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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF WINDSTREAM KENTUCKY EAST, LLC
AND WINDSTREAM KENTUCKY WEST, LLC FOR A
DECLARATORY RULING THAT APPROVAL IS NOT REQUIRED
FOR THE TRANSFER OF A PORTION OF THEIR ASSETS; (2)
ALTERNATIVELY FOR APPROVAL OF THE TRANSFER OF
ASSETS; (3) FOR A DECLARATORY RULING THAT
COMMUNICATIONS SALES AND LEASING, INC. IS NOT
SUBJECT TO KRS 278.020(1); AND (4) FOR ALL OTHER
REQUIRED APPROVALS AND RELIEF

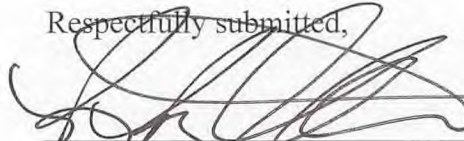
CASE NO.
2014-00283

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**WINDSTREAM KENTUCKY EAST, LLC AND
WINDSTREAM KENTUCKY WEST, LLC RESPONSES
TO THE COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION**

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively
“Applicants”), file the following Responses to the First Request for Information propounded by
the Commission Staff in accord with the instructions submitted with the request.

Respectfully submitted,



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VERIFICATION

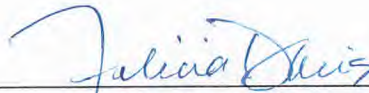
I, Cesar Caballero, Senior Regulatory Counsel, of Windstream Corporation, after being duly sworn, state that the facts contained in the responses to data requests for which I am listed as a witness are true and accurate to the best of my knowledge.



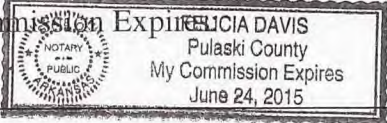
Cesar Caballero

STATE OF ARKANSAS)
)
COUNTY OF PUALSKI)

Subscribed and sworn to before me on this the 29 day of September, 2014.



Notary Public State at Large

My Commission Expires  JALECIA DAVIS
Pulaski County
My Commission Expires
June 24, 2015

VERIFICATION


I, Robert Gunderman, Senior Vice President - Treasurer, of Windstream Holdings, Inc., after being duly sworn, state that the facts contained in the responses to data requests for which I am listed as a witness are true and accurate to the best of my knowledge.



Robert Gunderman

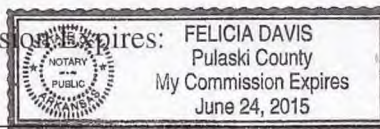
STATE OF ARKANSAS)
)
COUNTY OF PUALSKI)

Subscribed and sworn to before me on this the 29 day of September, 2014.



Notary Public State at Large

My Commission Expires:



1. Refer to paragraphs 16 and 17 of the Application, which state that Communication Sales and Leasing, Inc. (“CSL”) will own but not operate or manage the subject assets.

a. Explain the contention that CLS is not a utility as that term is defined in KRS 278.010(3)(e).

RESPONSE: KRS 278.010(3)(e) provides that an entity that “owns, controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation” is deemed a utility. Here, the subject assets owned by CSL cannot by themselves be used to transmit messages by telephone or telegraph without the assets retained by the Applicants. CSL will not use the subject assets for the transmission of messages by telephone or telegraph, will not be offering any services to customers in Kentucky, and will not receive any compensation for the transmission of messages by telephone or telegraph. CSL will lease all of its right, title and interest in the subject assets to the Applicants for their long term exclusive use, and CSL will only receive compensation in the form of rental payments as provided in the Master Lease.

The Commission has often addressed the “for the public” requirement and has determined what is required for an entity to be a utility: “As the name indicates, the term ‘public utility’ implies a public use and service to the public; and indeed, the principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public (or a portion of the public as such) which has a legal right to demand and receive its services and commodities. There must be a dedication or holding out, either express or implied, of produce [sic] or services to the public as a class. The term precludes

the idea of service which is private in nature and is not to be obtained by the public.” *See, e.g., In the Matter of: Petition of Kentucky Mountain Power, L.L.C. for a Declaratory Order*, Case No. 2001-00007 (March 19, 2001) (Finding that an Electric Wholesale Generator is not a utility). This understanding precludes CSL being classified as a utility. CSL will not be providing utility services to anyone. Rather, it will simply be leasing property to the Applicants so that they can continue to provide utility services subject to the Commission’s jurisdiction.

Additionally, the Commission has consistently declined to assert jurisdiction over parties that hold some ownership interest in utility facilities but do not provide any utility services directly. The situation has arisen in the context of financing agreements where utilities lease facilities to financial institutions for a period of years, and then leaseback the facilities to provide service to their customers. The Commission has routinely approved these arrangements without requiring the financial institutions to obtain Certificates of Public Convenience and Necessity as a result of their ownership interests in the utility facilities being used to provide the services. *See, e.g., In the Matter of: Application of Bullock Pen Water District for Approval to Enter Into a Lease Agreement with the Bank of Kentucky, Inc. in a Principal Amount of \$860,000.00 for the Purpose of Refinancing Certain Outstanding Debt Obligations Between the Kentucky Rural Water Finance Corporation and the Bullock Pen Water District*, Case No. 2012-00507 (January 4, 2013) (Involved a ten year lease and leaseback); *In the Matter of: Carroll County Water District No. 1’s Application for a Certificate of Public Convenience and Necessity for the Construction of Facilities for the District and Approval of a Lease Agreement in the Principal Amount of \$1,250,000 to Finance Such Facilities and to Refund Certain Prior Indebtedness*, Case No. 95-00062 (February 22,

1995) (Involved a twenty year lease and leaseback). In those cases, the financial institution held an ownership interest in the facilities as a result of the long-term lease arrangements. However, the facilities continued to be used by the existing utilities to provide services. The arrangement in this proceeding is indistinguishable. CSL will hold an ownership interest in certain facilities and those facilities will continue to be used by the Applicants, along with other facilities, to provide telecommunications services.

WITNESS: Cesar Caballero

b. Are the subject assets currently being used for the transmission or conveyance of any message by telephone or telegraph for the public for compensation?

RESPONSE: Standing alone, and as they will be owned by CSL, the subject assets are not being used (and could not be used) for the transmission or conveyance of any message by telephone or telegraph for the public for compensation. However, the subject assets, in conjunction with the assets that will be retained by the Applicants after the transaction, are currently being used for the transmission or conveyance of messages by telephone for the public for compensation, and the transaction will result in no change in this use. Note that currently Applicants, not CSL, are the entities providing and charging customers for these services. The Applicants are currently utilities and will continue to be utilities once the transaction closes.

WITNESS: Robert Gunderman.

c. After the proposed transfer, will the subject assets be used for the transmission or conveyance of any message by telephone or telegraph for the public for compensation?

RESPONSE: Please see Applicants' Response to Staff 1(b). CSL will not use the subject assets for these purposes. After the proposed transfer and pursuant to the terms of the Master Lease, CSL will have leased all of its rights in the subject assets to the Applicants for their exclusive use to transmit or convey messages by telephone or telegraph for the public for compensation. Consistent with a landlord/tenant relationship, CSL will have no retained rights under the Master Lease to use or operate the subject assets, and the only compensation or revenue that CSL will receive under the Master Lease will be derived from the rental payments made by Windstream to CSL for the exclusive use of the subject assets.

WITNESS: Robert Gunderman.

2. Provide a copy of the Internal Revenue Service private letter approving the transfer of subject assets into a Real Estate Investment Trust (“REIT”).

RESPONSE: Attached hereto is a copy of the private letter ruling issued by the IRS. By separate petition, Windstream is requesting confidential treatment for this response because public disclosure will result in competitive harm to Windstream.

WITNESS: Robert Gunderman

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC Windstream's
Response to Data Request Number 2 is Redacted in Its Entirety

3. Refer to Exhibit 4 of the Application, page 1, "Leased Property." What legal effect will the contemplated transaction have upon easements and rights of ways currently owned by the Applicants that will be transferred to the REIT?

RESPONSE: The legal effect will be minimal. Because Applicants will continue to be the sole and exclusive operator of the Subject Assets, Applicants will retain title to all easements and rights of ways. Windstream will transfer its beneficial rights and interests to CSL but it will retain title to the easements and rights of way. There will be no change in the nature, scope or manner of use of the easements and rights of way, and third parties will continue to bill Applicants, receive payment from Applicants and interact with Applicants with respect to all matters arising from these arrangements.

WITNESS: Cesar Caballero

4. Refer to Exhibit 4 of the Application, page 1, "Leased Property." What legal effect will the contemplated transaction have upon pole attachments and pole-attachment rates currently charged by the Applicants and included in the Applicants' current tariffs?

RESPONSE: The legal effect will be minimal. Because Applicants will continue to be the sole and exclusive operator of the Subject Assets There will be no change in the nature, scope or manner of use of the poles, and third parties will continue interact with Applicants with respect to all matters arising from these arrangements. Additionally, under the terms of the Master Lease, Applicants will continue to be responsible for the provision of pole attachments to third parties and Applicants will continue to be subject to all of the Commission's rules regarding pole attachments. Applicants' tariffed pole attachment rates will continue to govern after the transaction closes.

WITNESS: Cesar Caballero

a. Who will receive the revenue generated by pole-attachment fees if the transaction goes into effect?

RESPONSE: Applicants will continue to receive the revenue from pole attachment fees after the transaction closes.

WITNESS: Robert Gunderman

b. Who will be responsible for performing make-ready work associated with pole-attachment requests? Explain how such investments will be accounted.

RESPONSE: There will be no change in network maintenance responsibilities for the subject assets, and the Applicants will continue to be responsible for all network maintenance. Accordingly, Applicants will be responsible for performing all make-ready

work associated with pole attachment requests. Investments related to these functions will be accounted for as they are today.

WITNESS: Robert Gunderman

c. Who will be responsible for ensuring compliance with National Electrical Safety Code (“NESC”) inquiries or enforcement actions conducted by the Commission?

RESPONSE: There will be no changes in these responsibilities, and Applicants will continue to be responsible for ensuring compliance with NESC inquiries or any enforcement actions conducted by the Commission.

WITNESS: Robert Gunderman

d. If penalties or other sanctions result from Commission enforcement actions, who will be responsible for compliance?

RESPONSE: There will be no changes in these responsibilities, and Applicants will continue to be responsible for all regulatory compliance, including penalties or sanctions resulting from Commission enforcement actions.

WITNESS: Robert Gunderman

e. Describe in detail the inspection procedures that will be in place to ensure that facilities along pole routes, including all attachments and appurtenances, remain in compliance with Commission requirements, including the NESC.

RESPONSE: There will be no changes in the inspection procedures and other processes Applicants currently have in place to ensure compliance with Commissions requirements, including the NESC. Specifically, Windstream Outside Plant Project Managers and Engineers perform quality and safety inspections to ensure that work completed in the field is in accordance with all federal, state, and local laws and Windstream policies. These

include Occupational Safety and Health Act (OSHA), the National Electric Safety Code (NESC) Environmental protection Agency (EPA) and any other local or state regulations.

WITNESS: Robert Gunderman

5. How will the contemplated transaction affect line extensions?

RESPONSE: The transaction will not have any impact on line extensions, and the Applicants will continue to implement line extensions as they do currently today. Applicants will continue to offer services in their service territories and will continue satisfy their carrier of last resort obligations pursuant to Kentucky law and/or commission regulations.

WITNESS: Robert Gunderman

6. How will the contemplated transaction affect obtaining right of way for line extensions?

RESPONSE: Applicants will continue to have all obligations to secure rights of way and easements for line extensions. As discussed in response to Question 3, third parties will to interact with Applicants with respect to all matters related to these arrangements.

WITNESS: Robert Gunderman

7. Provide any communications or documentation from the Federal Communications Commission (“FCC”) stating that the contemplated transaction does not need FCC approval. If no such document or communication exists, cite to the relevant law exempting the contemplated transaction from FCC approval and explaining why the contemplated transaction is governed by this law.

RESPONSE: The contemplated transaction qualifies for *pro forma* treatment under the FCC’s rules and long-standing precedent. Applicants did not seek or receive written documentation from the FCC stating that the contemplated transaction does not need FCC approval. The FCC’s rules provide that “[t]ransfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or *pro forma*” and do not require prior approval. 47 C.F.R. sec. 63.24(d). None of the Applicants’ licenses or authorizations will change hands as a result of the transaction. The FCC’s rules recognize that *pro forma* treatment is properly applied where, as here, “there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests. 47 C.F.R. sec. 63.24(d), Note 2. Relatedly, the rules also accord *pro forma* treatment to an “[a]ssignment from a corporation to its individual stockholders.” *Id.*

WITNESS: Cesar Caballero

8. Describe, in detail, the facilities that will not be transferred to the REIT because of the American Recover and Reinvestment Act. Explain why these facilities will not be transferred to the REIT.

RESPONSE: The facilities of Applicants that will not be transferred to CSL include 1,970 miles of aerial fiber, 141 miles of buried fiber, 20 miles of aerial copper, 25 miles of buried copper and 3,305 poles . Under the terms of the grant and the security agreements with the Rural Utilities Service, the federal government has a retained interest in these assets. Because Applicants do not have full title to those assets, they were excluded from the transaction.

WITNESS: Robert Gunderman

9. Refer to paragraph 22 of the Application, which states that the Applicants already lease some facilities in Kentucky. Explain why the Applicants lease these facilities and provide examples of these facilities.

RESPONSE: Consistent with industry practice, it is sometimes more efficient or practical for the Applicants to lease assets from third parties instead of owning full title. For instance, third parties who own land where the Applicants desire to locate facilities may prefer to retain ownership of the subject property and instead lease the land, and thus preferences can be driven by many factors including the desire of the landowner to retain control over the nature of use of the subject property. Examples of situations when the Applicants lease property include leases for small parcels where the Applicants install remote switching facilities.

WITNESS: Robert Gunderman

10. Refer to paragraph 70 of the Application, which states that the Applicants serve approximately 353,000 access lines. Provide the number of access lines the Applicants have in Kentucky and provide the number of these access lines that are basic local exchange customers.

RESPONSE: Applicants serve approximately 353,000 access lines in Kentucky. Applicants serve approximately 27,000 basic local exchange customers in Kentucky.

WITNESS: Robert Gunderman

11. As a result of the proposed transaction, do the Applicants expect an increase or decrease in the number of Applicants' employees in Kentucky? Explain your answer.

RESPONSE: There will be no reduction or decrease to the number of employees in Kentucky as a result of the transaction. The transaction is not a merger or consolidation, and therefore there will be no elimination of duplicate positions or employees as a result of combined operations. Under the terms of the Master Lease, Applicants will continue to provide service to all their customers and will continue to be subject to all existing regulatory obligations. Therefore, Applicants will retain their existing employees in Kentucky.

WITNESS: Robert Gunderman

12. Refer to paragraph 78 of the Application, which states that cellular telecommunications companies utilize REITs to construct towers. Provide examples of this arrangement and describe how these arrangements are similar to those of the contemplated transaction, and how they are not similar.

RESPONSE: There have been many examples of the cellular telecommunications companies utilizing REITs to construct or own towers. For example, Crown Castle executed two agreements to buy the towers of two cellular companies. On December 16, 2013, Crown Castle International Corp. completed a transaction to acquire exclusive rights to approximately 9,700 AT&T towers for \$4.85 billion in cash and AT&T contracted to maintain its communications facilities on the towers for a minimum of 10 years with monthly rent of \$1,900 per site and fixed annual rent escalators of 2%. On Nov. 30, 2012, Crown Castle International Corp. completed a transaction to acquire exclusive rights to approximately 7,100 T-Mobile USA towers for \$2.4B in cash and T-Mobile has committed to maintain its communications facilities on the towers for a minimum of 10 years with annual rent escalation provisions tied to the consumer price index. In addition, the REIT tower companies that own, operate, and lease towers for cellular communications companies also build towers as requested from the cellular companies on an as-needed basis in exchange for a long-term contract. Cellular companies lease instead of build these towers because they believe their capital expenditures are better utilized elsewhere as reflected in the significant investments in electronic equipment by cellular companies to upgrade their networks to 4G wireless technology.

These cellular arrangements are similar to the contemplated transaction as both arrangements are long-term lease agreements involving integral communications real estate. Moreover, similar to the cellular companies, the Applicants have the flexibility in the future to fund the expansion of its network with their own capital or to enter into a lease agreement in exchange for funding. These arrangements are dissimilar in that the towers are typically built or purchased on non-exclusive basis, meaning the REIT tower companies can lease space on the tower to more than one cellular provider. As noted in response to Question No. 1, the Applicants will have an exclusive lease agreement with the REIT. The purpose for having exclusivity is to enable Applicants to retain title to rights of way, easements and pole attachment agreements to ensure no changes in the nature, scope or manner of use of the subject assets.

WITNESS: Robert Gunderman

13. Explain why CSL recently reincorporated in Maryland from Delaware.

RESPONSE: Further research indicated that the vast majority of publicly traded REITs have been incorporated in Maryland. Accordingly, it was concluded that CSL's acceptance by REIT investors and CSL's access to capital would benefit from having a corporate charter consistent with the prevailing practice for REITs. In addition, unlike Delaware, Maryland does not impose a franchise tax which will result in a savings of approximately \$180,000 annually for CSL.

WITNESS: Robert Gunderman

14. Provide the gross intrastate revenues for the Applicants for the fiscal years ending in 2013 and 2012. Is the contemplated transaction expected to negatively impact these revenues? Explain your answer.

RESPONSE: Windstream Kentucky East, LLC had gross intrastate revenues of \$178,833,233 in 2012 and \$164,228,000 in 2013. Windstream Kentucky West had gross intrastate revenues of \$8,293,797 in 2012 and \$7,018,000 in 2013. Applicants' revenues are not expected to change as a result of the transaction because Applicants will retain their customers and corresponding revenue streams.

WITNESS: Robert Gunderman

15. Can the Applicants acquire their own lines and facilities similar to those proposed to be transferred to the REIT. Explain your answer.

RESPONSE: Yes. Under the terms of the Master Lease, any expansions into new geographic areas, such as new subdivisions, would be owned by Applicants. In addition, the transaction does not prevent the Applicants from acquiring another company and owning similar assets owned by the REIT.

WITNESS: Robert Gunderman

16. Refer to Exhibit 4 of the Application, page 3, which states, “Tenant cannot enter into any Swap Agreement with a third party without Landlord’s reasonable consent.”

a. Describe in what situations the Applicants may enter into a Swap Agreement.

RESPONSE: This provision is intended primarily for Applicants’ CLEC affiliates that enter into swaps for their fiber facilities. Applicants historically have not entered into swaps and do not anticipate entering into swaps.

WITNESS: Robert Gunderman

b. Explain what constitutes “reasonable consent.”

RESPONSE: We are still developing operating procedures which include consent conditions for swaps, including no consent requirements. However, a swap would meet the reasonable consent standard if the term of the swap is not greater than the remaining term of the Master Lease and if the counterparty to the swap uses the subject assets for the purposes permitted (i.e., telecommunications and other uses performed by Applicants today) under the terms of the Master Lease.

WITNESS: Robert Gunderman

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF WINDSTREAM KENTUCKY EAST, LLC AND WINDSTREAM KENTUCKY WEST, LLC FOR A DECLARATORY RULING THAT APPROVAL IS NOT REQUIRED FOR THE TRANSFER OF A PORTION OF THEIR ASSETS; (2) ALTERNATIVELY FOR APPROVAL OF THE TRANSFER OF ASSETS; (3) FOR A DECLARATORY RULING THAT COMMUNICATIONS SALES AND LEASING, INC. IS NOT SUBJECT TO KRS 278.020(1); AND (4) FOR ALL OTHER REQUIRED APPROVALS AND RELIEF

CASE NO.
2014-00283

*** **

MOTION FOR CONFIDENTIAL TREATMENT

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively, “Windstream” or “Applicants”) move the Commission, pursuant to 807 KAR 5:001, Section 13, for an Order granting confidential treatment to Windstream’s Response to Data Request Number 2 from the Commission Staff’s First Request for Information issued on September 23, 2014.

Pursuant to 807 KAR 5:001, Section 13 the original response for which confidential treatment is sought is filed under seal with this motion. Windstream seeks confidential treatment of the entire Response. Redacted copies of the Response are filed with Windstream’s Responses to Staff’s September 23, 2014 Data Requests.

The Request and the Statutory Standard

Staff Request 2 requests the following:

Provide a copy of the Internal Revenue Service private letter approving the transfer of subject assets into a Real Estate Investment Trust (“REIT”).

Windstream does not object to providing the Commission a copy of the Private Letter Ruling (“PLR”) issued by the Internal Revenue Service (“IRS”). However, the PLR should be afforded confidential treatment in its entirety.

KRS 61.878(1)(c)(1) excludes from the public disclosure requirements of the Open Records Act the following information: “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” This exception applies to Windstream’s response to Staff Request 2.

The PLR is Generally Recognized as Confidential and Proprietary

Windstream is seeking confidential treatment of the PLR it received from the IRS addressing the federal income tax consequences of the transactions at issue in this proceeding. The IRS recognizes that the private letter ruling contains information that is privileged, confidential, and exempt from disclosure under applicable law. The IRS will not release the private letter ruling to the public until January 16, 2015. Even at that time, the IRS will only release the portion of the PLR that begins on page 13, and the first twelve pages of the PLR are not expected to ever be made public.

In light of the confidential and proprietary nature of the information at issue, Windstream takes all reasonable efforts to protect the private letter ruling from public disclosure. These measures include limiting access to the information within Windstream to only those individuals with a legitimate need to access the information and protecting the information against disclosure outside Windstream. Given the facts that both the IRS and Windstream maintain the

confidentiality of the PLR, Windstream's competitors and other members of the public currently are unable to access the information contained in the PLR.

**Disclosure of the PLR Will Result in an Unfair Commercial
Disadvantage for Windstream**

If publicly disclosed, the private letter ruling will provide an unfair competitive advantage to Windstream's competitors. The private letter ruling describes in detail the legal analysis supporting Windstream's contention that the assets at issue in this proceeding are eligible to be held in a Real Estate Investment Trust ("REIT"). It is a case of first impression for telecommunications providers and Windstream has expended significant investment and resources to support the legal analysis set forth in the private letter ruling. As a result of its investment, Windstream presently enjoys a significant first-mover advantage over other telecommunications providers that might be considering implementing a REIT strategy. This existing advantage will be lost, and the result will be competitively detrimental to Windstream, if the private letter ruling becomes available to other telecommunications providers before the IRS releases it to the public. Competing telecommunications providers will be able to obtain the benefit of Windstream's investment without incurring any of the costs. This will enable them to pursue similar strategies at a cost far less than that incurred by Windstream. Accordingly, Windstream requests that the Commission afford the private letter ruling confidential treatment until such time that it is publicly disclosed by the IRS.

The PLR is Required to be Disclosed to an Agency

Finally, the PLR is, by the terms of Staff Request 2, required to be disclosed to the Commission, a "public agency" as that term is defined in KRS 61.870(1). Windstream acknowledges that its Responses to the Information Requests should be a matter of public record and that the PLR is subject to Commission review. However, because public disclosure of the

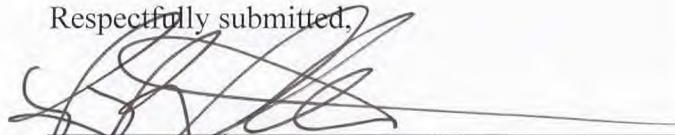
PLR will result in a competitive disadvantage for Windstream vis-à-vis other telecommunications providers, Windstream's filing of the PLR should be afforded confidential treatment.

Windstream requests that the PLR be maintained in the Commission's confidential files and not publicly disclosed. Windstream does not object to the Commission making the PLR public once the IRS releases it on January 16, 2015. However, the Commission should make public only those portions of the PLR that are released by the IRS

Wherefore, Windstream respectfully requests the Commission to enter an Order:

- (1) Affording confidential treatment to and withholding from public inspection Windstream's entire response to Staff Request 2 until the PLR is made public by the IRS;
- (2) Limiting the release of the PLR to those portions made public by the IRS on January 16, 2015, and not disclosing the portions of the PLR maintained as confidential by the IRS following that date; and
- (2) Granting Windstream all further relief to which it may be entitled.

Respectfully submitted,



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