the Merger will qualify as a reorganization for federal income tax purposes. We further have assumed, with your consent, that, in the course of obtaining any regulatory or third party consents, approvals or agreements in connection with the Merger, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on D&E, Windstream or the contemplated benefits of the Merger and that the Merger will be consummated in accordance with the terms of the Merger Agreement without waiver, modification or amendment of any material term, condition or agreement thereof. In addition, we have not been requested to make, and have not made, an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of D&E or Windstream, nor have we been furnished with any such evaluations or appraisals.

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Our opinion addresses only the fairness, from a financial point of view and as of the date hereof, to the holders of D&E Common Stock of the Merger Consideration and does not address any other aspect or implication of the Merger or any other agreement, arrangement or understanding entered into in connection with the Merger or otherwise or the fairness of the amount or nature of, or any other aspect relating to, any compensation to any officers, directors or employees of any party to the Merger, or class of such persons, relative to the Merger Consideration or otherwise. The issuance of this opinion was approved by our authorized internal committee.

Our opinion is necessarily based upon information made available to us as of the date hereof and financial, economic, market and other conditions as they exist and can be evaluated on the date hereof. These conditions have been and remain subject to extraordinary levels of volatility and uncertainty and we express no view as to the impact of such volatility and uncertainty on D&E, Windstream or the Merger. We are not expressing any opinion as to what the value of shares of Windstream Common Stock actually will be when issued to the holders of D&E Common Stock pursuant to the Merger or the prices at which shares of D&E Common Stock or Windstream Common Stock will trade at any time. Our opinion does not address the relative merits of the Merger as compared to alternative transactions or strategies that might be available to D&E, nor does it address the underlying business decision of D&E to proceed with the Merger.

We have acted as financial advisor to D&E in connection with the Merger and will receive a fee for our services, a significant portion of which is contingent upon the consummation of the Merger. We also became entitled to receive a fee upon the rendering of our opinion. In addition, D&E has agreed to indemnify us and certain related parties for certain liabilities and other items arising out of or related to our engagement. We and our affiliates in the past have provided financial advice and services to D&E, and may in the future provide financial advice and services to Windstream and its affiliates, for which we and our affiliates have received, and would expect to receive, compensation. We are a full service securities firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, we and our affiliates may acquire, hold or sell, for our and our affiliates own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of D&E, Windstream and any other company that may be involved in the Merger, as well as provide investment banking and other financial services to such companies.

It is understood that this letter is for the information of the Board of Directors of D&E in connection with its evaluation of the Merger and does not constitute advice or a recommendation to any shareholder as to how such shareholder should vote or act on any matter relating to the proposed Merger.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Merger Consideration to be received by the holders of D&E Common Stock is fair, from a financial point of view, to such holders.

Very truly yours,

CREDIT SUISSE SECURITIES (USA) LLC

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PART II INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Indemnification of Directors and Officers.

The DGCL permits a Delaware corporation to indemnify directors, officers, employees, and agents under some circumstances, and mandates indemnification under certain limited circumstances. The DGCL permits a corporation to indemnify a director, officer, employee, or agent for expenses actually and reasonably incurred, as well as fines, judgments and amounts paid in settlement in the context of actions other than derivative actions, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification against expenses incurred by a director, officer, employee or agent in connection with his defense of a proceeding against such person for actions in such capacity is mandatory to the extent that such person has been successful on the merits. If a director, officer, employee, or agent is determined to be liable to the corporation, indemnification for expenses is not allowable, subject to limited exceptions where a court deems the award of expenses appropriate. The DGCL grants express power to a Delaware corporation to purchase liability insurance for its directors, officers, employees, and agents, regardless of whether any such person is otherwise eligible for indemnification by the corporation. Advancement of expenses is permitted, but a person receiving such advances must repay those expenses if it is ultimately determined that he is not entitled to indemnification.

The Amended and Restated Certificate of Incorporation of Windstream (the Certificate) provides for indemnification to the fullest extent permitted by the DGCL, as amended from time to time. Under the Certificate, any expansion of the protection afforded directors, officers, employees, or agents by the DGCL will automatically extend to Windstream s directors, officers, employees, or agents, as the case may be.

Article VII of the Certificate provides for the indemnification of directors, officers, agents, and employees for expenses incurred by them and judgments rendered against them in actions, suits or proceedings in relation to certain matters brought against them as such directors, officers, agents, and employees, respectively. Article VII of the Certificate also requires Windstream, to the fullest extent expressly authorized by Section 145 of the DGCL, to advance expenses incurred by a director or officer in a legal proceeding prior to final disposition of the proceeding.

In addition, as permitted under the DGCL, Windstream has entered into indemnity agreements with its directors and officers. Under the indemnity agreements, Windstream will indemnify its directors and officers to the fullest extent permitted or authorized by the DGCL, as it may from time to time be amended, or by any other statutory provisions authorizing or permitting such indemnification. Under the terms of Windstream s directors and officers liability and company reimbursement insurance policy, directors and officers of Windstream are insured against certain liabilities, including liabilities arising under the Securities Act of 1933. Windstream will indemnify such directors and officers under the indemnity agreements from all losses arising out of claims made against them, except those based upon illegal personal profit, recovery of short-swing profits, or dishonesty; provided, however, that Windstream s obligations will be satisfied to the extent of any reimbursement under such insurance.

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Item 21. Exhibits and Financial Statements

2.1	Agreement and Plan of Merger, dated as of May 10, 2009, by and among Windstream Corporation, Delta Merger Sub, Inc. and D&E Communications, Inc. (included as *Annex A* to the Proxy Statement/Prospectus forming a part of this registration statement).
3.1	Amended and Restated Certificate of Incorporation of Windstream Corporation, as amended (incorporated by reference to Exhibit 3.1 to Windstream s Amendment No. 3 to the Registration Statement on Form S-4 filed May 23, 2006).
3.2	Amended and Restated By-laws of Windstream Corporation, as amended (incorporated by reference to Exhibit 3.2 to Windstream s Current Report on Form 8-K filed February 6, 2009).
5.1	Opinion of Kutak Rock LLP as to the legality of the securities to be issued.**
8.1	Opinion of Kutak Rock LLP regarding certain Federal income tax matters.**
8.2	Opinion of Barley Snyder LLC regarding certain Federal income tax matters.**
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm of Windstream Corporation.*
23.2	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm of D&E Communications, Inc.*
23.3	Consent of Kutak Rock LLP (included in Exhibit 5.1 and 8.1).
23.4	Consent of Barley Snyder LLC (included in Exhibit 8.2).
24.1	Powers of Attorney**
99.1	Form of Proxy Card of D&E Communications, Inc.*
99.2	Consent of Credit Suisse Securities (USA) LLC.**

* Filed herewith.

** Previously filed.

Item 22. Undertakings.

The undersigned Registrant hereby undertakes:

(A)(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 of 1933.

(ii) To reflect in the prospectus any facts or events arising after the effective date of the 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 the registration statement. Notwithstanding the foregoing, any increase or decrease in 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.

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(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.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will 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) For purposes of determining any liability under the Securities Act of 1933, each filing of the registrant s annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement will be deemed to be new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

(C) To respond to requests for information that is incorporated by reference into the proxy statement/prospectus pursuant to Items 4, 10(b), 11, or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(D) To supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

(E) That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(F) That every prospectus: (i) that is filed pursuant to paragraph (E) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

Insofar as indemnification by the registrant for liabilities arising under the Securities Act of 1933 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 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.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant 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 the 17th day of August, 2009.

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 below by the following persons in the capacities indicated on the 17th day of August, 2009.

Signature	Title
/s/ FRANCIS X. FRANTZ* **(Francis X. Frantz)**	Chairman of the Board
/s/ JEFFERY R. GARDNER **(Jeffery R. Gardner)**	President, Chief Executive Officer and Director
/s/ ANTHONY W. THOMAS **(Anthony W. Thomas)**	Chief Financial Officer (Principal Financial Officer)
/s/ JOHN C. EICHLER **(John C. Eichler)**	Controller (Principal Accounting Officer)
/s/ DENNIS E. FOSTER* **(Dennis E. Foster)**	Director
/s/ CAROL B. ARMITAGE* **(Carol B. Armitage)**	Director
/s/ JUDY K. JONES* **(Judy K. Jones)**	Director
/s/ FRANK E. REED* **(Frank E. Reed)**	Director
/s/ SAMUEL E. BEALL III* **(Samuel E. Beall III)**	Director

/s/ JEFFREY T. HINSON*	Director
(Jeffrey T. Hinson)	
/s/ WILLIAM A. MONTGOMERY*	Director
(William A. Montgomery)	

*By: /s/ JOHN P. FLETCHER
(John P. Fletcher)

Attorney-in-fact