

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION** **RECEIVED**

In the Matter of:

OCT 17 2014

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 )

PUBLIC SERVICE  
COMMISSION

CASE NO. 2014-00283

**KENTUCKY CABLE TELECOMMUNICATIONS  
ASSOCIATION'S REPLY IN SUPPORT OF MOTION TO INTERVENE**

The Kentucky Cable Telecommunications Association (“KCTA”) hereby replies to Windstream’s October 15 opposition to KCTA’s motion to intervene. The Commission should grant the motion because it is timely, because the cable industry’s special interest is clearly defined, and because industry participation through KCTA can only assist the Commission. It will not hinder Windstream—unless Windstream is up to something the Commission should stop.

As to timeliness, the Commission has not said whether the sixty day approval window of KRS 278.060(6) even applies. And Windstream’s Application downplayed the statute, mentioning it only in the alternative. The Commission should put the timing of KCTA’s request to intervene in the proper context. Windstream does not claim to have served its petition on any of its customers. The Commission’s first Order in this case was issued on September 30, 2014. In early October Windstream filed and KCTA reviewed responses to a set of Commission data requests. KCTA became concerned about the responses. For example, Windstream conceded

the transaction would have “legal effect” on pole attachments, but said it would be “minimal.” Within a week, KCTA filed to intervene.

As to KCTA’s interest, it is hard to take seriously Windstream’s protest that KCTA “offers little in the way of explanation concerning its interest in this case” since Windstream also ignores KCTA’s succinct concern about *CSL*’s future ability to maintain poles in public rights of way. That issue is not squarely addressed in paragraph 23 of Windstream’s application, so Windstream’s reprinting it in a bold font (Windstream Opp. 3) does not assist the Commission in evaluating KCTA’s Motion. But to restate the interest KCTA explained and Windstream glosses over: KCTA is concerned that Windstream is transferring real property to *CSL* while claiming *CSL* is beyond the Commission’s regulatory reach. Accordingly, in its Motion KCTA has questioned whether *CSL* will have a legal right to maintain poles in public rights of way without a franchise. If KCTA’s concerns are well-founded but not fully addressed in this case, KCTA members could be harmed in the future. Similarly, KCTA has concerns about how the Commission’s review of pole attachment rates – which is based on the depreciated cost of poles of certain heights – can be accomplished if the poles are sold off to *CSL*. Windstream’s attempts to downplay the effect of this transaction are not a reason to keep Windstream’s customers from protecting their own interests.

Finally, Windstream claims that in its Motion to Intervene KCTA is beating a “dead horse” because Windstream’s filings “make clear” the ability to attach to “the subject assets, or any future assets.” *See* Windstream Opp. 5. If Windstream has the ability to make legal commitments for *CSL* regarding future assets, it should say so in unmistakable language that the Commission can adopt and incorporate into an Order. Otherwise, if this case is about a horse,

it's about a Trojan Horse, CSL, being rolled into Kentucky by Windstream. KCTA's motion is well within the rules and the motion should be granted.

WHEREFORE, KCTA moves for full intervention in the above proceeding.

Respectfully submitted,

Gardner F. Gillespie  
(SCR 3.030 admission to be obtained)  
Sheppard Mullin Richter & Hampton LLP  
2099 Pennsylvania Avenue, NW, Suite 100  
Washington, DC 20006-6801  
(202) 747-1905  
[ggillespie@sheppardmullin.com](mailto:ggillespie@sheppardmullin.com)



---

Douglas F. Brent  
Sarah Jackson Bishop  
STOLL KEENON OGDEN PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 568-5734  
[douglas.brent@skofirm.com](mailto:douglas.brent@skofirm.com)

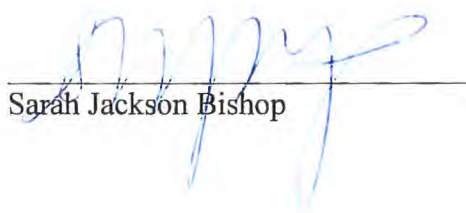
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing motion has been served by first class mail on those persons whose names appears below this 17<sup>th</sup> day of October, 2014.

Cesar Caballero  
Senior Regulatory Counsel  
Windstream Communications  
4001 Rodney Parham Road  
Little Rock, Arkansas 72212

Hon. R. Benjamin Crittenden  
Hon. Mark R. Overstreet  
Stites & Harbison  
421 West Main Street  
P.O. Box 634  
Frankfort, Kentucky 40602-0634

Jeanne Shearer  
Windstream Kentucky East, LLC  
130 W. New Circle Road, Suite 170  
Lexington, KY 40505



Sarah Jackson Bishop