

November 6, 2014

Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, Kentucky 40601

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COMMISSION

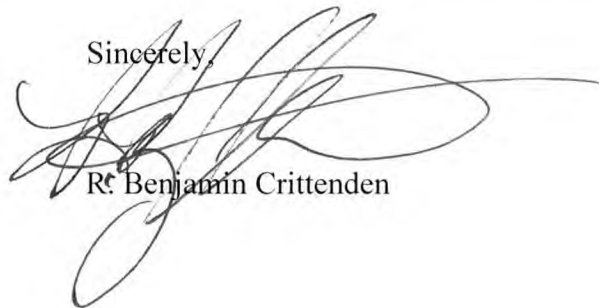
R. Benjamin Crittenden  
(502) 209-1216  
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Re: *Application of Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (1) for a Declaratory Ruling that Approval is Not Required for the Transfer of a Portion of their Assets; (2) Alternatively 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 for filing please find an original and ten copies of the Direct Testimony of John P. Fletcher and Robert E. Gunderman on behalf of Windstream Kentucky East, LLC and Windstream Kentucky West, LLC. Copies have been mailed and provided via e-mail to counsel for the other parties and counsel for the Communications Workers of America, which has moved to intervene in this proceeding.

Sincerely,



R. Benjamin Crittenden

RBC

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter Of:

The Application Of Windstream Kentucky East, LLC And Windstream Kentucky West, LLC For (1) 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

**DIRECT TESTIMONY OF**

**JOHN P. FLETCHER**

**ON BEHALF OF WINDSTREAM KENTUCKY EAST, LLC**

**AND WINDSTREAM KENTUCKY WEST, LLC**

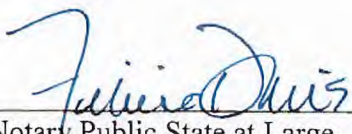
VERIFICATION

I, John P. Fletcher, Executive Vice President, Secretary and General Counsel of Windstream Holdings, Inc., after being duly sworn, state that I have personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
John P. Fletcher

STATE OF ARKANSAS            )  
  )  
COUNTY OF PULASKI        )

Subscribed and sworn before me on this the 6 day of November, 2014.

  
\_\_\_\_\_  
Notary Public State at Large  
My Commission Expires:

\_\_\_\_\_  


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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is John P. Fletcher and my business address is 4001 Rodney Parham Road,  
4 Little Rock, Arkansas 72212.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6 A. I am employed by Windstream Holdings, Inc. (“Holdings”) and my position is Executive  
7 Vice President, Secretary and General Counsel. The Applicants in this proceeding,  
8 Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively,  
9 “Applicants” or “Operating Companies”), are indirect subsidiaries of Holdings.

10 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
11 **BACKGROUND.**

12 A. I earned an undergraduate degree from Duke University and a law degree from the  
13 Southern Methodist University School of Law. Prior to my employment with Holdings, I  
14 was a partner in the law offices of Kutack Rock, LLP specializing in corporate and  
15 securities law.

16 **Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES.**

17 A. I am responsible for Holdings legal affairs, corporate governance, government relations,  
18 regulatory reporting and compliance.

19 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE**  
20 **KENTUCKY PUBLIC SERVICE COMMISSION?**

21 A. No.

22 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY**  
23 **PROCEEDINGS?**

1 A. No.

2 **II. PURPOSE OF TESTIMONY**

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 A. The purpose of my testimony is to support the Applicants' position that Commission  
5 approval should not be required for the Transaction under KRS 278.020(1), (5) and (6).

6 The Transaction involves a bare transfer of assets that will be simultaneously leased back  
7 for use by the Operating Companies. The Operating Companies will retain the exclusive  
8 authority to use those assets to provide telecommunications services to customers in the  
9 Commonwealth. At the conclusion of the Transaction, the same parties will be providing  
10 these services under the terms and conditions that exist currently. The Transaction  
11 effects no substantive change in how telecommunications services will be furnished.

12 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

13 A. Not at this time.

14 **III. THE APPLICANTS' REQUEST FOR A DECLARATORY ORDER**

15  
16 **Q. PLEASE EXPLAIN THE BASIS FOR THE APPLICANTS' POSITION THAT A  
17 DECLARATORY ORDER IS APPROPRIATE IN THIS CASE.**

18 A. The Commission has the authority to issue a Declaratory Order pursuant to 807 KAR  
19 5:001, Section 19. The requested Declaratory Order is appropriate because the  
20 Transaction will not result, either directly or indirectly, in the transfer or the acquisition  
21 of ownership, control, or the right to control Holdings or its subsidiaries, including those  
22 subsidiaries providing utility service in the Commonwealth. Nor will the Transaction  
23 result in CSL providing utility service to or for the public. The provisions of KRS  
24 278.020 concerning the change of control of utilities providing service in the

1 Commonwealth contemplate the acquisition or transfer of the ownership or control of the  
2 legal entity providing utility services, including the authority to provide that service.

3 They are inapplicable to a “naked” transfer or acquisition of assets that does not include  
4 the transfer of the authority to provide utility service, or the right or ability to operate the  
5 assets to provide such service to the public, as will occur with the Transaction.

6 **Q. WILL THE TRANSACTION INVOLVE A TRANSFER OF AUTHORITY TO**  
7 **OPERATE AS A UTILITY?**

8 A. No. The Applicants are not seeking to transfer the authority to operate as a  
9 telecommunications carrier to CSL, nor do the Operating Companies intend to transfer all  
10 assets used to provide service to CSL. CSL does not intend to provide service on a retail  
11 or wholesale basis or operate as a telecommunications provider. The Operating  
12 Companies will continue to operate the Subject Assets and serve the public as  
13 telecommunications public utilities.

14 **Q. DOES THE TRANSACTION CONTEMPLATE A CHANGE OF OWNERSHIP**  
15 **OR CONTROL NECESSITATING COMMISSION APPROVAL?**

16 A. No. The Transaction will not affect or change the ownership or control, or the right to  
17 control Holdings or Windstream Corporation. Moreover, both before and after the  
18 Transaction the Operating Companies will remain direct wholly-owned subsidiaries of  
19 Windstream Corporation, and indirect wholly-owned subsidiaries of Holdings.  
20 Accordingly, the Transaction does not constitute a change of ownership or control, or the  
21 right to control, of any utility in the Commonwealth as those terms are used in KRS  
22 278.020(5) and KRS 278.020(6). Nor will the Transaction require CSL to obtain a

1 certificate of public convenience and necessity to operate as a utility under KRS  
2 278.020(1).

3 **Q. PLEASE EXPLAIN THE BASIS FOR THE APPLICANTS' POSITION THAT**  
4 **COMMISSION APPROVAL IS NOT REQUIRED FOR THE TRANSACTION**  
5 **UNDER KRS 278.020(5).**

6 A. KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or  
7 control, or the right to control, any utility under the jurisdiction of the commission by sale  
8 of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by  
9 the commission.” The Transaction will not result in the acquisition or transfer of  
10 ownership, control or the right to control the Operating Companies. The Operating  
11 Companies will remain public utilities providing telecommunications service in the  
12 Commonwealth, and will remain wholly-owned subsidiaries of Windstream Corporation  
13 Windstream Corporation in turn will remain a wholly-owned subsidiary of Holdings.

14 **Q. FOLLOWING THE TRANSACTION, WILL CSL OWN OR CONTROL**  
15 **HOLDINGS, WINDSTREAM CORPORATION, OR THE OPERATING**  
16 **COMPANIES?**

17 A. No. CSL will not gain or otherwise possess the right to exercise any ownership of,  
18 control of, or the right to control Holdings, Windstream Corporation, or the Operating  
19 Companies as a result of the Transaction. No voting securities are being transferred to  
20 CSL in connection with the Transaction. Holdings and its subsidiaries will not become  
21 subsidiaries of CSL as a result of the Transaction. To the contrary, CSL and  
22 Holdings will be independent, publicly traded companies engaged in different businesses.



1 **Q. FOLLOWING THE TRANSACTION, WILL CSL EXERCISE CONTROL OVER**  
2 **THE SUBJECT ASSETS?**

3 A. No. The Master Lease will ensure that the Operating Companies have long term,  
4 exclusive control over the Subject Assets. In addition, following the Transaction, the  
5 Operating Companies will continue to be responsible for all capital improvements to the  
6 Subject Assets, along with their maintenance and operation. The Operating Companies  
7 will remain carriers of last resort in their service areas, and will retain their existing and  
8 future contractual and regulatory obligations as telecommunications utilities in the  
9 Commonwealth. Under the terms of the exclusive lease from CSL, the Operating  
10 Companies will be responsible for the operation and maintenance of the Subject Assets  
11 and will continue to have responsibility for quality of service standards and fulfillment of  
12 all regulatory obligations.

13 **Q. DO YOU SUPPORT THE APPLICANT'S POSITION THAT COMMISSION**  
14 **APPROVAL SHOULD NOT BE REQUIRED UNDER KRS 278.020(5)?**

15 A. Yes. The Transaction does not constitute the acquisition or transfer of ownership of, or  
16 control, or the right to control any utility under the jurisdiction of the Commission by the  
17 sale of assets, transfer of stock, or otherwise and thus does not require approval pursuant  
18 to KRS 278.020(5).

19 **Q. PLEASE EXPLAIN THE BASIS FOR THE APPLICANTS' POSITION THAT**  
20 **COMMISSION APPROVAL IS NOT REQUIRED FOR THE TRANSACTION**  
21 **UNDER KRS 278.020(6).**

22 A. KRS 278.020(6) provides in pertinent part that “[n]o individual, group, syndicate, general  
23 or limited partnership, association, corporation, joint stock company, trust, or other entity

1 (an “acquirer”), whether or not organized under the laws of this state, shall acquire  
2 control, either directly or indirectly, of any utility furnishing utility service in this state,  
3 without having first obtained the approval of the commission.” The Transaction will not  
4 provide CSL, either directly or indirectly, with the right, power, ability, or authority to  
5 “direct, or cause the direction of management and policies” of Holdings, Windstream  
6 Corporation or the Operating Companies.

7 **Q. WILL THE TRANSACTION RESULT IN CSL CONTROLLING HOLDINGS,**  
8 **WINDSTREAM CORPORATION OR THE OPERATING COMPANIES?**

9 A. No. Following the Transaction, CSL and Holdings will be independent, publicly traded  
10 companies engaged in different businesses. CSL will not have the ability to effect a  
11 change in the composition of the boards of directors of Holdings, Windstream  
12 Corporation or the Operating Companies. No voting securities are being transferred,  
13 and, CSL will own no voting or other securities of Holdings and therefore CSL will not  
14 own 10 percent or more of the voting securities of Holdings, Windstream Corporation or  
15 the Operating Companies as a result of the Transaction. To summarize, the Transaction  
16 does not constitute nor provide for the acquisition of control, either directly or  
17 indirectly, by CSL, its subsidiaries, or any other entity, of any utility furnishing service in  
18 the Commonwealth and thus does not require approval pursuant to KRS 278.020(6).

19 **Q. PLEASE EXPLAIN THE BASIS FOR THE APPLICANTS’ POSITION THAT**  
20 **COMMISSION APPROVAL IS NOT REQUIRED FOR THE TRANSACTION**  
21 **UNDER KRS 278.020(1).**

22 A. KRS 278.020(1) provides in pertinent part that “[n]o person, partnership or private  
23 corporation, or combination thereof shall commence providing utility service *to or for*

1 *the public* or begin the construction of any plant, equipment, property, or facility for  
2 furnishing *to the public* any of the services enumerated in KRS 278.010 . . . until that  
3 person has obtained from the Public Service Commission a certificate that public  
4 convenience and necessity require the service or construction.” (Emphasis supplied).  
5 The requirement of service “to or for the public” is repeated in the definition of a  
6 telecommunications “utility” found in KRS 278.010(3)(e), which provides in pertinent  
7 part that the term “utility” includes “any person . . . who owns, controls, operates, or  
8 manages any facility used or to be used for or in connection with: The transmission or  
9 conveyance over wire, in air, or otherwise, or any message by telephone or telegraph *to*  
10 *or for the public*, for compensation.” (Emphasis supplied).

11 **Q. WILL CSL BE ENGAGED IN THE PROVISION OF UTILITY SERVICES TO**  
12 **OR FOR THE PUBLIC?**

13 A. No. CSL will not be engaged in the “transmission or conveyance over wire, in air, or  
14 otherwise, of any message by telephone or telegraph to or for the public.” CSL instead  
15 will possess an ownership interest in certain communications infrastructure that it will  
16 lease pursuant to an exclusive long-term agreement to a single customer – Holdings.  
17 The Operating Companies, and not CSL, will continue to operate and maintain the  
18 subject assets for the purpose of providing telecommunications service using the assets  
19 to be owned by CSL. In addition, because the switches and other electronics required to  
20 provide telecommunications service will not be transferred to CSL, the entirety of the  
21 assets to be owned by CSL cannot, without the switches and other electronics that are not  
22 being transferred, transmit or convey over wire, in the air, or otherwise, any message.

1 **Q. WILL CSL HOLD ITSELF OUT AS PROVIDING UTILITY SERVICES**  
2 **TO THE PUBLIC?**

3 A. No. CSL will not hold itself out as willing to provide service to all who apply. To the  
4 contrary, it will not have any retail or wholesale customers and will not receive any  
5 compensation from the public as a result of its ownership of the Subject Assets.  
6 Moreover, the exclusive nature of the lease effectively prevents CSL from providing  
7 telecommunications service to the public. The Subject Assets will be exclusively leased  
8 to Holdings on a long term basis and thus unavailable to be used by CSL to provide  
9 telecommunications services to the public Finally, CSL intends to operate as an REIT  
10 but will be unable to maintain its status as such under the Internal Revenue Code if it  
11 were to provide telecommunications services to the public. Under the Internal Revenue  
12 Code, a REIT must receive at least 95 percent of its revenue from dividends and rents;  
13 the revenues generated by the provision of telecommunications service to the public  
14 would not qualify as such. Accordingly, with limited exceptions, a REIT can only own  
15 real estate and receive income in the form of rent, and cannot engage in any other  
16 activities. To summarize on this point, because CSL will not be providing be providing  
17 utility services as defined at KRS 278.010(3)(e), and because CSL will not be providing  
18 any services to the public, KRS 278.020(1) is inapplicable.

19 **IV. RETAINED TITLE TO EASEMENTS AND RIGHTS OF WAY**

20 **Q. PLEASE EXPLAIN THE IMPACT THE TRANSACTION WILL HAVE UPON**  
21 **EASEMENTS AND RIGHTS OF WAY CURRENTLY HELD BY THE**  
22 **OPERATING COMPANIES.**

1 A. Windstream will retain legal title to all easements and rights of way that they currently  
2 hold. No assignments of easements will be recorded in any real property records, and no  
3 agreements will be amended or assigned to reflect CSL as a party. Other parties to the  
4 easements and rights of way will not be given notice of the transfer to CSL, and they will  
5 continue to bill Windstream, receive payment from Windstream, and interact with  
6 Windstream with respect to all matters associated with the easements and rights of way.  
7 Through the Transaction, the beneficial ownership rights and interests in the easements  
8 and rights of way will be transferred to CSL. In this context, beneficial ownership means  
9 that CSL will own the right to all future income, gains or benefits from the easements and  
10 rights of way, as well as exposure to all risk of loss associated with those assets.

11 **Q. WILL THIS TRANSFER OF BENEFICIAL OWNERSHIP RIGHTS AND**  
12 **INTERESTS HAVE ANY OPERATIONAL IMPACTS FOR THE OPERATING**  
13 **COMPANIES?**

14 A. No. At the time of the transfer of the beneficial ownership rights and interests, CSL will  
15 immediately and contemporaneously lease its interests back to Windstream for its long-  
16 term exclusive use under the Master Lease. At the conclusion of these transactions,  
17 Windstream will continue utilizing the easements and rights of way in the same manner it  
18 does now. There will be no operational impact.

19 **Q. WILL EMPLOYEES OF THE OPERATING COMPANIES CONTINUE TO**  
20 **HAVE SAFE AND LEGAL ACCESS TO FACILITIES LOCATED WITHIN**  
21 **EASEMENTS AND RIGHTS OF WAY FOLLOWING THE TRANSACTION?**

22 A. Yes. Under the terms of the Master Lease, the Operating Companies will continue to  
23 have the exclusive legal right to access and utilize facilities located in easements and

1 rights of way following the transaction. Moreover, the Transaction will have no impact  
2 on the safety of any facilities utilized by the Operating Companies. The Operating  
3 Companies will continue operating and maintaining all facilities as they have before the  
4 Transaction.

5 **V. CONCLUSION**

6  
7 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

8 A. The Commission should enter a Declaratory Order that approval for the Transaction is  
9 not required under KRS 278.020(5) and (6) because the Transaction is a naked transfer of  
10 assets that does not constitute a change of ownership or control, or the right to control, of  
11 any utility in the Commonwealth. Approval should not be required under KRS  
12 278.020(5) because CSL will not own any interest in the Operating Companies, will have  
13 no control over the Subject Assets, and will not be using the Subject Assets to provide  
14 any telecommunications services. Approval should not be required under KRS  
15 278.020(6) because the Transaction will not provide CSL, either directly or indirectly,  
16 with the right, power, ability, or authority to “direct, or cause the direction of  
17 management and policies” of Holdings, Windstream Corporation or the Operating  
18 Companies. Finally, approval should not be required under KRS 278.020(1) because  
19 CSL will not be providing any telecommunications services to or for the public.  
20 Additionally, the transfer of the beneficial ownership interest in easements and rights of  
21 way does not require Commission approval because title will be retained by Windstream  
22 and the Operating Companies will continue to have the exclusive right to use the facilities  
23 located in the easements and rights of way.

24 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

1 A. Yes it does.

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 (1) 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**

**DIRECT TESTIMONY OF**

**ROBERT E. GUNDERMAN**


**ON BEHALF OF WINDSTREAM KENTUCKY EAST, LLC**

**AND WINDSTREAM KENTUCKY WEST, LLC**



**VERIFICATION**

I, Robert E. Gunderman, Interim Chief Financial Officer and Treasurer of Windstream Holdings, Inc., after being duly sworn, state that I have personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Robert E. Gunderman

STATE OF ARKANSAS            )  
  )  
COUNTY OF PULASKI        )

Subscribed and sworn before me on this the 6 day of November, 2014.

  
\_\_\_\_\_  
Notary Public State at Large

My Commission Expires:



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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Robert E. Gunderman and my business address is 4001 Rodney Parham  
4 Road, Little Rock, Arkansas 72212.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6 A. I am employed by Windstream Holdings, Inc. (“Holdings”) and my position is Interim  
7 Chief Financial Officer and Treasurer. The Applicants in this proceeding, Windstream  
8 Kentucky East, LLC and Windstream Kentucky West, LLC (collectively, “Applicants” or  
9 “Operating Companies”), are indirect subsidiaries of Holdings.

10 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL  
11 BACKGROUND.**

12 A. I earned a degree in accounting from the University of Arkansas and I am a certified  
13 public accountant. Prior to accepting my current position, I was a senior vice president of  
14 financial planning. In that position I was responsible for all forecasting, treasury and  
15 capital market functions, debt management, investor relations and risk management. I  
16 also served as vice president of internal audit for Alltel prior to joining Holdings in 2008.  
17 I was a senior accountant with Deloitte and Touche LLP before entering the  
18 communications industry in 1996.

19 **Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES.**

20 A. I am responsible for overseeing Holdings’ accounting, finance, capital planning, tax,  
21 procurement, and audit teams. In addition, I oversee the carrier solutions and the telecom  
22 procurement organizations.

1 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE**  
2 **KENTUCKY PUBLIC SERVICE COMMISSION?**

3 A. No.

4 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY**  
5 **PROCEEDINGS?**

6 A. No.

## 7 **II. PURPOSE OF TESTIMONY**

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of my testimony is to provide an overview of the transaction at issue in this  
10 proceeding. My testimony will establish that the transaction is beneficial for the  
11 Operating Companies and their customers because it will result in reduced long term  
12 debt, increased free cash flow and increased capital expenditures to provide enhanced  
13 telecommunications services. My testimony confirms that the Transaction will not have  
14 an adverse impact on rates or services provided by the Operating Companies and will  
15 result in no operational changes for the Operating Companies.

16 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

17 A. Not at this time.

## 18 **III. OVERVIEW OF THE TRANSACTION**

19 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE CHANGES IN THE**  
20 **TELECOMMUNICATIONS INDUSTRY THAT ULTIMATELY NECESSITATE**  
21 **THE TRANSACTION AT ISSUE IN THIS PROCEEDING.**

22 A. The telecommunications industry continues to change dramatically due to rapidly  
23 increasing customer and business data needs, the entry of competition, and technological

1           advancements. The Operating Companies operate in a highly competitive environment in  
2           which wireless, cable and over-the-top VoIP providers continue to expand their  
3           telecommunications offerings. To address these changes, Holdings and its operating  
4           companies have transformed over time from primarily rural voice providers to advanced  
5           communications and technology services companies and continue to make strategic  
6           investments to provide enhanced services to their residential and business customers.

7   **Q.   PLEASE PROVIDE A BRIEF OVERVIEW OF THE TRANSACTION.**

8   A.   To accelerate this ongoing transformation, to improve further Windstream's competitive  
9           position, and anticipate customer needs, the Applicants seek to effect a transaction in  
10          which they would transfer ownership of certain fixed assets of the Operating Companies,  
11          including copper, fiber, real estate, and other network assets, as more fully described later  
12          in my testimony (the "Subject Assets"), to Communications Sales and Leasing, Inc.  
13          ("CSL"), or one of CSL's wholly owned direct or indirect subsidiaries. CSL will lease  
14          back the Subject Assets on an exclusive, long-term basis to Holdings, the indirect  
15          corporate parent of the Applicants, for the exclusive use and benefit of the Applicants  
16          (the "Transaction").

17   **Q.   HOW WILL THIS TRANSACTION IMPACT THE OPERATING COMPANIES**  
18          **AND THEIR CUSTOMERS?**

19   A.   The Transaction will enable the Operating Companies to improve their financial  
20          condition and invest incremental capital to enhance broadband capabilities, accelerate  
21          their transition to an IP network, and pursue additional opportunities to strengthen their  
22          infrastructure and provide enhanced services to customers. These changes will transform  
23          the Operating Companies into a more nimble competitor without any reduction in

1 competition and without removing any customer choices from the marketplace. The  
2 Operating Companies remain committed to providing high quality services to their  
3 customers and the Transaction will be seamless for customers, who will experience no  
4 change in their rates, scope or terms of service as a result of the Transaction. By virtue of  
5 increased capital expenditures made possible by this Transaction, services will improve  
6 over time as the Operating Companies make incremental strategic investments to  
7 strengthen the infrastructure and accelerate their goal of expanding and enhancing  
8 broadband services. In addition, the new structure will allow Holdings to reduce  
9 approximately \$3.2 billion in long term debt resulting in increased free cash flow for  
10 additional investment and to deleverage further over time.

11 **Q. WILL THIS TRANSACTION RESULT IN A TRASFER OF OWNERSHIP OF**  
12 **THE OPERATING COMPANIES OR HOLDINGS?**

13 A. No. The Operating Companies will remain indirect, wholly-owned subsidiaries of  
14 Holdings following the Transaction. The Transaction will not result, either directly or  
15 indirectly, in the transfer or the acquisition of ownership, control, or the right to control  
16 Holdings or its subsidiaries, including the Operating Companies.

17 **Q. WILL THE TRANSACTION RESULT IN ANY CHANGES FOR CURRENT**  
18 **WINDSTREAM CUSTOMERS?**

19 A. No. The Operating Companies will continue to have sole responsibility for meeting all  
20 regulatory obligations regarding their provision of telecommunications services in the  
21 Commonwealth. The Operating Companies remain committed to providing high quality  
22 service. The Transaction will be seamless for customers, who will experience no change  
23 in their rates, scope, or terms of service as a result of the Transaction; likewise the

1 Transaction will be invisible to the Operating Companies' customers. The Transaction is  
2 designed to protect the public interest by ensuring the Applicants continue to have  
3 exclusive access to and exclusive control over the facilities used to provide regulated services.

4 **Q. WILL THE TRANSACTION RESULT IN CSL, THE REIT, PROVIDING**  
5 **COMMUNICATIONS SERVICES IN THE COMMONWEALTH?**

6 A. No. CSL, which will own and lease the Subject Assets back to Holdings for the  
7 exclusive use of the Operating Companies (as well as other indirect, wholly-owned  
8 subsidiaries of Holdings providing telecommunications service in other jurisdictions) will  
9 not provide telecommunications services in the Commonwealth or any other state. As  
10 part of the Transaction the shares of CSL will be distributed to Holdings' Shareholders  
11 and CSL will elect to operate as a Real Estate Investment Trust under the Internal  
12 Revenue Code. Following the Transaction, CSL will operate as an independent company  
13 separate from Holdings and its subsidiaries.

14 **IV. THE TRANSACTION**

15 **Q. PLEASE DESCRIBE THE ASSET TRANSFER THAT WILL OCCUR IN THE**  
16 **TRANSACTION.**

17 A. The Subject Assets will be transferred to CSL, which in turn will lease the use of the  
18 Subject Assets to Holdings for the benefit of the Operating Companies on an exclusive,  
19 long-term basis. The Subject Assets include all of the Operating Companies'  
20 distribution systems consisting of fiber optic cable, copper cable, conduits and conduit  
21 systems, poles, attachment hardware (bolts, lashing, etc.), guy wires, pedestals, concrete  
22 pads, central office land and buildings, signal repeaters, and amplifiers, together with all  
23 replacements, modifications, alterations, and additions, located in Kentucky. The

1 Operating Companies will not transfer other tangible assets, including central office  
2 switches, electronics, equipment used for maintenance and repair, and backend systems,  
3 such as routing, provisioning and billing systems. The Operating Companies will not  
4 transfer any customer accounts or regulatory authorizations to CSL. Finally, distribution  
5 facilities financed in partnership with the federal government through the American  
6 Recovery and Reinvestment Act will not be transferred because the federal government  
7 has a retained interest in those assets.

8 **Q. PLEASE DESCRIBE THE LONG-TERM LEASE THAT CSL AND HOLDINGS**  
9 **WILL ENTER FOR THE BENEFIT OF THE OPERATING COMPANIES.**

10 A. The lease of the Subject Assets for the benefit of the Operating Companies will be an  
11 exclusive, long-term master lease that will be in effect for up to 35 years (the "Lease").  
12 The Lease will provide the Operating Companies with exclusive rights to use the  
13 distribution systems and to access and affix communications electronics, switching, or  
14 other equipment to the distribution systems for the provision, routing and delivery of  
15 voice, data and other communications services. The Operating Companies' exclusive  
16 usage rights will include the right to provide communications services or sublease access  
17 to the system. The Operating Companies' right to install or affix or place on the system  
18 any electronics, switching and other equipment will not be subject to the approval of CSL  
19 and can be exercised in any manner that in the Operating Companies' sole judgment is  
20 necessary to operate their communications business subject to relevant industry standards  
21 and law.

22 **Q. IS IT AN UNUSUAL PRACTICE FOR TELECOMMUNICATIONS PROVIDERS**  
23 **TO LEASE FACILITIES NECESSARY TO PROVIDE SERVICES TO THEIR**  
24 **CUSTOMERS?**



1 A. No. Leasing rather than owning assets is not a new practice, and most service providers,  
2 including the Operating Companies, lease rather than own some assets that are used to  
3 provide services. Currently, real estate assets, poles, conduits and other tangible assets  
4 used to provide service are leased rather than owned by the Operating Companies. The  
5 terms of the Lease are summarized more fully in **EXHIBIT 4** attached to the Application  
6 filed in this proceeding.

7 **Q. PLEASE DESCRIBE THE OWNERSHIP AND OPERATION OF CSL**  
8 **FOLLOWING THE TRANSACTION.**

9 A. The initial shareholders of CSL will be the shareholders of Holdings, who will receive  
10 shares of CSL in proportion to their ownership of Holdings. CSL and Holdings will be  
11 independent, publicly-traded companies. At the conclusion of the Transaction, CSL will  
12 not own, control, or possess the right to control Holdings or any of its subsidiaries,  
13 including the Operating Companies. **EXHIBIT 5** to the Application filed in this  
14 proceeding illustrates the current and proposed post-Transaction corporate structure of  
15 Holdings and its subsidiaries, as well as the proposed post-Transaction corporate  
16 structure of CSL and its subsidiaries.

17 **Q. WILL CSL PROVIDE ANY UTILITY SERVICES?**

18 A. No. CSL will not provide public utility services to any customer in the Commonwealth  
19 or otherwise, nor will CSL operate any of the Subject Assets, or any transmission or  
20 switching facilities. Rather, CSL will simply own the Subject Assets and lease them  
21 exclusively to Holdings for the benefit of the Operating Companies.

22 **Q. PLEASE DESCRIBE THE OWNERSHIP AND OPERATION OF THE**  
23 **OPERATING COMPANIES FOLLOWING THE TRANSACTION.**

1 A. Following the Transaction, the Operating Companies will remain indirect, wholly-owned  
2 subsidiaries of Holdings. There will be no change in the ownership, control or corporate  
3 structure of Holdings, Windstream Corporation, or the Operating Companies as a result  
4 of the Transaction. The Operating Companies will be responsible for all capital  
5 improvements as well as maintaining the systems consistent with industry standards,  
6 sufficient to meet federal and state service delivery requirements. The Operating  
7 Companies will continue to be responsible for compliance with all federal, state and local  
8 legal and regulatory requirements. The Operating Companies will continue to serve as  
9 the carriers of last resort in their service areas and also continue to provision and charge  
10 appropriate contract and or tariff rates to other carriers as necessary to fulfill their co-  
11 location and other applicable regulatory obligations to provide access to network  
12 elements. The Operating Companies will continue to be responsible for the operation and  
13 maintenance of the Subject Assets in addition to the assets that they retain. The  
14 Operating Companies will continue to be responsible for meeting all quality-of-service  
15 standards and regulatory requirements associated with their businesses. The principal  
16 operational change resulting from the Transaction will simply be that the Subject Assets  
17 will be leased for the exclusive benefit of the Operating Companies rather than owned by  
18 the Operating Companies. The Operating Companies' operations and provision of  
19 service will not change as a result of the Transaction. Immediately upon the transfer and  
20 lease back of the Subject Assets, the Operating Companies will continue to provide the  
21 same services, at the same rates and pursuant to the same tariffs, under the same name.  
22 The Operating Companies will continue as the same legal entities operating and  
23 providing local exchange service in Kentucky. In addition, the Operating Companies will

1 continue providing all the other services they do today, including, local, long distance,  
2 Internet access, broadband, directory publishing, and other telecommunications products.  
3 The Operating Companies will maintain the same technical, financial and managerial  
4 ability to provide reliable service subsequent to the Transaction as they do today.

5 **Q. WILL ANY CUSTOMERS OF THE OPERATING COMPANIES BE**  
6 **TRANSFERRED TO TAS AS A RESULT OF THE TRANSACTION?**

7 A. No. The Operating Companies will continue to provide service to all their existing  
8 customers.

9 **V. THE OPERATING COMPANIES WILL CONTINUE TO POSSESS THE**  
10 **TECHNICAL, MANAGERIAL, AND FINANCIAL ABILITY TO PROVIDE**  
11 **REASONABLE SERVICE FOLLOWING THE TRANSACTION.**

12  
13 **Q. WILL THE TRANSACTION HAVE ANY IMPACT ON THE ABILITY OF THE**  
14 **OPERATING COMPANIES TO PROVIDE REASONABLE SERVICE TO THEIR**  
15 **CUSTOMERS?**

16 A. No. Following the Transaction, the Operating Companies will continue to be managed  
17 and operated by the same capable, experienced executives and employees. The Operating  
18 Companies will therefore maintain the same technical and managerial ability to provide  
19 reliable, high-quality services as they do today. The Operating Companies currently  
20 possess the financial ability to provide the certificated services to the public, and such  
21 ability will be enhanced by the Transaction. All of these factors, along with the  
22 additional details below, demonstrate that the Operating Companies will continue to  
23 possess the technical, managerial, and financial ability necessary to provide reasonable  
24 and high quality service.

25 **Q. WHAT IS THE BASIS FOR THE APPLICANTS' CLAIM THAT THE**

1           **OPERATING COMPANIES WILL CONTINUE TO POSSESS THE REQUIRED**  
2           **TECHNICAL CAPABILITIES TO PROVIDE REASONABLE SERVICE**  
3           **FOLLOWING THE TRANSACTION?**

4    A.    The Operating Companies will continue to possess the same technical capabilities after  
5           the transfer as they possess today. The Subject Assets will be leased back to Holdings for  
6           the long term exclusive benefit of the Operating Companies, whose personnel will  
7           continue to operate the Subject Assets.

8    **Q.    DO YOU EXPECT THAT THE OPERATING COMPANIES' TECHNICAL**  
9           **CAPABILITIES WILL BE ENHANCED BY THE TRANSACTION?**

10   A.    Yes. The financial benefits accruing to Holdings as a result of the Transaction, including  
11           the immediate reduction of approximately \$3.2 billion in long-term debt of Holdings,  
12           will facilitate reinvestment into the Operating Companies. The resulting increased free  
13           cash flow is expected to permit Windstream to increase its target capital expenditures  
14           from 11-13% to 13-15% of total revenue, which in turn will enable the Operating  
15           Companies to expand their broadband network and deliver enhanced services. As a result,  
16           the Operating Companies will continue to have the technical ability to provide reasonable  
17           service in the Commonwealth.

18   **Q.    WHAT IS THE BASIS FOR THE APPLICANTS' CLAIM THAT THE**  
19           **OPERATING COMPANIES WILL CONTINUE TO POSSESS THE REQUIRED**  
20           **MANAGERIAL CAPABILITIES TO PROVIDE REASONABLE SERVICE**  
21           **FOLLOWING THE TRANSACTION?**

22   A.    The Operating Companies will continue to employ personnel experienced and dedicated  
23           to the provision of high-quality communications service. The customer service, network

1 and operations functions critical to the success of the Applicants today will continue, and  
2 the business will be staffed to ensure that continuity. For example, the local operations  
3 will continue to be staffed and managed by employees who have established ties to the  
4 community and extensive knowledge of the local telephone business.

5 **Q. WILL THE TRANSACTION HAVE ANY IMPACT ON THE MANAGEMENT**  
6 **SERVICES PRESENTLY RECEIVED BY THE OPERATING COMPANIES?**

7 A. No. The Operating Companies will continue to receive the same centralized management  
8 services. They will be staffed by experienced and knowledgeable persons currently  
9 providing these services. Presently, centralized functions include human resources,  
10 finance, tax, media, legal, planning, general support, and information services, thereby  
11 allowing the individual Operating Companies to benefit from the efficiencies enjoyed  
12 with centralized support services. After the Transaction, the Operating Companies will  
13 continue to receive similar centralized management services, and thus will continue to  
14 enjoy the attendant efficiencies and the benefits of an experienced staff. As a result, the  
15 Operating Companies will continue to have the managerial ability to provide reasonable  
16 service in the Commonwealth.

17 **Q. WHAT IS THE BASIS FOR THE APPLICANTS' CLAIM THAT THE**  
18 **OPERATING COMPANIES WILL CONTINUE TO POSSESS THE REQUIRED**  
19 **FINANCIAL CAPABILITIES TO PROVIDE REASONABLE SERVICE**  
20 **FOLLOWING THE TRANSACTION?**

21 A. The Transaction is expected to improve the already stable financial condition of Holdings  
22 and the Operating Companies as a result of significant financial benefits that Holdings  
23 expects to receive from the Transaction. The overall net effect of the Transaction will be

1 to reduce long term debt by approximately \$3.2 billion resulting in increased free cash  
2 flow, thereby providing the Operating Companies more financial flexibility in  
3 upgrading and expanding their communications and broadband networks, making a faster  
4 transition to an IP network and pursuing additional opportunities that will strengthen their  
5 infrastructure and provide enhanced services to their customers.

6 **Q. HAVE THE APPLICANTS PROVIDED ANY SPECIFIC INFORMATION TO**  
7 **THE COMMISSION TO ESTABLISH THEIR CONTINUED FINANCIAL**  
8 **CAPABILITY?**

9 A. Yes. **EXHIBIT 7** to the Application offers a comparison of key financial metrics for  
10 Holdings pre and post Transaction. Holdings' revenues are expected to be approximately  
11 \$5.9 billion per year and are expected to generate approximately \$2.3 billion of annual  
12 operating income. Holdings will continue to possess the financial ability to succeed in  
13 the ever-increasing competitive telecommunications marketplace.

14 **Q. WILL THE TRANSACTION IMPACT THE NUMBER OF CUSTOMERS**  
15 **SERVED BY THE OPERATING COMPANIES IN THE COMMONWEALTH?**

16 A. No. The Operating Companies currently serve approximately 353,000 access lines in  
17 Kentucky. The number of the Operating Companies access lines will not change as a  
18 result of the Transaction.

19 **Q. HOW WILL THE TRANSACTION IMPACT HOLDINGS' ABILITY TO RAISE**  
20 **CAPITAL FOR THE OPERATING COMPANIES?**

21 A. Holdings, which among other functions raises capital for the Operating Companies, will  
22 continue to possess the financial capability, enhanced by the Transaction, to enable the  
23 Operating Companies to continue to provide high-quality telecommunications services to

1 customers. Moreover, Holdings, through its subsidiaries, will continue to be one of the  
2 largest independent local exchange carriers in the nation. Because of its lower amount of  
3 debt, improved leverage ratio and greater free cash flow, Holdings' ability to raise capital  
4 in order to invest in network, employees and information systems to continue providing  
5 high quality service will be enhanced by the Transaction. As a result, the Operating  
6 Companies will continue to have the financial ability to provide reasonable service in the  
7 Commonwealth.

8 **Q. DOES THE TRANSACTION PROMOTE THE PUBLIC INTEREST?**

9 A. Yes. The Operating Companies operate in an industry that has been and continues to be  
10 subject to rapid technological advances, evolving consumer preferences, and dynamic  
11 change. The public interest requires that the Applicants increase their financial flexibility  
12 by means of efforts like the Transaction to facilitate further investments in network  
13 improvements and upgrades that will enable them to continue to provide and enhance the  
14 full range of high-quality services they provide to residential and business customers in  
15 the Commonwealth. The Transaction will enable the Operating Companies to become a  
16 more nimble competitor by increasing their financial flexibility in the highly competitive  
17 telecommunications service market that is characterized by stagnant or falling demand  
18 and largely fixed costs, without any reduction in competition and without removing any  
19 customer choices from the marketplace. If the Applicants do nothing, the Operating  
20 Companies will be under growing pressure to increase revenues per line, as line counts  
21 are generally declining but many fixed costs remain stable or are growing. The financial  
22 efficiencies that will produce lower long term debt and increased free cash flow from the  
23 Transaction are expected to help relieve that pressure, and strengthen the ability of the

1 Operating Companies to continue offering basic services at affordable prices and provide  
2 the Operating Companies with greater resources to invest in new services and new uses  
3 for the wireline network that should further strengthen the Operating Companies'  
4 financial position. Additionally, the Transaction is required by the public interest in  
5 order for the Operating Companies to effectively compete and offer the latest technology  
6 at levels that meet or exceed that of their competitors and meet and exceed the data and  
7 content needs of consumers and businesses, which are increasing and changing in scope  
8 rapidly and significantly. Intermodal competition, between wireline and wireless  
9 telecommunications services, is widespread in the territories served by the Operating  
10 Companies.

11 **Q. ARE COMPETITORS OF THE OPERATING COMPANIES TAKING**  
12 **ADVANTAGE OF STRATEGIES SIMILAR TO THE ONE AT ISSUE IN THIS**  
13 **TRANSACTION?**

14 A. Yes. Many of the Operating Companies' wireless competitors have already  
15 accomplished restructurings similar to that proposed in this Application. Specifically,  
16 many wireless companies transferred certain telecommunications assets (e.g. towers) to  
17 REITs and are leasing the towers back from the REIT. In addition, wireless companies  
18 generally lease rather than own the fiber optic cable used by them to connect towers to  
19 their switches or to connect to other carriers' networks. The Transaction will permit the  
20 Operating Companies to restructure in a fashion similar to the competitors, and is  
21 necessary to level further the playing field among these competitors and to enhance  
22 competition.



1 **Q. WHAT IMPACTS, IF ANY, WILL THE OPERATING COMPANIES'**  
2 **CUSTOMERS EXPERIENCE AS A RESULT OF THE TRANSACTION?**

3 A. The Operating Companies' customers will experience no change, other than the expected  
4 improvements in service as the financial benefits of the Transaction are translated into  
5 further network investment.

6 **Q. IS IT CORRECT THAT THE TRANSACTION WILL HAVE NO IMPACT ON**  
7 **RATES OR SERVICES FOR THE OPERATING COMPANIES' EXISTING**  
8 **CUSTOMERS?**

9 A. That is correct. Customers will receive at least the same high-quality local exchange and  
10 long distance service as they do today, subject to the same rules, regulations, and  
11 applicable tariffs. The Transaction will not affect existing price regulation plans, service  
12 quality obligations, or tariffs. Further, any subsequent end user rate changes will  
13 continue to be governed by the same rules and procedures. Similarly, the terms and  
14 prices for existing wholesale services under applicable access tariffs or agreements will  
15 remain unchanged as a result of this Transaction.

16 **Q. WILL THE TRANSACTION IMPACT INTERCONNECTION AGREEMENTS,**  
17 **POLE ATTACHMENT AGREEMENTS, OR ANY OTHER OBLIGATIONS THE**  
18 **OPERATING COMPANIES MIGHT HAVE WITH THIRD PARTIES THAT USE**  
19 **THE OPERATING COMPANIES' FACILITIES?**

20 A. No. the Transaction will not impact the terms of any existing interconnection  
21 agreements, pole attachment agreements, or other obligations under state and federal laws  
22 regarding interconnection.

1 **Q. IS THE TRANSACTION BEING UNDERTAKEN IN ACCORDANCE WITH**  
2 **THE LAW?**

3 A. Yes. The Transaction is in accordance with the law. The Applicants are seeking  
4 approval, to the extent the Commission determines it is necessary, pursuant to KRS  
5 278.020(5) and KRS 278.020(6). In addition, all filings required by the Commission's  
6 Orders in Administrative Case No. 359 and Administrative Case No. 370 will made.

7 **Q. IS THE TRANSACTION BEING UNDERTAKEN FOR A PROPER PURPOSE?**

8 A. Yes. The Transaction is for a proper purpose and is consistent with the public interest.  
9 The Transaction is being proposed to continue the transformation of Holdings and the  
10 Operating Companies to advanced communications and technology services companies,  
11 to permit the Operating Companies to continue to make strategic investments to provide  
12 enhanced services to their residential and business customers, to improve their financial  
13 flexibility and to reduce their debt, to expand their broadband network and to deliver  
14 enhanced services, and to adapt to the new ways residential and business customers use  
15 content with a faster transition to an IP network.

16 **VI. CONCLUSION**

17 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

18 A. The Transaction involves the transfer of certain real estate assets held by the Operating  
19 Companies to CSL, which will be simultaneously leased for the Operating Companies'  
20 long-term and exclusive use. The Transaction will allow for increased capital  
21 expenditures that will better enable the Operating Companies to provide the enhanced  
22 services demanded by customers in the modern telecommunications marketplace. The  
23 Transaction will result in no operational changes for the Operating Companies and no

1 adverse impacts for customers or other telecommunications providers that have entered  
2 into Interconnection or Pole Attachment Agreements with the Operating Companies. The  
3 Operating Companies will continue to possess long term exclusive control to use the  
4 facilities at issue to provide telecommunications service to their customers. Following  
5 the Transaction, the Operating Companies will continue to possess the technical,  
6 managerial, and financial capabilities to provide reasonable services to their customers.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes it does.