

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter Of:

The Application Of Windstream Kentucky East, LLC And Windstream Kentucky West, LLC For A Declaratory Ruling That Approval Is Not Required For The Transfer Of A Portion Of Their Assets; (2) Alternatively For Approval Of The Transfer Of Assets; (3) For A Declaratory Ruling That Communications Sales and Leasing, Inc. Is Not Subject To KRS 278.020(1); and (4) For All Other Required Approvals And Relief

AUG 07 2014

PUBLIC SERVICE
COMMISSION

CASE NO. 2014-00 283

APPLICATION

Windstream Kentucky East, LLC (“WKE”) and Windstream Kentucky West, LLC (“WKW”) (collectively, “Applicants” or “Operating Companies”), pursuant to 807 KAR 5:001, Section 19, respectfully request a Declaratory Order from the Kentucky Public Service Commission (“Commission”) that approval of the transfer of the assets described in this Application is not required under Kentucky law. Alternatively, the Applicants seek approval of the transfer pursuant to KRS 278.020(5) and (6) and all other applicable provisions of Chapter 278. The Applicants further seek a Declaratory Order that Communications Sales and Leasing, Inc. (“CSL”) is not required by KRS 278.020(1) to obtain a certificate of public convenience and necessity in connection with its ownership of the Subject Assets and its exclusive lease of the Subject Assets to Holdings for the benefit of WKE and WKW.

I. INTRODUCTION

1. The telecommunications industry continues to change dramatically due to rapidly increasing customer and business data needs, the entry of competition, and technological advancements. The Operating Companies exist in a highly competitive environment in which wireless, cable and over-the-top VoIP providers continue to expand their telecommunications

offerings. To address these changes, Windstream Holdings, Inc. (“Holdings”) and its operating companies have transformed over time from primarily rural voice providers to advanced communications and technology services companies and continue to make strategic investments to provide enhanced services to their residential and business customers.

2. To accelerate this ongoing transformation, to improve further Windstream’s competitive position, and to provide for customer needs, the Applicants propose to restructure by transferring ownership of certain fixed assets of the Operating Companies, including copper, fiber, real estate, and other network assets, as more fully described in this Application (the “Subject Assets”), to Communications Sales and Leasing, Inc. (“CSL”), or one of CSL’s wholly owned direct or indirect subsidiaries. CSL will lease back the Subject Assets on an exclusive, long-term basis to Windstream Holdings, Inc., the indirect corporate parent of the Applicants, for the use and benefit of the Applicants (the “Transaction”).

3. The Transaction will enable the Operating Companies to improve their financial condition and invest incremental capital to enhance broadband capabilities, accelerate their transition to an IP network, and pursue additional opportunities to strengthen their infrastructure and provide enhanced services to customers. These changes will transform the Operating Companies into a more nimble competitor without any reduction in competition and without removing any customer choices from the marketplace. The Operating Companies remain committed to providing high quality services to their customers and the Transaction will be seamless for customers, who will experience no change in their rates, scope or terms of service as a result of the Transaction. By virtue of increased capital expenditures made possible by this Transaction, services will improve over time as the Operating Companies make incremental strategic investments to strengthen the infrastructure and accelerate their goal of expanding and

enhancing broadband services. In addition, the new structure will allow Holdings to reduce approximately \$3.2 billion in debt yielding increased free cash flow for additional investment and to deleverage further over time.

4. The Applicants will remain indirect, wholly-owned subsidiaries of Holdings following the Transaction. There will be no change or transfer of ownership or control of Holdings as a result of the Transaction.

5. The Operating Companies will continue to have sole responsibility for meeting all regulatory obligations regarding their provision of telecommunications services in the Commonwealth. The Operating Companies remain committed to providing high quality service. The Transaction will be seamless for customers, who will experience no change in their rates, scope, or terms of service; likewise the Transaction will be invisible to the Operating Companies' customers. The Transaction is designed to protect the public interest by ensuring the Applicants continue to have access to and control over the facilities used to provide regulated services.

6. CSL, which will own and lease the Subject Assets back to Holdings for the exclusive use of the Operating Companies (as well as other indirect, wholly-owned subsidiaries of Holdings providing telecommunications service in other jurisdictions) will not provide telecommunications services in the Commonwealth. As part of the Transaction the shares of CSL will be distributed to Holdings' Shareholders and CSL will operate as a Real Estate Investment Trust under the Internal Revenue Code. Following the Transaction, CSL will operate as an independent company separate from Holdings and its subsidiaries.

7. The Transaction is pro forma and the Federal Communication Commission under the Federal Communication Commission's rules and accordingly does not require prior approval by the FCC.

8. The Transaction will not result, either directly or indirectly, in the transfer or the acquisition of ownership, control, or the right to control Holdings or its subsidiaries, including the Operating Companies.

II. PARTIES TO THE RESTRUCTURING

A. The Windstream Entities.

9. Holdings, a Delaware Corporation with a mailing address of 4001 Rodney Parham Road, Little Rock, Arkansas 72212, is a publicly-traded Fortune 500 and S&P 500 diversified communications and entertainment company. Holdings' indirectly-owned subsidiaries provide local and long distance telephone services, data hosting services, broadband and high-speed data services and video services to customers throughout the United States. Together, Holdings' operations currently have approximately 3.4 million connections (*i.e.*, voice lines, high-speed Internet lines, digital television customers) and approximately \$6 billion in annual revenues. More information about Holdings and its operations can be found at www.windstream.com/about.

10. Holdings does not provide telecommunications services, is not a utility as that term is defined at KRS 278.010(3)(e), and is not subject to the jurisdiction of this Commission as a utility. Holdings indirectly owns and operates a number of licensed telecommunications providers in all states and the District of Columbia, except Alaska, many of which also hold

authority from the Federal Communications Commission (“FCC”) to provide domestic interstate and international telecommunications services.

11. Windstream Corporation is a Delaware corporation with a mailing address of 4001 Rodney Parham Road, Little Rock, Arkansas 72212. It is a wholly-owned subsidiary of Holdings and is the direct corporate parent of the Operating Companies and the competitive local exchange carrier and long-distance providers identified in paragraph 14 below. Windstream Corporation does not provide telecommunications services, is not a utility as that term is defined at KRS 278.010(3)(e), and is not subject to the jurisdiction of this Commission as a utility.

12. Windstream Kentucky East, LLC is a limited liability company organized under the laws of Delaware on October 22, 2001. Its mailing address is 4001 Rodney Parham Road, Little Rock, Arkansas 72212 and its electronic mail address is jeanne.shearer@windstream.com. As evidenced by EXHIBIT 1 to this application, WKE is in good standing in the State of Delaware. WKE is authorized to transact business in the Commonwealth of Kentucky. A copy of its certificate of authorization issued by the Secretary of State of the Commonwealth of Kentucky is attached as EXHIBIT 2. WKE is authorized to provide incumbent local exchange services in the Commonwealth (Utility ID 5022700).

13. Windstream Kentucky West, LLC is a limited liability company organized under the laws of the Commonwealth of Kentucky. Its mailing address is 4001 Rodney Parham Road, Little Rock, Arkansas 72212 and its electronic mail address is jeanne.shearer@windstream.com. As evidenced by EXHIBIT 3 to this application, WKW is in good standing in the Commonwealth. WKW is authorized to provide incumbent local exchange services in the Commonwealth (Utility ID 11000).

14. Holdings' other indirect subsidiaries in the Commonwealth hold the following authorizations:

- (a) Network Telephone Corp. is authorized to provide local exchange services (Utility ID 5007600) and interexchange services (Utility ID 22250076).
- (b) Paetec Communications, Inc. is authorized to provide local exchange services (Utility ID 22251445) and interexchange services (Utility ID 5144500).
- (c) Talk America, Inc. is authorized to provide local exchange services (Utility ID 5051890), interexchange services (Utility ID 5100700), and operator services (Utility ID 22251007).
- (d) The Other Phone Company is authorized to provide local exchange services (Utility ID 5010600) and interexchange services (Utility ID 22250106).
- (e) US LEC of Tennessee, LLC is authorized to provide local exchange services (Utility ID 5050370), interexchange services (Utility ID 22205037), and operator services (Utility ID 33305037).
- (f) Windstream Communications, Inc. is authorized to provide local exchange services (Utility ID 33351184), interexchange services (Utility ID 5118400), and operator services (Utility ID 22251184).
- (f) Windstream KDL, Inc. is authorized to provide local exchange services (Utility ID 22251009) and interexchange services (Utility ID 5100900).
- (g) Windstream Norlight, Inc. is authorized to provide local exchange services (Utility ID 22213700), interexchange services (Utility ID 13700), and operator services (Utility ID 33313700).
- (h) Windstream NTI, Inc. is authorized to provide local exchange services (Utility ID 5056180) and interexchange services (Utility ID 5177600).
- (i) Windstream NuVox, Inc. is authorized to provide local exchange services (Utility ID 5005500) and interexchange services (Utility ID 22250055).

15. Network Telephone Corp., Paetec Communications, Inc., Talk America, Inc., The Other Phone Company, US LEC of Tennessee, LLC, Windstream Communications, Inc., Windstream KDL, Inc., Windstream Norlight, Inc., Windstream NTI, Inc., and Windstream

NuVox, Inc. (collectively the “CLEC/LD Companies”) each only provide competitive local exchange, operator, and/or interexchange services. Following the restructuring, each of the CLEC/LD Companies will remain indirect, wholly-owned subsidiaries of Holdings.

B. The CSL Entities.

16. CSL is a newly formed Delaware corporation. Immediately upon the transfer of the Subject Assets to CSL, or to one of its wholly-owned direct or indirect subsidiaries, CSL (or the subsidiary) will become the owner of the Subject Assets and will lease the Subject Assets back to Holdings on a long-term, exclusive basis for the benefit of the Operating Companies so that the Operating Companies can continue to operate their telecommunications business as they do currently. CSL will own the Subject Assets but will not operate or manage them, or provide telecommunications service on a retail or wholesale basis.

17. CSL will elect to operate as a Real Estate Investment Trust (“REIT”) under the Internal Revenue Code, and after the Transaction both CSL and Holdings will be independent publicly traded companies. Because CSL will not provide telecommunications services, is not a utility as that term is defined at KRS 278.010(3)(e), and will not subject to the jurisdiction of this Commission as a utility, CSL is not seeking authority to become a regulated telecommunications carrier or public utility.

18. Talk America Services, LLC (“TAS”), is a Delaware Limited Liability Company and a wholly-owned subsidiary of CSL. TAS will operate as a competitive local exchange carrier and long distance carrier in those areas of the Commonwealth where Windstream CLEC/LD companies are currently authorized.¹ Following the Transaction and the filings

¹ TAI will seek authority to provide such services in the Commonwealth by separate notice filings in accordance

required under Administrative Case Numbers 359 and 370, approximately 200 of the residential local and long distance customers of the Holdings' CLEC/LD companies will be transferred to TAS. The only change these customers will see is the name of the carrier that provides them service.

III. PROPOSED TRANSACTION

A. The Asset Transfer.

19. The Subject Assets will be transferred to CSL, which in turn will lease the use of the Subject Assets to Holdings for the benefit of the Operating Companies on an exclusive, long-term basis described in paragraph 21 below. The Subject Assets include all of the Operating Companies' distribution systems consisting of fiber optic cable, copper cable, conduits and conduit systems, poles, attachment hardware (bolts, lashing, etc.), guy wires, pedestals, concrete pads, central office land and buildings, signal repeaters, and amplifiers, together with all replacements, modifications, alterations, and additions, located in Kentucky.²

20. The Operating Companies will not transfer other tangible assets, including central office switches, electronics, equipment used for maintenance and repair, and backend systems, such as routing, provisioning and billing systems. The Operating Companies also will not transfer any customer accounts or regulatory authorizations to CSL.

with the procedures established by the Commission by its Orders in Administrative Case No. 359 and Administrative Case 370.

² The distribution facilities financed in partnership with the federal government through the American Recovery and Reinvestment Act will not be transferred.

B. The Lease.

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

22. Leasing rather than owning assets is not a new practice, and most service providers, including the Operating Companies, lease rather than own some assets that are used to provide services. Currently, various fiber optic cables, real estate assets, poles, conduits and other tangible assets used to provide service are leased rather than owned by the Operating Companies. The terms of the Lease are summarized more fully in EXHIBIT 4 attached to this Application.

C. The Ownership And Operation Of CSL Following The Transaction.

23. The initial shareholders of CSL will be the shareholders of Holdings, who will receive shares of CSL in proportion to their ownership of Holdings. CSL and Holdings will be independent, publicly-traded companies. At the conclusion of the Transaction, CSL will not own, control, or possess the right to control Holdings or any of its subsidiaries, including the Operating Companies.

24. EXHIBIT 5 illustrates the current and proposed post-Transaction corporate structure of Holdings and its subsidiaries, as well as the proposed post-Transaction corporate structure of CSL and its subsidiaries.

25. CSL will not provide public utility services to any customer in the Commonwealth or otherwise, nor will CSL operate any of the Subject Assets, or any transmission or switching facilities. Rather, CSL will simply own the Subject Assets and lease them exclusively to Holdings for the benefit of the Operating Companies.

D. The Ownership And Operation Of The Operating Companies Following The Transaction.

26. Following the Transaction, the Operating Companies will remain indirect, wholly-owned subsidiaries of Holdings. There will be no change in the ownership, control or corporate structure of Holdings, Windstream Corporation, or the Operating Companies as a result of the Transaction.

27. The Operating Companies will be responsible for all capital improvements as well as maintaining the systems consistent with industry standards, sufficient to meet federal and state

service delivery requirements. The Operating Companies will continue to be responsible for compliance with all federal, state and local legal and regulatory requirements.

28. The Operating Companies will continue to serve as the carriers of last resort in their service areas and also continue to provision and charge appropriate contract and or tariff rates to other carriers as necessary to fulfill their co-location and other applicable regulatory obligations to provide access to network elements.

29. The Operating Companies will continue to be responsible for the operation and maintenance of the Subject Assets in addition to the assets that they retain. The Operating Companies will continue to be responsible for meeting all quality-of-service standards and regulatory requirements associated with their businesses. The principal operational change resulting from the Transaction will simply be that the Subject Assets will be leased for the exclusive benefit of the Operating Companies rather than owned by the Operating Companies.

30. The Operating Companies' operations and provision of service will not change as a result of the Transaction. Immediately upon the transfer and lease back of the Subject Assets, the Operating Companies will continue to provide the same services, at the same rates and pursuant to the same tariffs, under the same name. The Operating Companies will continue as the same legal entities operating and providing local exchange service in Kentucky. In addition, the Operating Companies will continue providing all the other services they do today, including, local, long distance, Internet access, broadband, directory publishing, and other telecommunications products. The Operating Companies will maintain the same technical, financial and managerial ability to provide reliable service subsequent to the Transaction as they do today.

E. CLEC/LD Companies' Residential Customers.

31. TAS will assume the CLEC/LD Companies' residential customer contracts and relationships. In so doing, TAS will become the new provider of record for the approximately 200 residential customers in the Commonwealth of the CLEC/LD Companies.

32. Aside from a change in the CLEC/LD residential customers' telecommunications provider, this transfer will have no impact on the transferred customers. The rates, terms and conditions of service provided to the transferred residential customers will not change as a result of the transfer to TAS. Where services are provided pursuant to filed tariff, TAS will adopt the tariffs of the CLEC/LD Company or file tariffs that incorporate identical rates, terms and conditions of service. Where services are provided on a detariffed basis, TAS will continue to provide service to the customers pursuant to the relevant service contracts or price lists and maintain them on a website.

33. The transfer of the CLEC/LD residential customers to TAS will not be consummated unless and until TAS has received all required regulatory authorizations to provide interstate and intrastate telecommunications services and has complied with Federal Communications Commission ("FCC") and state requirements for notice to the customers. Attached hereto as EXHIBIT 6 is a form of the notice that would be provided to the CLEC/LD Companies' residential customers at least thirty days prior to the transfer to TAS.

34. Initially, TAS will operate as a reseller of CLEC/LD Companies local exchange and interexchange services. In the future it will have the option to resell the services of other authorized carriers or to procure and to operate its own facilities.

35. No Operating Companies' customers will be transferred to TAS. No business customers will be transferred to TAS.

36. The CLEC/LD Companies will retain and continue to provide telecommunications services to their enterprise customers.

IV. REQUEST FOR DECLARATORY ORDER

37. The Commission has the authority to issue a Declaratory Order pursuant to 807 KAR 5:001, Section 19. The requested Declaratory Order is appropriate because the Transaction will not result, either directly or indirectly, in the transfer or the acquisition of ownership, control, or the right to control Holdings or its subsidiaries, including those subsidiaries providing utility service in the Commonwealth. Nor will the Transaction result in CSL providing utility service to or for the public.

38. The provisions of KRS 278.020 concerning the change of control of utilities providing service in the Commonwealth contemplate the acquisition or transfer of the ownership or control of the legal entity providing utility services, including the authority to provide that service. They are inapplicable to a "naked" transfer or acquisition of assets that does not include the transfer of the authority to provide utility service, or the right or ability to operate the assets to provide such service to the public, as will occur with the Transaction.

39. The Applicants are not seeking to transfer the authority to operate as a telecommunications carrier to CSL, nor do the Operating Companies intend to transfer all assets used to provide service to CSL. CSL does not intend to provide service on a retail or wholesale basis or operate as a telecommunications provider. The Operating Companies will continue to operate the Subject Assets and serve the public as telecommunications public utilities.

40. The Transaction will not affect or change the ownership or control, or the right to control Holdings or Windstream Corp. Moreover, both before and after the Transaction the Operating Companies will remain direct wholly-owned subsidiaries of Windstream Corp., and indirect wholly-owned subsidiaries of Holdings. Accordingly, the Transaction does not constitute a change of ownership or control, or the right to control, of any utility in the Commonwealth as those terms are used in KRS 278.020(5) and KRS 278.020(6). Nor will the Transaction require CSL to obtain a certificate of public convenience and necessity to operate as a utility under KRS 278.020(1).

41. The Transaction is pro forma under the Federal Communications Commission's rules and accordingly does not require prior approval by the FCC.

A. KRS 278.020(5).

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

43. CSL will not gain or otherwise possess the right to exercise any ownership of, control of, or the right to control Holdings, Windstream Corp., the Operating Companies, or the

CLEC/LD Companies as a result of the Transaction. No voting securities are being transferred to CSL in connection with the Transaction. Holdings and its subsidiaries will not become subsidiaries of CSL as a result of the Transaction. To the contrary, CSL and Holdings will be independent, publicly traded companies engaged in different businesses.

44. Following the Transaction the Operating Companies will continue to be responsible for all capital improvements to the Subject Assets, along with their maintenance and operation. The Operating Companies will remain carriers of last resort in their service areas, and will retain their existing and future contractual and regulatory obligations as telecommunications utilities in the Commonwealth. Under the terms of the exclusive lease from CSL, the Operating Companies will be responsible for the operation and maintenance of the Subject Assets and will continue to have responsibility for quality of service standards and fulfillment of all regulatory obligations.

45. Following the Transaction, CSL will not be providing telecommunications or other utility services to the public in the Commonwealth. Specifically, following the Transaction: (1) the Subject Assets will be exclusively leased to Holdings and thus unavailable to be used by CSL to provide telecommunications services to the public; (2) CSL will not have any retail telecommunications customers; (3) because the switching equipment and electronics necessary to operate the network will not be transferred to CSL, CSL will lack the operational capability to provide telecommunications service to the public using only the transferred assets; and (4) CSL could not maintain its status as a REIT under the Internal Revenue Code and provide retail telecommunications services. Under the Internal Revenue Code, a REIT must receive at least 95 percent of its revenue from dividends and rents; the revenues generated by the provision of telecommunications service to the public would not qualify as such. Accordingly,

with limited exceptions, a REIT can only own real estate and receive income in the form of rent, and cannot engage in any other activities.

46. The Transaction does not constitute the acquisition or transfer of ownership of, or control, or the right to control any utility under the jurisdiction of the Commission by the sale of assets, transfer of stock, or otherwise and thus does not require approval pursuant to KRS 278.020(5). The Applicants respectfully request that the Commission issue an Order declaring that no such approval is required.

B. KRS 278.020(6).

47. KRS 278.020(6) provides in pertinent part that “[n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an “acquirer”), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.”

48. As further described at paragraphs 19-30 and 42-45 *supra*, the Transaction will not provide CSL, either directly or indirectly, with the right, power, ability, or authority to “direct, or cause the direction of management and policies” of Holdings, Windstream Corporation, the Operating Companies, or the CLEC/LD Companies.

49. CSL will not have the ability to effect a change in the composition of the boards of directors of Holdings, Windstream Corp., the Operating Companies, or the CLEC/LD Companies. No voting securities are being transferred, and CSL will not own 10 percent or more

of the voting securities of Holdings, Windstream Corp., or the Operating Companies as a result of the Transaction.

50. Following the Transaction, CSL and Holdings will be independent, publicly traded companies engaged in different businesses.

51. The Transaction does not constitute nor provide for the acquisition of control, either directly or indirectly, by CSL, its subsidiaries, or any other entity, of any utility furnishing service in the Commonwealth and thus does not require approval pursuant to KRS 278.020(6). The Applicants respectfully request that the Commission issue an Order declaring that no such approval is required.

C. KRS 278.020(1).

52. KRS 278.020(1) provides in pertinent part that “[n]o person, partnership or private corporation, or combination thereof shall commence providing utility service *to or for the public* or begin the construction of any plant, equipment, property, or facility for furnishing *to the public* any of the services enumerated in KRS 278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.” (Emphasis supplied).

53. The requirement of service “to or for the public” is repeated in the definition of a telecommunications “utility” found in KRS 278.010(3)(e), which provides in pertinent part that the term “utility” includes “any person . . . who owns, controls, operates, or manages any facility used or to be used for or in connection with: The transmission or conveyance over wire, in air,

or otherwise, or any message by telephone or telegraph *to or for the public*, for compensation.”
(Emphasis supplied).

54. CSL will not be engaged in the “transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph to or for the public.” CSL instead will possess an ownership interest in certain communications infrastructure that it will lease pursuant to an exclusive long-term agreement to a single customer – Holdings. WKE and WKW, and not CSL, will continue to operate and maintain the subject assets for the purpose of providing telecommunications service using the assets to be owned by CSL. In addition, because the switches and other electronics required to provide telecommunications service will not be transferred to CSL, the entirety of the assets to be owned by CSL cannot, without the switches and other electronics that are not being transferred, transmit or convey over wire, in the air, or otherwise, any message.

55. The Commission has held that:

“The use to which the plant, equipment or some portion thereof is put must be for the public in order to constitute it a public utility. ... “One offers service to the ‘public’ ... *when he holds himself out as willing to serve all who apply up to the capacity of his facilities.*” ... Utility service limited to a specific class of persons is not service to the public.³

CSL will not hold itself out as willing to provide service to all who apply. To the contrary, it will not have any retail customers and will not receive any compensation from the public as a result of its ownership of the Subject Assets. Moreover, the exclusive nature of the lease effectively prevents CSL from providing telecommunications service to the public. Finally,

³ *In the Matter Of: Petition Of Mountain Water District For Disclaimer Of Jurisdiction Or Approval Of Tariff*, Case No. 2009-00405, 2010 Ky. PUC LEXIS 411 at * 7-8 (Ky. P.S.C. April 12, 2010) (emphasis supplied) (citations omitted).

CSL intends to operate as an REIT but will be unable to maintain its status as such under the Internal Revenue Code if it were to provide telecommunications services to the public.

56. Because CSL will not be providing utility services as defined at KRS 278.010(3)(e), and because CSL will not be providing any services to the public, KRS 278.020(1) is inapplicable. The Applicants respectfully request that the Commission issue an Order declaring that CSL is not required by KRS 278.020(1) to obtain a certificate of public convenience and necessity in connection with its ownership of the Subject Assets and its exclusive long-term lease of the Subject Assets to Holdings for the benefit of WKE and WKW.

V. REQUEST IN THE ALTERNATIVE FOR APPROVAL UNDER KRS 278.020(5) AND KRS 278.020(6)

57. If the Commission nevertheless determines that approval for transfer and acquisition of the Subject Assets is necessary under KRS 278.020(5), or KRS 278.020(6), or any other applicable provision, this Application demonstrates that the Transaction satisfies all applicable criteria and should be approved.

58. The Operating Companies, following the Transaction, will continue to have the capability (enhanced by the Transaction) to provide high quality telecommunications services and introduce advanced services.

A. KRS 278.020(5).

59. Although the Subject Assets will be transferred to CSL through the Transaction, the Operating Companies, *and not CSL*, will operate the Subject Assets and provide telecommunications services to the public in the Commonwealth. Accordingly, the Applicants respectfully submit that the proper inquiry under KRS 278.020(5) is whether following the

Transaction the Operating Companies will continue to have the financial, technical, and managerial ability to provide reasonable service in the Commonwealth.

60. KRS 278.020(5) provides that the Commission shall grant approval under that statute if “the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.” To the extent Commission approval is required, the Transaction satisfies these standards. Following the Transaction, the Operating Companies will continue to be managed and operated by the same capable, experienced executives and employees. The Operating Companies will therefore maintain the same technical and managerial ability to providing reliable, high-quality services as they do today. The Operating Companies currently possess the financial ability to provide the certificated services to the public, and such ability will be enhanced by the Transaction. All of these factors, along with the additional details below, demonstrate that the Operating Companies will continue to possess the technical, managerial, and financial ability necessary to provide reasonable and high quality service.

(i) *Continued Technical Capability.*

61. The Operating Companies will continue to possess the same technical capabilities after the transfer as they possess today. The Subject Assets will be leased back to Holdings for the exclusive benefit of the Operating Companies, whose personnel will continue to operate the Subject Assets.

62. The financial benefits accruing to Holdings as a result of the Transaction, including the immediate reduction of \$3.2 billion in long-term debt of Holdings, will facilitate reinvestment into the Operating Companies. The resulting increased free cash flow is expected to permit the Operating Companies to increase their target capital expenditures from 11-13% to

13-15% of total revenue, which in turn will enable the Operating Companies to expand their broadband network and deliver enhanced services. The Transaction will allow the Operating Companies to adapt to the new ways residential and business customers use content with a faster transition to an IP network.

63. Additionally, all equipment, buildings, systems, software licenses and other assets owned and used in the provision of TAS's service will continue to be available, operated, maintained and managed by the Operating Companies in the provision of service after the Transaction.

64. As a result, the Operating Companies will continue to have the technical ability to provide reasonable service in the Commonwealth.

(ii) *Continued Managerial Capability.*

65. The Operating Companies will continue to employ personnel experienced and dedicated to the provision of high-quality communications service. The customer service, network and operations functions critical to the success of the Applicants today will continue, and the business will be staffed to ensure that continuity. For example, the local operations will continue to be staffed and managed by employees who have established ties to the community and extensive knowledge of the local telephone business.

66. The Operating Companies will continue to receive the same centralized management services. They will be staffed by experienced and knowledgeable persons currently providing these services. Presently, centralized functions include human resources, finance, tax, media, legal, planning, general support, and information services, thereby allowing the individual

Operating Companies to benefit from the efficiencies enjoyed with centralized support services. After the Transaction the Operating Companies will continue to receive similar centralized management services, and thus will continue to enjoy the attendant efficiencies and the benefits of an experienced staff.

67. As a result, the Operating Companies will continue to have the managerial ability to provide reasonable service in the Commonwealth.

(iii) *Continued Financial Capability.*

68. The Transaction is expected to improve the already stable financial condition of Holdings and the Operating Companies as a result of significant financial benefits that Holdings expects to receive from the Transaction. The overall net effect of the Transaction will be to increase the net free cash flow and reduce long term debt by approximately \$3.2 billion, thereby providing the Operating Companies more financial flexibility in upgrading and expanding their communications and broadband networks, making a faster transition to an IP network and pursuing additional opportunities that will strengthen their infrastructure and provide enhanced services to their customers.

69. Attached as **EXHIBIT 7** is a comparison of key financial metrics for Holdings pre and post Transaction.. Holdings' revenues are expected to be approximately \$5.9 billion per year and are expected to generate approximately \$2.3 billion of annual operating income. Holdings will continue to possess the financial ability to succeed in the ever-increasing competitive telecommunications marketplace.

70. The Operating Companies currently serve approximately 353,000 access lines in Kentucky. The number of ILEC access lines will not change as a result of the Transaction. The CLEC/LD Companies serve approximately 200 residential customers to be transferred to TAS. No other customer transfers will occur as a result of the Transaction.

71. Holdings, which among other functions raises capital for the Operating Companies, will continue to possess the financial capability, enhanced by the Transaction, to enable the Operating Companies to continue to provide high-quality telecommunications services to customers. Moreover, Holdings, through its subsidiaries, will continue to be one of the largest independent local exchange carriers in the nation. Because of its lower amount of debt, improved leverage ratio and greater free cash flow, Holdings' ability to raise capital in order to invest in network, employees and information systems to continue providing high quality service will be enhanced by the Transaction.

72. As a result, the Operating Companies will continue to have the financial ability to provide reasonable service in the Commonwealth.

2. KRS 278.020(6).

73. KRS 278.020(6) provides in pertinent part that the Commission shall approve a proposed transaction subject to its provisions upon finding that the proposed transaction "is to be made in accordance with law, for a proper purpose and is consistent with the public interest." The Transaction comports with each of these requirements.

74. The Operating Companies operate in an industry that has been and continues to be subject to rapid technological advances, evolving consumer preferences, and dynamic change.

The public interest requires that the Applicants increase their financial flexibility by means of efforts like the Transaction to facilitate further investments in network improvements and upgrades that will enable them to continue to provide and enhance the full range of high-quality services they provide to residential and business customers in the Commonwealth.

75. The Transaction will enable the Operating Companies to become a more nimble competitor by increasing their financial flexibility in the highly competitive telecommunications service market that is characterized by stagnant or falling demand and largely fixed costs, without any reduction in competition and without removing any customer choices from the marketplace. If the Applicants do nothing, the Operating Companies will be under growing pressure to increase revenues per line, as line counts are generally declining but many fixed costs remain stable or are growing.

76. The financial efficiencies that will produce lower long term debt and increased free cash flow from the Transaction are expected to help relieve that pressure, and strengthen the ability of the Operating Companies to continue offering basic services at affordable prices and provide the Operating Companies with greater resources to invest in new services and new uses for the wireline network that should further strengthen the Operating Companies' financial position.

77. The Transaction is required by the public interest in order for the Operating Companies to effectively compete and offer the latest technology at levels that meet or exceed that of their competitors and meet and exceed the data and content needs of consumers and businesses, which are increasing and changing in scope rapidly and significantly. Intermodal

competition, between wireline and wireless telecommunications services, is widespread in the territories served by the Operating Companies.

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

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

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

⁴ The approximately 200 transferred residential CLEC/LD Companies' customers will, other than a change in name of their carrier, also see no initial changes as their service will continue to be provided and supported by the CLEC/LD Companies, albeit resold by TAI. Customers will receive the same full range of products and services as prior to the separation, at the same prices, and under the same terms and conditions.

Finally, the Transaction will not impact the terms of any existing interconnection agreements or obligations under state and federal laws regarding interconnection.

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

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

83. To the extent the Commission determines necessary, the Operating Companies respectfully request approval of the Transaction pursuant to KRS 278.020(5) and KRS 278.020(6).

VI. COMMUNICATIONS

84. Inquiries or copies of any correspondence, orders, or other materials pertaining to this Application should be directed by e-mail transmission to:

Mark R. Overstreet
 R. Benjamin Crittenden
 Stites & Harbison PLLC
moverstreet@stites.com
bcrittenden@stites.com

Cesar Caballero
 Windstream Communications
cesar.caballero@windstream.com

Jeanne Shearer
 Windstream Kentucky East, LLC
 Windstream Kentucky West, LLC
jeanne.shearer@windstream.com

VII. COMPLIANCE WITH 807 KAR 5:001

85. Pursuant to Section 14 of 807 KAR 5:001, the Application sets forth the following information:

<u>Regulation</u>	<u>Requirement</u>	<u>Pertinent Application Location</u>
807 KAR 5:001, Section 14(1)	Full name, mailing address, and electronic mail address of applicants.	Paragraphs 12 and 13.
807 KAR 5:001, Section 14(1)	Full Statement of the facts upon which the application is based.	<i>Passim.</i>
807 KAR 5:001, Section 14(1)	Request for relief sought.	Page 1, paragraphs 46, 51, 56, 83 and <i>supra</i> .
807 KAR 5:001, Section 14(2)	If the applicant is a corporation.	Not applicable.
807 KAR 5:001, Section 14(3)	If the applicant is a limited liability company.	Paragraphs 12 and 13; Exhibits 1-3.

<u>Regulation</u>	<u>Requirement</u>	<u>Pertinent Application Location</u>
807 KAR 5:001, Section (14)(4)	If the applicant is a limited partnership.	Not Applicable.
807 KAR 5:001, Section 19(2)(a), (b)	Full written statement of the facts upon which the application is based.	<i>Passim</i>
807 KAR 5:001, Section 19(2)(c)	Full disclosure of the applicant's interest.	Paragraphs 1-3, 12-13.
807 KAR 5:001, Section 19(2)(d)	Identify relevant statutes and administrative regulations.	Paragraphs 10-11, 17, 37-38, 40, 42, 47, 51-53, 56-57, 58-60, 73, 81, 83.
807 KAR 5:001, Section 19(2)(e)	Proposed resolution	Page 1, paragraphs 46, 51, 56, 83 and <i>supra</i> .

WHEREFORE, for the reasons set forth above, Applicants request the Commission enter an Order:

- (1) Declaring that no approval is required for the Transaction under KRS 278.020(1), (5) or (6), or any other provisions of Chapter 278 of the Kentucky Revised Statutes;
- (2) In the alternative, finding that the Operating Companies will continue to have the financial, technical, and managerial ability to provide reasonable service, and that the Transaction is being made in accordance with law, for a proper purpose and is consistent with the public interest and approving the Transaction pursuant to KRS 278.020(5) and KRS 278.020(6); and
- (3) Granting the Applicants all other relief to which they may appear entitled and which may be required to consummate the Transaction.

Respectfully submitted,



Mark R. Overstreet
R. Benjamin Crittenden
STITES & HARBISON PLLC
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634
Telephone: (502) 223-3477
moverstreet@stites.com
bcrittenden@stites.com

Exhibits

<u>Exhibit No.</u>	<u>Description</u>	<u>Corresponding Paragraph</u>
1	Windstream Kentucky East, LLC State of Delaware Good Standing Certificate	12
2	Windstream Kentucky East, LLC Certificate of Authority	12
3	Windstream Kentucky West, LLC Commonwealth of Kentucky Certificate of Existence	13
4	Summary of terms of exclusive lease of Subject Assets	22
5	Current and proposed post-Transaction corporate structure of Holdings and its subsidiaries	24
6	Form of Notice to CLEC/LD Companies' customers	33
7	Comparison of key financial metrics for Holdings pre and post Transaction for the 12 months ended December 31, 2013	69

EXHIBIT 1

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "WINDSTREAM KENTUCKY EAST, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-FIFTH DAY OF JULY, A.D. 2014.


AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



3448612 8300

140996718

You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 1567091

DATE: 07-25-14

EXHIBIT 2

Commonwealth of Kentucky
Alison Lundergan Grimes, Secretary of State

Alison Lundergan Grimes
Secretary of State
P. O. Box 718
Frankfort, KY 40602-0718
(502) 564-3490
<http://www.sos.ky.gov>

Certificate of Authorization

Authentication number: 153764
Visit <https://app.sos.ky.gov/ftshow/certvalidate.aspx> to authenticate this certificate.

I, Alison Lundergan Grimes, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

WINDSTREAM KENTUCKY EAST, LLC

, a limited liability company authorized under the laws of the state of Delaware, is authorized to transact business in the Commonwealth of Kentucky, and received the authority to transact business in Kentucky on June 13, 2008.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that an application for certificate of withdrawal has not been filed; and that the most recent annual report required by KRS 14A.6-010 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 7th day of August, 2014, in the 223rd year of the Commonwealth.



Alison Lundergan Grimes
Alison Lundergan Grimes
Secretary of State
Commonwealth of Kentucky
153764/0707420

0707420.06

AMcRay
L902

**Kentucky Secretary of State
TREY GRAYSON**

Trey Grayson
Secretary of State
Received and Filed
06/13/2008 1:11:34 PM
Fee Receipt: \$90.00

Division of Corporations
BUSINESS FILINGS

P.O. Box 718
Frankfort, KY 40602
(502) 564-2848
<http://www.sos.ky.gov/>

Application for Certificate of Authority

Pursuant to the provisions of KRS Chapter 275, the undersigned hereby applies for authority to transact business in Kentucky on behalf of the limited liability company named below and for that purpose submits the following statements:

1. The company is a limited liability company (LLC),
 a professional limited liability company (PLLC).

2. The name of the limited liability company is
Windstream Kentucky East, LLC

3. The name of the limited liability company to be used in Kentucky is

4. Delaware (if "real name" is unavailable for use)
is the state or country of organization.

5. 10/22/2001 is the date of organization and, if the limited liability company has a specific date of dissolution, the latest date upon which the limited liability company is to dissolve is Perpetual.

6. The street address of the office required to be maintained in the state of formation or, if not so required, the principal office address is
4001 Rodney Parham Road Little Rock AR 72212
Street City State Zip Code

7. The names and usual business addresses of the current managers, if any, are as follows:
SEE ATTACHED "EXHIBIT A"

Name	Address

(Attach a continuation, if necessary)

8. The street address of the registered office in Kentucky is
Kentucky Home Life Building, Louisville, Kentucky 40202
Street City State Zip Code

and the name of the registered agent at that office is
C T Corporation System

9. This application will be effective upon filing, unless a delayed effective date and/or time is specified:

(Delayed effective date and/or time)

I certify that, as of the date of filing this application, the above-named limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation.

John P. Fletcher
Signature
John P. Fletcher, Exec. Vice Pres., Gen. Counsel, Secretary
Type or Print Name & Title

Date: June 4, 2008

I, C T Corporation System, consent to serve as the registered agent on behalf of the limited liability company.
Type or print name of registered agent

J.L. Miles
Signature of Registered Agent
Asst. Secy.
Type or Print Name & Title

FLC (06/07)

(See attached sheet for instructions)

EXHIBIT A
To
Application for Certificate of Authority
State of Kentucky

WINDSTREAM KENTUCKY EAST, LLC

7. The names and usual business addresses of the current managers, if any, are as follows:

Jeffery R. Gardner, Manager, President and Chief Executive Officer
4001 Rodney Parham Road, Little Rock, AR 72212

Francis X. Frantz, Manager
4001 Rodney Parham Road, Little Rock, AR 72212

Brent Whittington, Executive Vice President and Chief Financial Officer
4001 Rodney Parham Road, Little Rock, AR 72212

John P. Fletcher, Executive Vice President, General Counsel and Secretary
4001 Rodney Parham Road, Little Rock, AR 72212

Richard J. Crane, Executive Vice President, Chief Marketing Officer
4001 Rodney Parham Road, Little Rock, AR 72212

William G. Raney, Executive Vice President, Network Operations
4001 Rodney Parham Road, Little Rock, AR 72212

Gregg Richey, Senior Vice President – Consumer Sales
4001 Rodney Parham Road, Little Rock, AR 72212

Susan Bradley, Senior Vice President – Human Resources
4001 Rodney Parham Road, Little Rock, AR 72212

Frank Schueneman, Senior Vice President – Network Operations
4001 Rodney Parham Road, Little Rock, AR 72212

Michael D. Rhoda, Senior Vice President – Government Affairs
4001 Rodney Parham Road, Little Rock, AR 72212

Robert G. Clancy, Senior Vice President – Treasurer
4001 Rodney Parham Road, Little Rock, AR 72212

Tony Thomas, Controller
4001 Rodney Parham Road, Little Rock, AR 72212

Willis Kemp, Vice President – Tax
4001 Rodney Parham Road, Little Rock, AR 72212

David Cameron, Assistant Secretary
4001 Rodney Parham Road, Little Rock, AR 72212

EXHIBIT 3

Commonwealth of Kentucky
Alison Lundergan Grimes, Secretary of State

Alison Lundergan Grimes
Secretary of State
P. O. Box 718
Frankfort, KY 40602-0718
(502) 564-3490
<http://www.sos.ky.gov>

Certificate of Existence

Authentication number: 153294
Visit <https://app.sos.ky.gov/ftshow/certvalidate.aspx> to authenticate this certificate.

I, Alison Lundergan Grimes, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

WINDSTREAM KENTUCKY WEST, LLC

is a limited liability company duly organized and existing under KRS Chapter 14A and KRS Chapter 275, whose date of organization is March 8, 1954 and whose period of duration is perpetual.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that articles of dissolution have not been filed; and that the most recent annual report required by KRS 14A.6-010 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 25th day of July, 2014, in the 223rd year of the Commonwealth.



Alison Lundergan Grimes
Secretary of State
Commonwealth of Kentucky
153294/0183453

EXHIBIT 4

**PROJECT RITE
OUTLINE OF MASTER LEASE**

JULY 28, 2014

The following is a preliminary outline of the structure and certain key provisions of the proposed Master Lease ("Master Lease") contemplated to be entered into among Windstream Holdings, Inc. ("Tenant") and Communications Sales & Leasing, Inc. and the entities set forth on Schedule 1 of the Master Lease (collectively, "Landlord").¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Master Lease.

LEASED PROPERTY

- Leased Property includes, among other things, all of Landlord's rights and interest in the following: (1) the approximately 41 Facilities, categorized by geographic area 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"); and (2) all Easements, Permits and Pole Agreements related to the Leased Property. (Section 1.1)
- The Master Lease is a single, indivisible lease of the Leased Property and not separate leases.

TERM

- Initial Term: 15 years (Section 1.3)
- Renewal Terms: In addition, Tenant may renew the Master Lease for up to 4 Renewal Terms of 5 years for 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. (Sections 1.3 and 1.4(a))
- 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).

¹ This summary is based on the draft Master Lease circulated on 7/28.

RENT

- Initial Term: \$650,000,000². 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%. (Section 2.1).
- 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 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% (Sections 1.4(b) and 41.14)
- 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 is obligated to fund a Capital Improvement under the Master Lease, defaults on its obligation and then fails to cure such default within 30 days of Tenant's notice of such failure, Tenant may offset the amount Landlord was so obligated to but failed to fund to Tenant against the subsequent payments of Rent. (Sections 3.4, 4.1, 4.2 and 9.1(e))

EXCLUSIVE USE OF LEASED PROPERTY

- The Leased Property is being leased to Tenant on an exclusive basis and in its present condition. (Sections 1.1 and 7.1)
- 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. (Section 7.2)
- 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 i.e. the data center space, 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 permitted under the Master Lease shall constitute a permitted use. (Section 7.2(a))
- 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 (e.g. the discontinuing would not reduce the route miles with respect to any one Facility by more than 10% or reduce the route miles by more than 5% for all Facilities in the aggregate over the Term). (Section 7.2(d))
- 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. (Section 6.2)
- Tenant and Tenant's Subsidiaries have the right to pledge any of Tenant's Property (including the Communications Licenses), any TCI ILEC Extensions and any TCI CLEC Extensions during the term, subject to Tenant's obligation to transfer Tenant's Property, such TCI ILEC Extensions and such TCI CLEC Extensions to a Successor Tenant free and clear of any liens or encumbrances to the extent the same constitute Communications Assets. (Sections 6.2 and 11.1)

² The final rent amount for the initial term will be determined following receipt of the final appraisal process of the Leased Property.

- In the event that any of Tenant's Property is leased, Tenant shall use commercially reasonable efforts to ensure those lease agreements can be transferred to a third party. (Section 6.2)

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 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 this 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. (Section 7.3(b))
- Tenant cannot enter into any Swap Arrangement with a third party without Landlord's reasonable consent. (Section 7.3(c))
- 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. (Section 9.2(f))

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. (Section 9.1(a))
- 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). (Section 10.1)
- 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 period of 5 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. (Section 10.2(b))
 - 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 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. (Article 10)
 - If Tenant constructs a Capital Improvement with its own funds or outside financing (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. (Section 10.2(c))
 - 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. (Section 10.2(c))
 - If a Tenant Capital Improvement constitutes an extension of the Distribution Systems to a new geographic area where Tenant or its Subsidiaries are a competitive local exchange carrier (each a "TCI CLEC Extension"), Tenant may remove the connections between the TCI CLEC Extension and the Leased Property by delivering notice of such election to Landlord. If Tenant elects not to remove such TCI CLEC Extension 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. (Section 10.2(c))

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. (Section 13.1)
- Tenant may self-insure its insurance obligations or use a captive provider. (Section 13.9)

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 and TCI CLEC Extensions, which Tenant shall not be required to repair). (Section 14.2(a))
- The Master Lease will not terminate as a result of a casualty, and Tenant is not entitled to any rent abatement. (Section 14.3)

CONDEMNATION

- The Master Lease will terminate as to a Facility if the Facility is totally and permanently taken. (Section 15.1)
- 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 and TCI CLEC Extensions, even if the Condemnation proceeds do not cover all restoration costs. The Rent is subject to an equitable abatement during such restoration. (Section 15.1(c))

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. (Section 16.1)
- Landlord may exercise self-help rights if Tenant defaults under the Master Lease. (Section 17.2)
- An Event of Default as to any Facility is an Event of Default as to all the Facilities. (Section 16)

SALE OF LEASED PROPERTY/TRANSFER OF LANDLORD

- Landlord may sell all, but not less than all, of the Leased Property to a single buyer or group of buyers that is not a Competitor of Tenant without the consent of Tenant. (Section 18.1)
- Tenant's consent is required if: (1) a Competitor acquires 10% of the equity interests of Landlord, (2) a Competitor acquires all or substantially all of Landlord's assets relating to the Facilities, or (3) the merger or consolidation with or into a Competitor. (Section 18.2)

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. (Section 21.1)

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. (Sections 2.1 and 22.1)
- 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 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.(Section 22.2)
- Permitted Subleasing and Collocation Arrangements

- Tenant shall be permitted to sublease all or any portion of the Leased Property and enter into collocation arrangements without Landlord's consent, provided that (i) the space pursuant to such sublease or collocation arrangement does not constitute greater than 30% in the aggregate of the route miles of all the Facilities in the aggregate subject to the Master Lease (such portion, a "Material Portion") and (ii) such sublease (other than a sublease with a Discretionary Transferee) or collocation agreement is 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) 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. (Section 22.3)
- 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 collocation arrangements or (iii) any subtenants under the Specified Subleases and any permitted assignment by such subtenants with respect to a Specified Sublease. (Section 22.3)

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. (Section 23.1)

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 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, all employees primarily dedicated to the maintenance, operation or support of the Affected Facility subject to existing collective bargaining agreements.
- If Successor Tenant and Landlord cannot agree on the Communications Assets FMV within the time periods set forth in the Master Lease, the agreed upon price is less than the amount required to repay in full in cash the principal and accrued interest on all loans outstanding under the Credit Agreement, to cash collateralize all letters of credit outstanding under the Credit Agreement and to pay in full in cash all other obligations outstanding under the Credit Agreement (the "Credit Agreement Payoff Amount") unless the Successor Tenant is the Credit Agreement Agent or its designee, a Lease Termination Notice has been delivered to Tenant or a Final Lease Expiration has occurred, 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 35th 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 2 potential Qualified Successor Tenants (1 of which will be Landlord or an Affiliate of Landlord) and Tenant will select 3 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). (Section 36.2(b))
- Third, determining the highest price a Qualified Successor Tenant would agree to pay for the Communication Assets. The highest price will be set as the Communications Assets FMV that Tenant receives for the Communication Assets. Tenant will have 3 months to enter into a definitive agreement specifying the Communications Assets FMV and all other terms for the sale of the Communication Assets with one Qualified Successor Tenant which Communication Assets FMV must be no less than the Credit Agreement Payoff Amount unless the Successor Tenant is the Credit Agreement Agent or its designee. If Tenant does not enter into such agreement within the 3 month period, a Lease Termination Notice has been delivered to Tenant, or the Final Lease Expiration has occurred, Landlord and Tenant will engage a Third Party Qualified Auctioneer to conduct an auction for the Communication Assets among the 5 potential Qualified Successor Tenants in a manner to maximize the value of the Communication Assets. Tenant must transfer the Communication Assets to the highest bidder. All bids shall provide the all cash purchase price proposed to be paid for the Communication Assets unless (x) the cash portion of the offered purchase price is sufficient to repay the Credit Agreement Payoff Amount and (y) Tenant agrees in writing to an alternative form of compensation (except that (x) a bid from Landlord cannot be in a form other than cash and (y) a bid from the Credit Agreement Agent (or its designee) may be in the form of a "credit bid" of the indebtedness and other obligations outstanding under the Credit Agreement). (Section 36.2(c))
- The Landlord will enter into a lease with the Qualified Successor Tenant for a term of 10 years, under a lease substantially similar to the Master Lease, except that (1) the Leased Property shall only include the Leased Property pertaining to the Affected Facility, (2) the references to Discretionary COC Transferee shall be deleted from the Master Lease and the term Discretionary Transferee shall be substituted in its place and (3) the rent shall be the Successor Tenant Rent as determined pursuant to the process described above. (Section 36.2)
- In the event the transfer of the Communications Assets and operational control of the Affected Facility by Tenant to Successor Tenant is not completed by the expiration or earlier termination of the Term, Tenant and Landlord will enter into a management agreement (the "Management Agreement"). Under the Management Agreement, Tenant will operate the applicable Facility in accordance with all necessary regulatory standards, and Tenant will be paid a management fee equal to 110% of the reasonable operating costs (including the allocable share of overhead and administrative expenses) and 100% of the reasonable capital expenditures, incurred by Tenant to continue operating the Facilities. During the term of the Management Agreement, Tenant will not

be obligated to pay rent, Landlord will be responsible for all costs and expenses of operating the applicable Facility, and all profits, rents and revenues following the end of the Term will belong to Landlord. (Section 36.3)

- Tenant shall enter into a Transition Services Agreement at Landlord's request to ensure a fully operating Facility is transferred to Landlord or Successor Tenant. (Section 36.3)

EXHIBIT 5

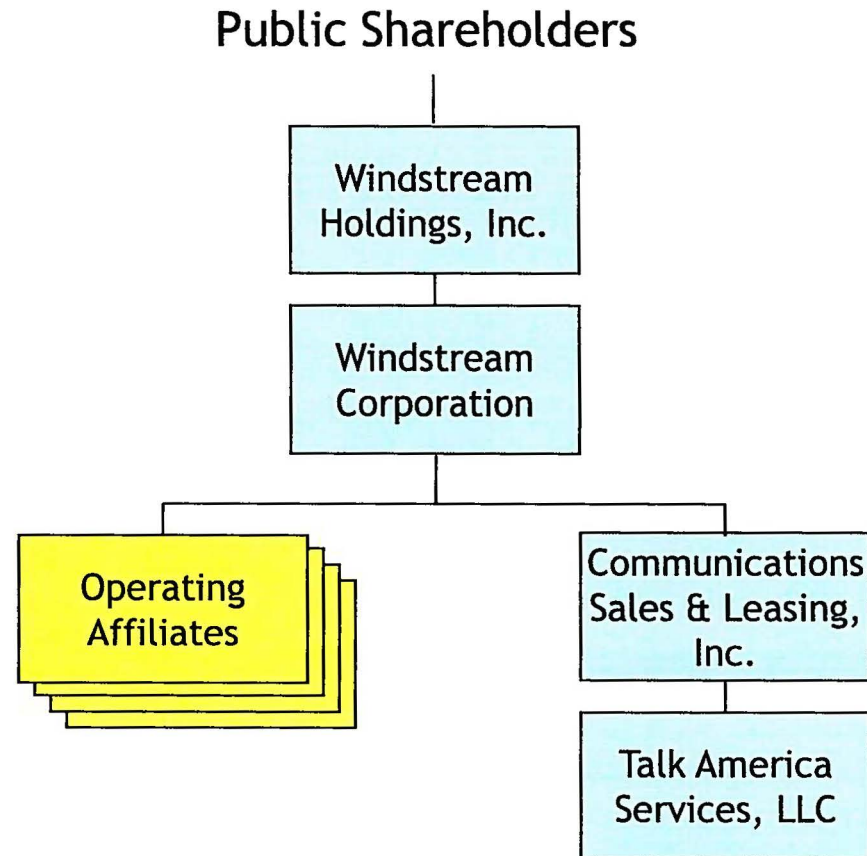


windstream 

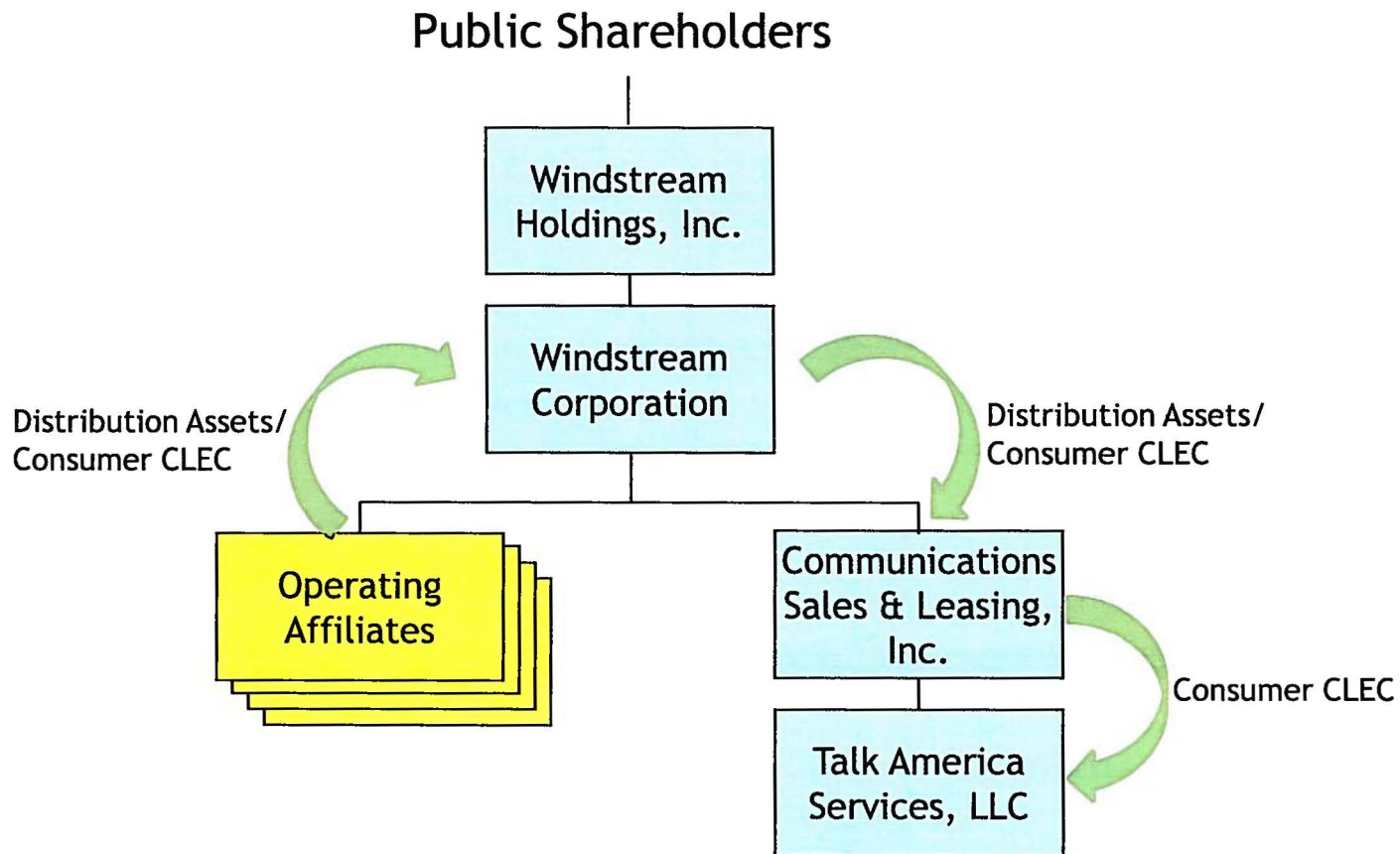


Windstream Holdings, Inc. Spin/REIT

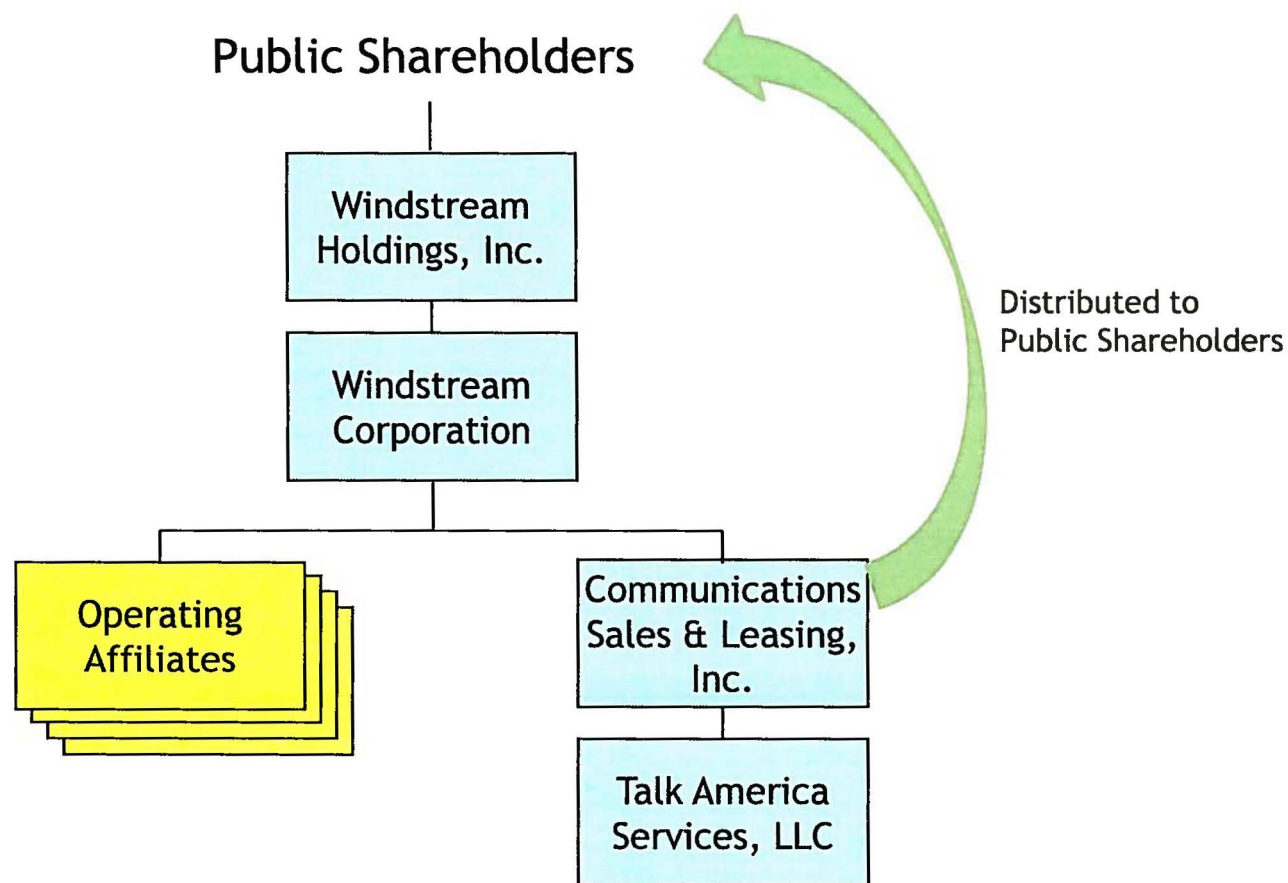
Windstream Holdings, Inc. Pre-Transaction



Windstream Holdings, Inc. Transaction Steps



Windstream Holdings, Inc. Transaction Steps



Windstream Holdings, Inc. Post-Transaction

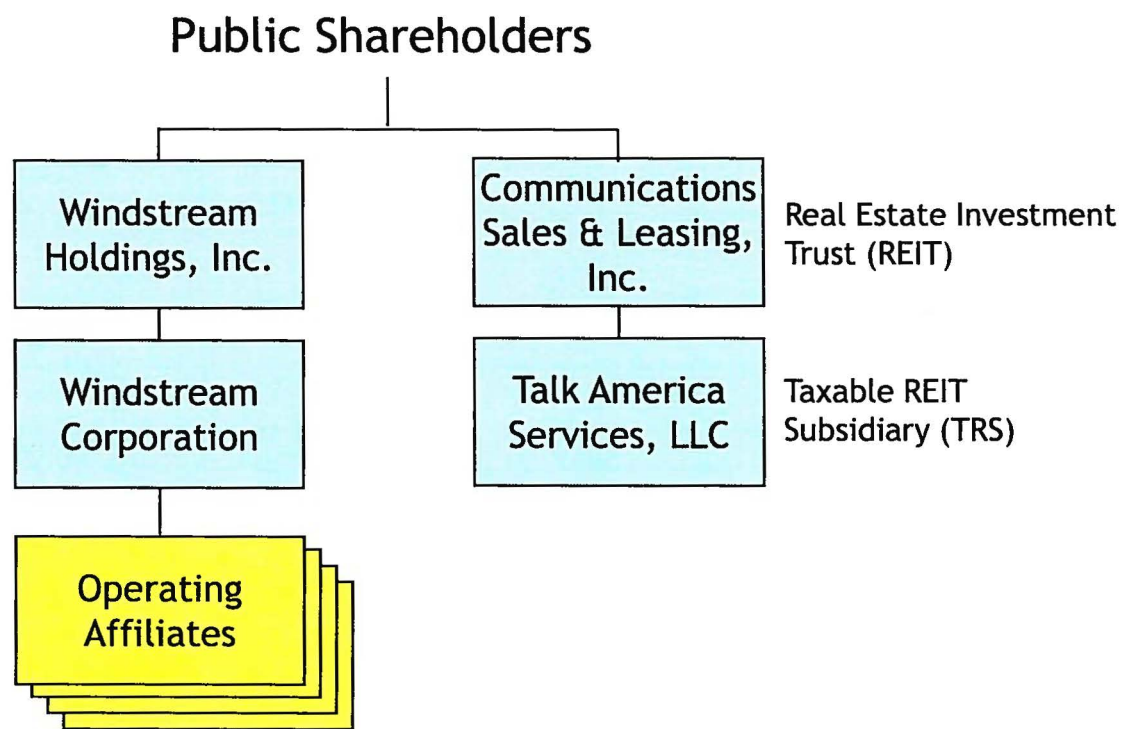


EXHIBIT 6

Dear Valued Customer,

Windstream Communications, Inc. and certain its affiliates ("Windstream") are divesting certain of its local exchange residential markets to Talk America Services, LLC ("Talk America"). As a result of the transaction, your local and long distance service will transfer from Windstream to Talk America on or about January 30, 2015.

Rest assured you will continue to receive the high-quality service you have come to expect. There will be no change in your current plan, rates, features, terms and conditions of your service or customer service contracts. Also, there will be no charges associated with transferring your service to Talk America and no action is required by you during this transfer.

As a customer, you have a choice in carriers for your communications services. If you choose to select another provider, you should contact that carrier immediately to ensure that your services are transferred before January 30, 2015. Keep in mind, if you change carriers, you may have to pay a transfer charge.

Under Federal Communications Commission rules, any restriction or "freezes" you may have placed on your account to block changes to your preferred local and/or long distance carrier will be removed as part of the transfer process. If you wish to reinstate such restrictions, please contact us at 1-800-XXX-XXXX.

Customer service is the foundation of our business. Please let us know how we can work with you to meet your needs. If you have any questions or complaints before, during, and after the transition of your service to Talk America, do not hesitate to contact us at 1-800-XXX-XXXX.

Be sure to look for more information from us during the upcoming months. We are excited about serving you and look forward to providing you with the same high-quality, innovative products and services in the future.

Sincerely,

Talk America Services, LLC

EXHIBIT 7


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	<u>\$ 2,318.1</u>	<u>\$ (670.2)</u>	<u>\$ 1,647.9</u>
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	<u>8,786.4</u>	<u>(3,169.5)</u>	<u>5,616.9</u>
Cash, including restricted cash	57.9	(38.3)	19.6
Net debt	<u>\$ 8,728.5</u>	<u>\$ (3,131.2)</u>	<u>\$ 5,597.3</u>
Leverage ratio	3.79		3.41
Net leverage ratio	3.77		3.40

STATE OF ARKANSAS)
)
COUNTY OF PULASKI

VERIFICATION

I, John P. Fletcher, state that I am Executive Vice President, Secretary and General Counsel of Windstream Holdings, Inc. and its applicant subsidiaries (the “Windstream Companies”); that I am authorized to make this Verification on behalf of the Windstream Companies, Inc.; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



John P. Fletcher
Executive Vice President, Secretary & General Counsel
Windstream Holdings, Inc.

Sworn and subscribed before me this 7 day of August, 2014.



Notary Public

My commission expires

