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RECEIVED
NOV 6 2014
PUBLIC SERVICE COMMISSION

November 5, 2014

Jeff DeRouen, Executive Director
Kentucky Public Service Commission
P. O. Box 615
211 Sower Blvd.
Frankfort, KY 40601

Re: Application of Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (1) 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

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of the Direct Testimony of Randy Barber on behalf of The Communications Workers of America. Please note that the CWA Motion to Intervene is still being considered by the Commission and, therefore, CWA is not yet a party. This testimony is being filed in order that CWA will be in compliance with the procedural schedule should Intervenor status be granted.

A copy has been mailed to the attached Certificate list.

Respectfully,

Don Meade

Don Meade

DM/sks

CERTIFICATE OF SERVICE

A copy of the Direct Testimony of Randy Barber was mailed to the attorneys listed below this 5th day of November, 2014.

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Don Meade

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
NOV 6 2014
PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF WINDSTREAM KENTUCKY EAST, LLC AND WINDSTREAM KENTUCKY WEST, LLC (1) 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

PRE-FILED DIRECT TESTIMONY OF RANDY BARBER

ON BEHALF OF THE COMMUNICATIONS WORKERS OF AMERICA

Dated: November 6, 2014

Q. Please state your name and business address.

A. My name is Randy Barber. My office address is: Suite 204, 6935 Laurel Avenue, Takoma Park, Maryland 20912.

Q. By whom are you employed and in what capacity?

A. I am employed by the Center for Economic Organizing and serve as its president.

Q. On whose behalf are you testifying in this case?

A. I am testifying on behalf of the Communications Workers of America (CWA).

Q. Why is CWA interested in this case?

A. CWA represents more than 200 employees of Windstream in Kentucky who may be directly affected by the proposed transaction. CWA is concerned about the long-term prospects of its employer, as well as the employer's ability and commitment to safely and reliably operate, maintain, and improve that company's telecommunications network in Kentucky.

Q. When you were engaged by CWA on this case, what were you asked to do?

A. I have been asked to evaluate the proposed transaction and provide expert analysis and testimony, based on my financial experience as well as my knowledge of other telecommunications industry transactions.

Q. Do you have experience in rendering opinions as an expert witness?

A. Yes. While I do not specialize in being an expert witness, I have performed that function on several occasions, and I have assisted experts and attorneys in the financial and analytical aspects of judicial, quasi-judicial and regulatory proceedings. Most relevantly, I served as the financial expert for the CWA and/or the International Brotherhood of Electrical Workers (IBEW) in five major telecommunications transactions: FairPoint Communications' acquisition of Verizon's Northern New England landline business, the merger of Embarq and CenturyTel that formed CenturyLink, Frontier Communications' acquisition of Verizon landline businesses in fourteen states, the acquisition of Qwest Communications by CenturyLink, and Frontier Communications' acquisition of AT&T's landline business in Connecticut.

In addition, I have testified as an expert witness (either at trial or by deposition) in several judicial proceedings and arbitrations. These have included, for example, a class action law suit involving A.P. Moller-Maersk/BTT, a National Mediation Board Single Carrier proceeding, the Big Sky Airlines Bankruptcy, and an Examiner's Investigation into the Bankruptcy of Eastern Air Lines. I have also served as an expert consultant in various proceedings where it was not necessary for me to testify, such as an airline fitness investigation involving ATX, a cross-border airline merger investigation (American Airlines-Canadian Airlines), and a major CWA/AT&T arbitration.

Q. What in your educational and employment background has qualified you to provide an expert opinion on issues such as those presented in this case?

A. After attending Dartmouth College, I have worked as a financial consultant for more than 25 years. I specialize in complex financial and operational analyses of companies and industries, sometimes in the context of collective bargaining, other times in support of clients' strategic or policy interests. My clients tend to be labor unions and pension funds. I also regularly analyze a wide range of issues impacting specific employee benefit plans. Among the companies that I have analyzed are Alcatel, Avaya, AT&T, Boeing, Catholic Healthcare West, Celestica, CenturyTel (now CenturyLink), Columbia/HCA, Eastern Air Lines, Edison Schools, Embarq, FairPoint Communications, Frontier Communications, Idearc, Lucent Technologies, MCI, Oregon Steel, Qwest, RH Donnelley, Sprint, Sylvan Learning Systems, T-Mobile, Texas Air Corporation, TIAA-CREF, United Air Lines, the United States Postal Service, Verizon, Wal-Mart, and the Washington (DC) Hospital Center. More broadly, I have provided clients with various analyses of such industries as aerospace manufacturing, air transport, for-profit education, newspaper publishing, off-road vehicle manufacturers, and telecommunications and internet access and content providers.

In addition, I have performed a wide range of analyses of private sector pension plans and public employee retirement systems across the country. These include investigations into factors associated with under-funding, integration of two or more benefit plans, efforts to improve the operations of benefit plans, evaluations of proposed investment and funding mechanisms, and proposals to convert defined benefit plans into defined contribution plans. A number of the activities mentioned above have taken the form of joint labor-management initiatives in which I served as the union expert, paired with one or more management experts. Some of these projects included work with AT&T, Lucent Technologies, and the League of Voluntary Hospitals and Nursing Homes (New York City and environs).

Q. What is the scope of your testimony?

A. My testimony focuses on the key financial and operational risks to Windstream's Kentucky Incumbent Local Exchange Carrier (ILEC) operations.

Q. In order to render an opinion, what information would you need to review?

A. Ideally, I should be able review all relevant information that was available to the Windstream board of directors, management, and advisors, as well as subsequently developed data regarding the proposed transaction, and refined projections regarding the post-closing company. Windstream has indicated that it will soon file a prospectus for the transaction with the Securities and Exchange Commission, since all current Windstream shareholders will become holders in the new REIT. This filing should provide a wealth of more detailed information about the transaction, although probably not at the Kentucky level. Unfortunately, this prospectus has yet to be filed. In addition, I should have access to specific financial projections for Windstream's Kentucky ILEC operations, with and without the proposed transaction. These projections should include an income statement (profit and loss), a cash flow statement (sources and use of funds) and a balance sheet (assets and liabilities). These projections should have notes in sufficient detail to understand the numbers presented, including, for example, some form of documentation regarding the valuation of the assets to be spun off to CSL. In addition, to fully understand the proposed transaction, I should have copies of the proposed sale and lease agreements to which the Kentucky ILECs will be a party.

Q. Have you been able to review all of the information you require?

A. No. I have not been able to review any of this information, other than very high-level summaries. In particular, Windstream has not provided any specific financial information about the effect of the transaction on Kentucky ILEC operations (either financial or operational impacts), and it has not provided copies of the sale and lease agreements to which the Kentucky ILECs will be parties. In addition, Windstream (the parent company) has so far filed very little information about the transaction with the Securities and Exchange Commission. In fact, the only financial information about the proposed transaction consists of two pages: one page from a July 29, 2014, presentation to Windstream investors (that page is attached as Schedule RB-1) and one page that was included as Exhibit 7 to Windstream's Application in this case (for ease of reference, I am attaching a copy of that page as Schedule RB-2). Beyond those two pages, which provide only very high-level financial summaries, Windstream has provided two summaries of the terms of the lease as of July 28, 2014, and October 31, 2014; but it has made clear that these are drafts that are subject to change. As noted above, it would be far more preferable to have access to the anticipated but as yet unfiled prospectus.

Q. Based on the limited information available to you, what is your general understanding of the proposed transaction?

A. As I understand it, Windstream Holdings (the parent company of the Kentucky ILECs) is proposing to sell "real estate" assets of certain of its operating subsidiaries, including the Kentucky ILECs to a newly created company, Communications Sales and Leasing

(CSL). As I understand it, the Kentucky "real estate" sold to CSL will include all poles, conduits, wires, cables, and associated hardware of the Kentucky ILECs, but will not include easements and rights of way.

The sales price will be approximately $3.2 billion on a company-wide basis. The sales price for the Kentucky assets has not been stated. Windstream has stated that it will use the proceeds from the sale to reduce the amount of its debt. No information has been provided about the amount of the debt reduction that is allocable to the Kentucky ILECs.

Windstream will then lease back those same assets from CSL for a period of 15 years, with the option to extend the lease by an additional 20 years. The annual cost of the lease company-wide will be approximately $650 million, escalating at 0.5% per year beginning in the fourth year of the lease. The annual lease payment from the Kentucky ILECs has not been stated.

CSL will be organized as a Real Estate Investment Trust (REIT). At its inception, CSL will be a subsidiary of Windstream, but immediately after the asset sale occurs, CSL will be spun off from Windstream as a completely separate, publicly traded company. Windstream's common stockholders will receive all of the shares of CSL.

As a REIT, CSL will pay out most of its profits as shareholder dividends. Windstream estimates that CSL's initial annual dividend will be 60 cents per share.

After the transaction, Windstream will reduce its common stock dividend from its current level of $1.00 per share annually to 10 cents per share annually. Thus, the effective dividends received by Windstream's shareholders from the two companies (Windstream and CSL) would be reduced from $1.00 per share to 70 cents per share.

Q. Based on the limited information available, are you able to render an opinion about the financial impact of the proposed transaction on Windstream as a whole?

A. No, I cannot perform any financial analysis with the limited information available. All I can do is restate Windstream's numbers. Specifically, Windstream shows (in Schedule RB-1) that what I will call its required cash flow -- debt service and lease payments -- will increase significantly from the transaction. Windstream shows that its Operating Income Before Depreciation and Amortization ("OIBDA") is currently $2.22 billion per year. After paying debt service, Windstream has adjusted free cash flow of $830 million per year. After the transaction, Windstream's OIBDA will decline by $650 million (the lease payment) to $1.57 billion and its adjusted free cash flow will decline by $322 to $508 million.

Q. Why would the proposed transaction reduce Windstream's free cash flow?

A. The transaction replaces two expenses -- interest expense and depreciation expense -- with a new expense -- the lease payment. Depreciation expense does not require a cash outlay. In contrast, the lease obligation is a cash expense, so substituting the lease obligation for interest and depreciation results in a significant reduction in free cash flow.

Q. Does Windstream make up for that loss of cash flow in some other way?

A. Yes. Windstream is proposing to reduce its common stock dividend from $1.00 per share annually to 10 cents per share annually. Windstream has approximately 600 million shares of stock, so the dividend reduction would preserve approximately $540 million per year in cash.

The net effect of the sale, lease, and dividend cut under Windstream's projections would be to increase cash retained in the business from about $230 million at present ($830 million free cash flow less $600 million common stock dividends) to about $448 million ($508 million free cash flow less $60 million dividend).

Q. Do you have any concerns about the cash flow impact of the proposed transaction on the company as a whole?

A. Yes. I am concerned that Windstream is substituting discretionary cash outlays (common stock dividends) with mandatory cash outlays (lease payments). While I recognize that there is a positive cash flow benefit of the transaction due to the reduction in dividend payments, the nature of the cash flow requirements would change under the proposed transaction. If there is a serious downturn in Windstream's business, or other serious financial upset, Windstream would have much less flexibility to respond. By turning depreciation expense into a cash outlay (through the lease), Windstream is reducing its ability to respond to emergent conditions. As a simple example, if a disaster occurred and Windstream needed immediate access to cash, it has $830 million it could draw upon today ($600 million in dividend payments plus $230 million of free cash flow). After the proposed transaction, cash available to meet such a condition would decline to only $508 million ($60 million in dividend payments and $448 million in free cash flow).

Q. What is the effect of the transaction on cash flow to the Kentucky ILECs?

A. I do not know. Windstream has not provided any comparable information, even on a summary level, for its Kentucky ILEC operations. I do not know if the proposed transaction would increase or decrease the net cash available to the Kentucky operations. The answer to that question would depend on the interest expense, depreciation expense, and dividend payments made today by the Kentucky ILECs, as compared to the lease expense and dividend payments they would make if the transaction occurs. None of that information is available to me.

Q. Do you have other concerns and unanswered questions about the proposed transaction?

A. Yes, I have at least two other concerns about the proposed transaction. First, there is a serious question about the accounting for the proposed transaction. Second, I do not know if the transaction would create any operational concerns for CWA members, such as their ability to access poles or conduits owned by CSL but leased to Windstream.

Q. Why is there a question about the accounting for the proposed transaction and how might that affect Windstream's operations?

A. On September 12, 2014, Windstream affiliates in Ohio filed a letter with the Public Utilities Commission of Ohio. A copy of the letter is attached as Schedule RB-3. I have read the September 12, 2014, letter several times and discussed it with some investment analysts to see if, perhaps, such accounting treatment is commonplace in REIT transactions. I am still confused by the statements made in the letter.

As I understand it, Windstream is saying that the proposed lease with CSL will not be recognized as a lease by Windstream's accountants. Rather, for accounting purposes under Generally Accepted Accounting Principles (GAAP), Windstream must continue to show the plant as an asset and take depreciation on that asset. The letter is silent about the other important aspect of the transaction: the retirement of $3.2 billion in debt that is supported by those assets. That is, if Windstream cannot show the lease payments as an expense and it has retired the $3.2 billion in debt that was supporting those assets, will it be able to take any type of interest expense for GAAP accounting purposes; and if so, what would be the interest rate on that debt? Further, does this accounting treatment have an effect on the ability of Windstream to pay dividends to shareholders, affect its covenant requirements on debt, or have other potential financial implications?

In addition, Windstream has not stated how this enormous difference between its books for tax purposes and its books under GAAP would affect ratemaking. When Windstream comes to this Commission to change pole attachment rates, for example, would it base its costs on its GAAP books (showing ownership of poles) or its tax books (showing that the poles are leased from CSL), or on yet another set of books?

Compounding this problem is the letter's statement that the Windstream companies would be required to take a write-off representing the discounted present value of the lease payments to CSL. There is no mention of the effect this would have on Windstream's shareholders' equity or its ability to raise capital in the future. According to

Windstream's annual report, as of December 31, 2013, Windstream's shareholders' equity was $840.2 million. Given the magnitude of the lease payments ($650 million per year), it appears to me that Windstream may be required to write off most or all of its common equity balance. If that occurs, it might restrict Windstream's ability to issue new equity, pay common stock dividends, or otherwise raise capital.

I also cannot tell from the letter exactly how the transaction would be treated for federal and state tax purposes. The letter states that CSL will be able to take depreciation on the assets for tax purposes; but it does not mention whether Windstream will be able to deduct the lease payments for tax purposes. If the lease payments are not deductible, then the transaction could result in a significant increase in Windstream's tax expense (since it would lose depreciation and interest expense), which could severely affect its cash flow.

Q. Why are you concerned about CWA members having safe access to the facilities being sold and leased back?

A. Windstream has stated it would retain all operational control of the assets. The Outline of Master Lease dated October 31, 2014 (attached as Schedule RB-4), however, states: "Landlord may require Tenant (or require Tenant to cause Tenant's Subsidiaries) to convey legal title to Landlord to any or all of the easements, permits and pole agreements … ." Schedule RB-4, p. 3.

The Application also fails to mention what happens at the end of the lease term. It appears that when the lease ends, Windstream could lose control of the assets.

Specifically, that document states: "Upon expiration or termination of the Master Lease, Tenant shall transfer the Communications Assets to the Successor Tenant for fair market value (the "Communication Assets FMV"). The term "Communications Assets" means the business operations conducted by Tenant and its Subsidiaries at the Affected Facility, including the license to operate as an ILEC in the local exchange area in which the Affected Facility is located, the Electronics and other equipment owned by Tenant or Tenant's Subsidiaries located in the local exchange area and used in the operation of such Affected Facility (excluding the Shared Corporate Assets), any customer relationships related to such Affected Facility which Tenant can no longer support due to the end of the Term ... all Tenant's Property relating to such Affected Facility, all TCI ILEC Extensions and any TCI CLEC Extensions to such Affected Facility that Tenant elects to include as part of the Communication Assets and, if requested by a Successor Tenant, required by an applicable collective bargaining agreement or required by applicable law, all employees primarily dedicated to the maintenance, operation or support of the Affected Facility." Schedule RB-4, pp. 7-8. The outline of the lease then contains several detailed provisions governing this end-of-lease transfer of ownership, operations, customers, and employees.

Q. Are the terms of the lease finalized?

A. No. Windstream states in response to Kentucky Cable Telecommunication Association data request 23: "The Master Lease is being finalized and has not been executed at this time by the parties." Consequently, I do not know if the summary of the lease as of

October 31, 2014, that I am relying on will represent the actual agreement between Windstream and CSL.

Q. Do you have any other concerns with Windstream's Application?

A. Yes. Windstream claims that the transaction would enable it to invest additional capital in its network. No information is provided, however, about whether any of this investment will be made in Kentucky and how the safety and quality of service might be affected.

Q. What do you conclude?

A. From all of this information, I conclude that there is not enough information for me to render an informed opinion about the effects of the proposed transaction on Windstream's Kentucky ILECs. I have serious questions about both the financial and operational impacts of the proposed transaction on the Kentucky ILECs.

Q. Do you have sufficient information to make a recommendation to the Commission?

A. No. Based on the lack of critically important information, I cannot formulate a fact-based recommendation to the Commission. All I can suggest given the information available is that the Commission should request additional information from Windstream about the specific impacts on Kentucky ILEC finances and operations. If the schedule permits such an inquiry, then I would respectfully recommend that the Commission obtain and analyze that information. If the schedule does not provide sufficient time for further information gathering and analysis, then with all due respect I would recommend that the

Commission deny the Application based on a lack of evidence, and without foreclosing Windstream's right to refile the Application with the necessary information.

Q. Does this conclude your direct testimony?

A. Yes, based on the information available to me at this time.

Separation Creates Significant Value

windstream

The separation is free cash flow accretive, significantly deleveraging to Windstream and provides the potential for substantial shareholder value creation

	Current Windstream	New Windstream	REIT	Illustrative Combined Value / % Change
Assumed Adjusted OIBDA Multiple	6.7x	6.7x	14.4x	
	Current		*1-Year Triple-Net REIT Comp Average*	
Indicative Share Price	$ 10.46	$ 8.66	$ 9.41	$ 18.07 / 72.7%
Indicative Equity Value	$ 6,307	$ 5,222	$ 5,672	
(+) Net Debt (as of 12/31/14E) [1]	8,500	5,250	3,400	
Indicative Enterprise Value	$ 14,807	$ 10,472	$ 9,072	
Fiscal Year 2014E Metrics: [2]				
FY14E Revenue [2]	$ 5,900	$ 5,900	$ 650	
FY14E Adjusted OIBDA [2]	2,220	1,570	630	
FY14E Adjusted Free Cash Flow [2,3]	830	508	439	$ 946 / 14.0%
Net Leverage [4]	3.8x	3.3x	5.4x	
Dividend per Share	$ 1.00	$ 0.10	$ 0.60	$ 0.70 / (30.0%)

Note: For illustrative purposes only and not intended to predict future share prices of New Windstream or the REIT. The REIT's indicative share price and dividend per share assumes a 1:1 exchange ratio. Assumes $650M lease payment from Windstream to the REIT and pay down of ~$3.2B of debt at Windstream. Excludes transfer of consumer CLEC business.

(1) Excludes debt premium. FY14E debt estimated based on FCF and payout ratio guidance. Assumes Windstream incurs $150M in transaction expenses and financing fees.

(2) FY14E Revenue and Adjusted OIBDA equal to Wall St. consensus estimates. Windstream FY14E adjusted FCF equal to midpoint of guidance.

(3) Assumes 4.0% interest rate on debt paid down at Windstream and 5.5% interest rate on new debt at the REIT, tax affected at 38.0%.

(4) Assumes $75M pro forma cash at Windstream and $75M pro forma cash at the REIT.

WINDSTREAM HOLDINGS, INC.
FOR THE YEAR ENDED DECEMBER 31, 2013
(Millions)

	As Reported		Proforma Adjustments		Proforma	
Reconciliation to Pro Forma Adjusted OIBDA						
Revenues and sales	$	5,988.1	$	(50.5)	$	5,937.6
Adjusted OIBDA	$	2,318.1	$	(20.2)	$	2,297.9
Rent payment		-		(650.0)		(650.0)
Pro Forma Adjusted OIBDA	$	2,318.1	$	(670.2)	$	1,647.9
Debt Leverage Ratio:						
Long-term debt, including current maturities	$	8,707.2	$	(3,169.5)	$	5,537.7
Capital lease obligations		79.2		-		79.2
Total long-term debt and capital lease obligations		8,786.4		(3,169.5)		5,616.9
Cash, including restricted cash		57.9		(38.3)		19.6
Net debt	$	8,728.5	$	(3,131.2)	$	5,597.3
Leverage ratio		3.79				3.41
Net leverage ratio		3.77				3.40

FILE

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September 12, 2014

Barcy McNeal, Secretary
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, OH 43215-3793

Re: *In the Matter of the Application of Windstream Holdings, Inc. et al. to Transfer,* PUCO Case No. 14-1438-TP-ATR

Dear Ms. McNeal:

This letter supplements the information contained in the application filed in this case on August 19, 2014.

In accordance with generally accepted accounting principles in the United States ("GAAP"), the spin-off-leaseback should be accounted for in accordance with the provisions for sale-leaseback transactions involving real estate. As a result of Windstream Holdings, Inc.'s ("Holdings") operating companies continued involvement in the telecommunications distribution system assets, due in part to retaining all applicable regulatory obligations, including pole attachment obligations, the spin-off-leaseback does not qualify for sale-leaseback accounting under GAAP, which means it will not be treated as either a capital or operating lease.

Under this accounting treatment, Holdings' operating companies remain the accounting owner of the assets. Accordingly, the assets subject to the spin-off-leaseback will remain on the balance sheet of Holdings' operating companies and will continue to be depreciated as they are currently and there will be no changes to any of the operating companies' accounts, including pole attachments, except for the recognition of a long-term lease obligation equal to the operating companies' proportionate share of the required future minimum lease payments due to the REIT on a discounted basis, with a corresponding reduction in the operating companies' equity accounts. Other than the aforementioned changes, the annual reports filed with the PUCO by Holdings' ILEC affiliates will not change as a result of the transaction and will continue to be filed as they are today.

As mentioned above, the assets will remain on the balance sheet of Holdings as accounting owner and also will appear on the REIT's books as legal owner. Both companies will depreciate the assets, but only the REIT will include depreciation expense as a tax deduction

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in its tax returns. Holdings and its operating companies would no longer include depreciation expense as an income tax deduction in their returns.

Additionally, capital improvements made to existing plant, whether such capital improvements are funded by Holdings or the REIT, will continue to be owned by the REIT. Capital additions, e.g., new plant to serve new subdivisions, will be owned by Holdings' operating companies.

Please advise if you have any questions about this.

Thank you for your assistance.

Very truly yours,

BAILEY CAVALIERI LLC

William A. Adams

WAA/jlp

Exhibit D

Outline of Master Lease

OCTOBER 31, 2014

The following is a preliminary summary of the principal terms of a Master Lease ("Master Lease") contemplated to be entered into among Windstream Holdings, Inc. ("Tenant" or "Windstream") and Communications Sales & Leasing, Inc. or one or more of its wholly-owned subsidiaries (collectively, "Landlord"). The Master Lease would be signed and dated contemporaneously with the closing of the spin-off transaction. The final terms of the Master Lease are subject to receipt of all required regulatory approvals, satisfaction of all conditions precedent to the spin-off, and approval by the Board of Directors of Windstream of the definitive terms of the Master Lease.

Leased Property

- Leased Property includes, among other things, all of Landlord's rights and interest in the following: (1) operational facilities used in Tenant's ILEC operations 13 states and in Tenant's CLEC operations in 24 states, categorized by geographic area (each a Facility") which includes the (i) central office land and buildings in the geographic area of the applicable Facility and (ii) all fiber optic cable lines, copper cable lines, conduits, telephone poles, attachment hardware (including bolts and lashing), guy wires, anchors, pedestals, concrete pads, amplifiers and such other fixtures and other items of property, including all components thereof (such as cross connect cabinets, windstream outside plant mini-cabinet mounting post (WOMP), fiber distribution hubs, fiber access terminals and first entry fiber splice cases), together with all replacements, modifications, and additions thereto in the geographic area of the applicable Facility (collectively, the "Distribution Systems"); (2) all Easements, Permits and Pole Agreements related to the Leased Property and (3) all system maps and records for the Distribution Systems.
- The Master Lease is a single, indivisible lease of the Leased Property and not separate leases.

Term

- Initial Term: 15 years
- Renewal Terms: In addition, Tenant may renew the Master Lease for up to 4 Renewal Terms of 5 years for any or all of the Facilities (each, a "Renewal Term"). Tenant must deliver a Renewal Notice at least 24 months prior to the end of the then current term (a "Renewal Election Outside Date") if Tenant exercises its right to renew the Master Lease. If Tenant elects to renew less than all of the Facilities, the Renewal Notice must specify which Facilities it elects not to renew for such Renewal Term.
- Extension of Initial Term: During the first five years of the Master Lease, Tenant may extend the Initial Term as to all of the Facilities (and no less than all) from 15 to 20 years (the "Initial Extension Right"). If Tenant exercises the Initial Extension Right (i) the number of Renewal Terms will be reduced to 3 so that the maximum term (taking into account all renewals) is 35 years and (ii) Landlord will be obligated to provide the Funding Commitment as described below (see Maintenance/Capital Improvements below).

10762781.13B-NYCSR03A - MSW

Exhibit D

RENT

- Initial Term: $650,000,000[1]. The Rent is subject to annual increases at a rent escalator of 0.5% commencing the 4th year, provided that any funding made by Landlord to Tenant for Tenant Capital Improvements will be subject to an annual escalation of 0.5%.
- Renewal Terms: No later than 210 days prior to the Renewal Election Outside Date for each Renewal Term, Landlord must deliver a notice to Tenant stating Landlord's proposed Renewal Rent and Successor Tenant Rent. If Landlord and Tenant have not entered into a written agreement confirming the Renewal Rent and Successor Tenant Rent by 180 days prior to the Renewal Election Outside Date, an independent appraisal process will automatically be initiated to determine the Renewal Rent and Successor Tenant Rent, which shall be equal to the Fair Market Rental for each Facility based on the methodology used to establish the Initial Rent and memorialized in Exhibit E to the Master Lease. Beginning the second year of each Renewal Term, the Rent shall increase at an escalation rate by 0.5%
- Triple Net Lease: Tenant responsible for all costs relating to the Leased Property, including real estate taxes, insurance premiums, maintenance costs, and all fees under the Easements, Permits and Pole Agreements, subject to limited carve outs. In the event Landlord defaults on its obligation to fund a Capital Improvement under the Master Lease and fails to cure such default within 30 days of Tenant's notice of failure to make such payment, Tenant may offset the amount Landlord was so obligated to but failed to fund to Tenant against the subsequent payments of Rent.

EXCLUSIVE USE OF LEASED PROPERTY

- The Leased Property is being leased to Tenant on an exclusive basis and in its present condition. Any of Tenant's Subsidiaries have the right to use, occupy and operate the Leased Property and discharge any of Tenant's obligations under the Master Lease on Tenant's behalf.
- Tenant is only permitted to use the Leased Property for the provision, routing and delivery of voice, data, video, data center, cloud computing and other communication services, the colocation activities in the data center space, the entry into pole attachment agreements with third parties, the provision of dark or dim fiber services to third parties or ancillary activities provided under the Communications Regulations (the "Primary Intended Use") consistent with its current use or with prevailing communications industry use at any time. Any sublease (including, but not limited to, any rights granted pursuant to pole attachment agreement, a dark fiber agreement, a dim fiber agreement or a collocation agreement) entered into in accordance with the terms of the Master Lease shall constitute a permitted use.
- Tenant must continuously operate the Facilities for one or more of the activities constituting the Primary Intended Use, with the specific use conducted at any portion of the Facilities to be determined by Tenant in its reasonable discretion, with limited exceptions.
- Tenant and Tenant's Subsidiaries have the right to affix Electronics and other equipment (collectively, but not limited to, "Tenant's Property") to the Distribution Systems.

RESTRICTIONS

- Landlord cannot, without Tenant's prior consent, (i) construct for any Person other than Tenant or its Subsidiaries fiber, copper, coaxial and fixed wireless facilities within the same local exchange area of the incumbent local exchange carriers (each an "ILEC") that are Subsidiaries of Tenant and are

[1] The final rent amount for the initial term will be determined following receipt of the final appraisal process of the Leased Property.

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operating the Facilities being leased by Tenant under this Master Lease or (ii) construct for any Person other than Tenant or its Subsidiaries extensions (including extensions in the form of fiber, copper, coaxial or fixed wireless facilities) of any ILEC Facility under the Master Lease into a geographic area that adjoins the local exchange area of any ILEC Facilities that are leased by Tenant under this Master Lease. There are no restrictions in the Master Lease on Landlord's ability to acquire fiber, copper, coaxial and fixed wireless facilities from any Person.

- Landlord may require Tenant (or require Tenant to cause Tenant's Subsidiaries) to convey legal title to Landlord to any or all of the easements, permits and pole agreements provided that (i) Landlord has obtained all certificates, consents, approvals, licenses or permits necessary for Landlord to hold such legal title, (ii) Landlord pays all applicable transfer taxes, costs and expenses related to the conveyances, (iii) Landlord cooperates with Tenant to allow Tenant to obtain all necessary certificates, consents, approvals, licenses and permits necessary for Tenant to continue to operate and maintain the Leased Property in Tenant's name and (iv) Landlord executes such additional documents requested by Tenant to enable Tenant to exercise its rights as to the Leased Property and perform its obligations under the Master Lease. Landlord is responsible for all fees under the transferred easements, permits and pole agreements and rents solely due to the legal title being transferred to Landlord.

MAINTENANCE/CAPITAL IMPROVEMENTS

- Tenant is responsible for maintaining the Leased Property in accordance with prudent industry practice and in compliance with (among other things) all federal and state utility commissions delivery standards, and all permits, pole agreements, and easements. The maintenance responsibilities include: (1) repairing fiber and copper cuts with respect to the Distribution Systems and (2) replacing poles, conduits and other facilities at the Leased Property as required to comply with Tenant's maintenance obligations. Tenant is required to submit periodic reports to Landlord on operational matters to enable Landlord to confirm that Tenant is complying with its maintenance and other obligations under the Master Lease.
- Tenant has the right to make Capital Improvements (which includes maintenance, repairs, extensions, upgrades, additions, replacements or overbuild to the Distribution Systems) without Landlord's consent that are constructed in accordance with Tenant's current engineering standard (which may be modified without Landlord's consent so long as the standard is consistent with prevailing industry practice and is in compliance with applicable law).
- If Tenant exercises the Initial Extension Right, Landlord has the obligation to fund up to $50 million annually (the "Funding Commitment") towards Capital Improvements for a maximum period of 5 consecutive Lease Years (or such lesser period as provided below) following Tenant's exercise of the Initial Extension Right, but in no event will Landlord have an obligation to fund any Capital Improvements from and after the 7th anniversary of the Commencement Date. Landlord may agree to provide additional funding for Tenant Capital Improvements if requested by Tenant and otherwise agreed to by Landlord.
    - Any funds provided by Landlord prior to the 2nd anniversary of the Commencement Date will result in an increase of annual Rent based on the following formula: (i) the amount of funds advanced by Landlord to Tenant on the particular date multiplied by (ii) a capitalization rate of 8.125%.
    - Any funds provided by Landlord from and after the 2nd anniversary of the Commencement Date through the 7th anniversary of the Commencement Date will result in an increase of annual rent based on the following formula: (i) the amount of funds advanced by Landlord to Tenant on a particular date multiplied by (ii) a capitalization rate not to exceed 200 basis points above the average of Landlord's highest cost of debt's

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average implied yield over the preceding 60 trading days and Landlord's average implied dividend yield over the preceding 60 trading days.

- Tenant is required to provide (i) an Annual Construction Summary each year reflecting the Capital Improvements made by Tenant in the prior year and (ii) the demarcation between the Leased Property and Tenant 's Property with respect to Tenant Capital Improvements in excess of $500,000. A separate report will be delivered by a nationally recognized accounting firm confirming that the summary is accurate and that the Capital Improvements have not degraded the structural integrity of the Leased Property.
  - If Tenant constructs a Capital Improvement that is not funded by Landlord (each a "Tenant Capital Improvement") which constitutes maintenance, repair, overbuild, upgrade or replacement of the Leased Property (each a "TCI Replacement"), then such TCI Replacement automatically becomes part of the Leased Property.
  - If a Tenant Capital Improvement constitutes an Extension of the Distribution Systems to a New Geographic Area where Tenant or its Subsidiaries are licensed as an ILEC (each a "TCI ILEC Extension") then, at the end of the term for the applicable Facility, the TCI ILEC Extension will be included as part of the Communication Assets sold to a Successor Tenant.
  - If a Tenant Capital Improvement occurs where Tenant or its Subsidiaries are a competitive local exchange carrier and is not a TCI Replacement (each a "TCI CLEC Extension"), Tenant may remove the connections between the TCI CLEC Extension and the Leased Property or, if the connection between the TCI CLEC Extension and the Leased Property is functionally independent, elect to leave such connection in place by delivering notice of either such election to Landlord (which notice shall also indicate Tenant's intent to enter into an interconnection agreement with the Successor Tenant for continuing access to the Leased Property). If the connection between the TCI CLEC Extension and the Leased Property is not functionally independent and if Tenant elects not to remove such TCI CLEC Extension connection or does not provide timely notice to Landlord, the TCI CLEC Extension will be included as part of the Communication Assets sold to a Successor Tenant.
  - A Tenant Capital Improvement that constitutes a Long-Haul Fiber Route (a "Long Haul TCI") shall be treated as Tenant's Property, and in no event shall any such Long Haul TCI (i) become part of the Leased Property, (ii) be considered a TCI ILEC Extension or a TCI CLEC Extension or (iii) be considered part of the Communication Assets. A Long Haul TCI will not become part of the Leased Property even though the Long Haul Fiber Route constituting the Long Haul TCI enters into or passes through a geographic area where Tenant or its Subsidiaries are licensed as an incumbent local exchange carrier.

INSURANCE

- Tenant is responsible for maintaining property insurance and additional liability insurance with respect to the Leased Improvements, the Capital Improvements and all Tenant's Property.
- Tenant may self-insure its insurance obligations or use a captive provider.

CASUALTY

- In all instances of a casualty in which a Facility and/or any Tenant Capital Improvements to a Facility are damaged, Tenant must restore the Leased Property in a manner consistent with Prudent Industry Practice (excluding any TCI ILEC Extensions, TCI CLEC Extensions and any Long Haul TCI, which Tenant shall not be required to repair).

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- The Master Lease will not terminate as a result of a casualty, and Tenant is not entitled to any rent abatement.

CONDEMNATION

- The Master Lease will terminate as to a Facility if the Facility is totally and permanently taken.
- If there is a partial Taking, the Master Lease does not terminate and Tenant is required to restore the Leased Property to the condition it existed prior to such Taking (except for any TCI ILEC Extensions, TCI CLEC Extensions and any Long Haul TCI) even if the Condemnation proceeds do not cover all restoration costs. The Rent is subject to an equitable abatement during such restoration.

EVENTS OF DEFAULT

- Events of Defaults include, without limitation, the following:
  - Tenant fails to pay (i) any installment of Rent and such failure continues for 10 days following Notice from Landlord or (ii) any other amounts that Tenant is required to pay under the Master Lease and such failure continues for 30 days following Notice from Landlord;
  - Any applicable license or agreement material to a Facility's operation for its Primary Intended Use is terminated, revoked or suspended for more than 45 days;
  - Any event or condition occurs that (1) results in any Material Indebtedness (defined as Indebtedness of any one or more of Tenant and Tenant's Subsidiaries in an aggregate principal amount exceeding $75,000,000) becoming due prior to its stated maturity, (2) enables or permits the holders of any Material Indebtedness to cause it to become due or require any payment, repurchase, redemption or defeasance prior to its stated maturity, or (3) Tenant fails to pay the principal of any Material Indebtedness when due, except that no Event of Default shall be deemed to have occurred under (1), (2) and (3) above to the extent any payment, repurchase, redemption or defeasance of any Material Indebtedness is not an Event of Default under the Credit Agreement.
- Landlord may exercise self-help rights if Tenant defaults under the Master Lease.
- An Event of Default as to any Facility is an Event of Default as to all the Facilities.

SALE OF LEASED PROPERTY/TRANSFER OF LANDLORD

- Landlord may sell all, but not less than all, of the Leased Property to a single buyer that is not a Competitor of Tenant without the consent of Tenant. In connection with such sale, Landlord and the buyer shall concurrently enter into an assignment agreement pursuant to which Landlord assigns to such buyer all of its rights, title and interest under this Master Lease, and the buyer agrees to perform all of the obligations, terms, covenants and conditions of Landlord hereunder from and after the effective date of the sale. Landlord and the successor owner shall be jointly and severally liable for any obligation to provide a Funding Commitment to Tenant that arises from and after the date of the sale.
- Tenant's consent is required if: (1) a Competitor acquires 10% or more of the Equity Interests of Landlord or Communications Sales and Leasing, Inc. ("<u>CS&L Parent</u>"), (2) a Competitor acquires all or substantially all of Landlord's assets relating to the Facilities, (3) there is a merger or consolidation with or into a Competitor or (4) there is a sale or other transfer of any Equity Interests in any entity comprising Landlord that would result in CS&L Parent not being the beneficial owner, whether directly or indirectly, of 100% of the Equity Interests in such entity unless the Equity Interests that are sold or transferred are convertible into Equity Interests in CS&L Parent.

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INDEMNIFICATION

- Tenant is responsible for protecting, indemnifying, save harmless and defending Landlord against all losses, including, without limitation, (1) any use, misuse, maintenance or repair by Tenant of the Leased Property, (2) any claims of trespass with respect to the Leased Property and (3) all third party claims, including any claims of bodily injury or property damage occurring on or about the Leased Property.

ASSIGNMENT/CHANGE OF CONTROL/SUBLETTING

- There is a general prohibition on Tenant's right to assign the Master Lease without Landlord's consent in its reasonable discretion. Any Change in Control constitutes an assignment of the Master Lease. A Change in Control includes the following:
  - The direct or indirect transfer of 50% or more of the voting power of the Voting Stock of Tenant (a "Tenant COC");
  - The first day on which a majority of the members of the board of directors of Tenant are not Continuing Directors (i.e., a member of the board on the date of the Master Lease signing or nominated/elected to the board with the approval of the majority of the Continuing Directors);
  - The direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Tenant and its Subsidiaries, taken as a whole, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act); or
  - The adoption of a plan relating to the liquidation or dissolution of Tenant.
- Permitted Assignments
  - With Landlord's prior written consent, which consent shall not be unreasonably withheld, allow to occur or undergo a Change of Control (including a transfer or assignment of the Master Lease to a third party in conjunction with the sale of all or substantially all of Tenant's assets relating to the Facilities);
  - Without Landlord's prior written consent, assign the Master Lease to any of Tenant's Subsidiaries;
  - Without Landlord's prior written consent:
    - Tenant shall be permitted to undergo a Tenant COC if the acquirer is a Discretionary COC Transferee (a transferee with the required experience, licenses or certifications, solvency and financial qualifications) and the Parent Company of such Discretionary COC Transferee (or Discretionary COC Transferee itself) has become a Guarantor and provided a Guaranty. If there is a Tenant COC, no Landlord approval is required with respect to the assignment documents if Tenant remains obligated under the Master Lease, the requirements for a Guaranty from the Parent Company or Discretionary COC Transferee are met, and any modifications required under the Master Lease are made.
    - Tenant shall be permitted to assign the Master Lease in connection with a foreclosure (a "Foreclosure Assignment") by a Permitted Leasehold Mortgagee

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or a Permitted Leasehold Mortgagee Designee, subject to certain conditions being met.

- Tenant shall be permitted to assign the Master Lease to any Person that is not a Foreclosure Assignment if the Person is Discretionary Transferee who agrees in writing to assume the obligations of Tenant, and the Parent Company of such Discretionary Transferee (or the Discretionary Transferee itself) has become a Guarantor and provided a Guaranty.

- Without Landlord's prior written consent, pledge or mortgage its Leasehold Estate to a Permitted Leasehold Mortgagee.

- Permitted Subleasing Arrangements
  - Without Landlord's consent, Tenant shall be permitted to enter into any pole attachment agreement with a third party that is required in order to discharge or comply with Tenant's obligations under any Communications License or Communications.
  - Tenant shall be permitted to enter into any other sublease agreement (including, without limitation, any rights granted by Tenant through a dark fiber agreement, a dim fiber agreement, or a collocation agreement) without Landlord's consent, provided that the route miles or space pursuant to such sublease does not constitute greater than 30% in the aggregate of the route miles or space of all the Facilities in the aggregate then subject to the Master Lease (such portion, a "Material Portion"). Any such sublease (other than a sublease with a Discretionary Transferee) must be made in the normal course of the Primary Intended Use and to third party users or operators of portions of the Leased Property in furtherance of the Primary Intended Use or is required to discharge Tenant or its Subsidiaries' obligations under any Communications License or Communications Regulations. Any sublease or collocation arrangement for a Material Portion will require Landlord's consent, except no consent will be required to the extent (x) permitted under the Specified Subleases, (y) the subtenant under such sublease is a Discretionary Transferee or (z) with respect to any collocation arrangement, Tenant or its Subsidiaries is obligated to enter into such collocation arrangement in order to discharge its obligations under any Communication License or Communications Regulations.
  - Landlord shall have the right to reasonably approve the identity of any subtenant to ensure that the subtenant is adequately capitalized, competent and experienced for the operations it will be conducting, except no such consent from Landlord shall be required for (i) any subtenant that is a Discretionary Transferee, (ii) any third parties under any pole attachment agreements, collocation arrangements, dim fiber arrangements and dark fiber arrangements or (iii) any subtenants under the Specified Subleases and any permitted assignment by such subtenants with respect to a Specified Sublease.

FINANCIAL REPORTING

- Tenant will have certain financial reporting obligations under the Master Lease which are consistent with Tenant's Credit Agreement except for modifications to take into account the Master Lease and the filing and reporting obligations of Landlord.

END OF TERM

- Upon expiration or termination of the Master Lease, Tenant shall transfer the Communications Assets to the Successor Tenant for fair market value (the "Communication Assets FMV"). The term "Communications Assets" means the business operations conducted by Tenant and its Subsidiaries

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at the Affected Facility, including the license to operate as an ILEC in the local exchange area in which the Affected Facility is located, the Electronics and other equipment owned by Tenant or Tenant's Subsidiaries located in the local exchange area and used in the operation of such Affected Facility (excluding the Shared Corporate Assets), any customer relationships related to such Affected Facility which Tenant can no longer support due to the end of the Term (for the purposes of determining whether the Tenant can support a customer, Tenant will not be able to meet this standard by entering into an interconnection agreement with the Successor Tenant pursuant to which the Tenant obtains wholesale access that allows Tenant to re-sell the Affected Facility to a customer), all Tenant's Property relating to such Affected Facility, all TCI ILEC Extensions and any TCI CLEC Extensions to such Affected Facility that Tenant elects to include as part of the Communication Assets and, if requested by a Successor Tenant, required by an applicable collective bargaining agreement or required by applicable law, all employees primarily dedicated to the maintenance, operation or support of the Affected Facility.

- The Communications Assets FMV will be determined as follows:
  - First, determining the rent Landlord would be entitled to receive from the Successor Tenant under a 10 year lease (the "Successor Tenant Rent"), which Master Lease shall be consistent with the terms described below. The Successor Tenant Rent shall be determined at the same time as the Renewal Rent (See Rent above). In the case of an expiration of the Master Lease on the 35[th] anniversary of the Commencement Date (the "Final Lease Expiration") or a termination of the Master Lease, the Successor Tenant Rent will be the Fair Market Rental determined pursuant to the appraisal process set forth in the Master Lease.
  - Second, identifying a pool of qualified potential successor tenants (each, a "Qualified Successor Tenant") prepared to lease the applicable Facility at the Successor Tenant Rent and bid for the Communication Assets. Landlord will select 3 potential Qualified Successor Tenants (1 of which will be Landlord or an Affiliate of Landlord) and Tenant will select 4 potential Qualified Successor Tenants (1 of which will be the Credit Agreement Agent or its designee), each of whom must meet the criteria of a Discretionary Transferee (or in the case of a Credit Agreement Agent or its designee, a Discretionary COC Transferee).
  - Third, determining the highest price a Qualified Successor Tenant would agree to pay for the Communication Assets as follows:
    - (1) Except for circumstances in which a Third Party Qualified Auctioneer is required to be engaged as outlined in clause (2) below, the Communications Assets FMV may be negotiated and agreed upon by Tenant and Successor Tenant (the "Negotiated Communications Assets FMV") by entering into a definitive agreement (such agreement, a "Communications Assets Sale Agreement") within the time period set forth in the Master Lease. If Landlord is notified by the Credit Agreement Agent that a Credit Agreement Agent Trigger Event exists and the Successor Tenant is not the Credit Agreement Agent (acting on behalf of the lenders under the Credit Agreement) or its designee, such Negotiated Communications Assets FMV cannot be less than the Credit Agreement Payoff Amount.
    - (2) Landlord and Tenant will be required to engage a Third Party Qualified Auctioneer upon the occurrence of any of the following: (i) Tenant does not enter into a Communications Assets Sale Agreement in accordance with the terms of the Master Lease, (ii) a Lease Termination Notice has been delivered to Tenant,