

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

CASE NO. 2014-00283

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PUBLIC SERVICE
COMMISSION

**WINDSTREAM'S RESPONSE IN OPPOSITION TO KENTUCKY CABLE
TELECOMMUNICATIONS ASSOCIATION'S MOTION FOR FULL INTERVENTION**

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively, "Windstream") oppose the motion for full intervention filed by Kentucky Cable Telecommunications Association's (KCTA) because it fails to satisfy the requirements of 807 KAR 5:001, Section 4(11): (1) KCTA's motion is untimely; (2) KCTA has not identified a special interest in the proceeding; (3) KCTA's proposed intervention will not aid the Commission; and (4) KCTA's intervention will disrupt the proceeding. Accordingly, the Commission should deny KCTA's motion for intervention.

A. KCTA's Motion is Untimely.

KCTA's motion for full intervention was filed with the Commission on October 9, 2014, or 63 days after Windstream filed its application in this proceeding.¹ Even more concerning is that KCTA delayed until 57 days prior to the expiration of the period for the Commission's consideration of the Company's application if the Commission concludes that approval pursuant to KRS 278.020(6) is required. KCTA offers no explanation for its delay in seeking intervention or how its motion is timely in light of such delay.

The Commission's regulations allow that "a person who wishes to become a party to a proceeding before the commission may, **by timely motion**, request that leave to intervene be granted."² KCTA's motion is not timely. A more than two-month delay without explanation is not "timely" by any definition of the word. To the extent KCTA possesses some special interest in this proceeding—and it does not as addressed below—that interest has existed from the date Windstream filed its Application and it has not changed since then.

KCTA offers no reason why it waited more than two months after the date Windstream filed its Application to seek full intervention in this proceeding. Indeed, the fact KCTA's motion was filed *after* the expiration of the original 60-day deadline for the Commission to act on Windstream's Application under KRS 278.020(6) if the Commission determined that approval was required³ only underscores the untimeliness of its request.

¹ The transaction was widely publicized beginning a week prior to the filing of Windstream's application in Kentucky. See <http://www.bloomberg.com/news/2014-07-29/windstream-to-spin-off-telecom-assets-into-publicly-traded-reit.html> ; <http://online.wsj.com/articles/windstream-to-spin-off-assets-into-reit-1406637025> ; http://markets.nytimes.com/research/stocks/news/press_release.asp?docTag=201407290700PRIMZONEFULLFEEED10091524&feedID=600&press_symbol=22015529

² 807 KAR 5:001, Section 4(11)(a) (emphasis added).

³ KRS 278.020(6) provides, in pertinent part, that "[t]he commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixth (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days." The original 60-day period was to expire on October 6, 2014, or three days *before* KCTA's filing. By Order dated September 30, 2014, the Commission extended the deadline for a ruling by an additional 60 days.

Although the Commission's regulation, 807 KAR 5:001, Section 11(4)(a), does not define "timely," waiting until the last possible moment to move to intervene does not meet any reasonable definition of the term. This is particularly the case where the Commission may be facing a statutory deadline for action. Accordingly, the Commission should deny KCTA's motion as untimely.

B. KCTA has not Identified a Special Interest in this Proceeding.

Even those persons making timely motions to intervene must demonstrate that they have "a special interest in the proceeding not otherwise adequately represented."⁴ KCTA offers little in the way of explanation concerning its interest in this case. KCTA notes its members attach to the facilities owned by the applicants and that will be transferred to Communications Sales and Leasing, Inc. ("CSL"), and that it has concerns about its members continuing ability to do so after the transfer. It also notes its concerns how those connections will continue to be regulated. KCTA's bases for intervention are without merit.

Paragraph 23 of Windstream's August 7, 2014 application makes clear that Windstream, and not CSL, will possess the exclusive right under the master lease to occupy and sublease the transferred facilities, include the right to contract for third-party pole attachments:

23. 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

⁴ 807 KAR 5:001, Section 4(11)(a).

Companies' sole judgment is necessary to operate their communications business subject to relevant industry standards and law.⁵

In its responses to the Staff's September 23, 2014 data requests Windstream re-emphasized that the proposed transfer will not alter third-parties' ability to request pole attachments from Windstream, or the Commission's continuing jurisdiction over such attachments and contractual arrangements:

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

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

...

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

RESPONSE: There will be no change in these responsibilities, and *Applicants will continue to be responsible for all regulatory compliance, including penalties or sanctions resulting from Commission enforcement action.*⁶

⁵ Application, *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 The 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. 2014-0000283 (Ky. P.S.C. Filed August 7, 2014) (emphasis supplied).

⁶ Windstream Response to Staff's September 23, 2014 Data Requests, *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 The 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. 2014-0000283 (Ky. P.S.C. Filed October 1, 2014) (emphasis supplied) ("Windstream's Response") (Exhibit 1).

Moreover, as Windstream will continue to make line extensions as it does today,⁷ those new assets will be owned by Windstream and will be subject to the Commission's jurisdiction.

Both the Company's application and its responses to Staff data request make clear that the proposed transfer will not affect the ability of KCTA's members to place their attachments on the subject assets, or any future assets, or the Commission's continuing jurisdiction over such assets and contractual arrangements. After the transaction closes, KCTA's members' rights with respect to pole attachments under existing rates, rules, and regulations will be unchanged.

In light of these representations, KCTA and its members have no interest in this proceeding other than to beat a dead horse.

C. KCTA's Proposed Intervention is not Likely to Present Issues or Develop Facts that will aid the Commission.

A timely motion intervene, which KCTA's is not, may also be granted where the entity seeking intervention is "likely to present issues or develop facts that assist the commission in fully considering the matter . . ."⁸ The only issue raised anywhere in KCTA's motion involves pole attachments, and, as set forth above, the transactions at issue in this proceeding will have no impact on such arrangements. Accordingly, KCTA's participation in this proceeding for the purpose of addressing such attachments will be of no benefit to the Commission, and KCTA's motion should be denied.

D. KCTA's Intervention will Unduly Complicate and Disrupt the Proceeding.

KCTA's proposed intervention comes at a time when substantial progress has been made toward a resolution of this case and limited time remains for the Commission to rule on Windstream's Application. As set forth above, Windstream has responded to the Commission

⁷ Windstream's Response to Staff 1-5 and Staff 1-6. (Exhibit 2).

⁸ 807 KAR 5:001, Section 4(11)(b).

Staff's data requests and presumably addressed all of the issues necessary for a resolution of this matter. Pursuant to KRS 278.020(6), less than two months remain for the Commission to rule on Windstream's Application. By seeking to intervene so late in the proceeding, KCTA will unduly burden the Commission's ability to reach a resolution in the time provided it by statute if it concludes approval is required. Accordingly, the Commission should deny KCTA's motion to intervene.

E. Conclusion.

KCTA is not entitled under 807 KAR 5:001, Section 4(11) to intervene and its motion should be denied. In the alternative, if the Commission were to grant KCTA's motion, its intervention should be limited to issues involving pole attachments.

Respectfully submitted,



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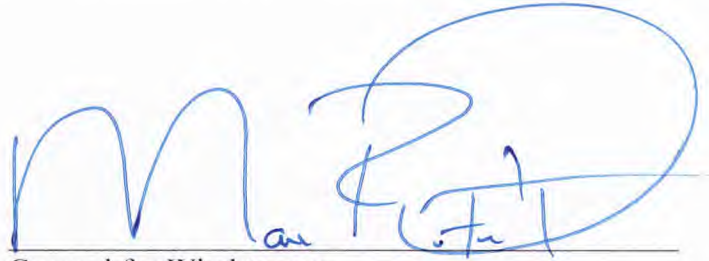
COUNSEL FOR WINDSTREAM KENTUCKY
EAST AND WINDSTREAM KENTUCKY WEST

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 15th day of October, 2014 upon:

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A handwritten signature in blue ink, appearing to read 'M. P. Gillespie', written over a horizontal line.

Counsel for Windstream

Exhibit 1

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

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

WITNESS: Cesar Caballero

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

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

WITNESS: Robert Gunderman

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

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

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

WITNESS: Robert Gunderman

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

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

WITNESS: Robert Gunderman

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

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

WITNESS: Robert Gunderman

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

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

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

WITNESS: Robert Gunderman

Exhibit 2

5. How will the contemplated transaction affect line extensions?

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

WITNESS: Robert Gunderman

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

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

WITNESS: Robert Gunderman