

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In The Matter Of:

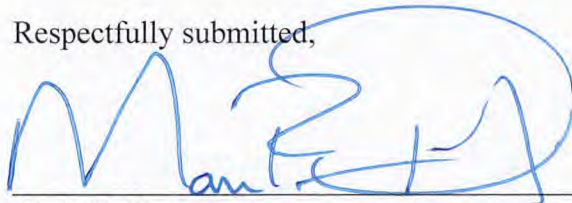
APPLICATION OF WINDSTREAM KENTUCKY EAST, LLC )  
AND WINDSTREAM KENTUCKY WEST, LLC (1) FOR A )  
DECLARATORY RULING THAT APPROVAL IS NOT )  
REQUIRED FOR THE TRANSFER OF A PORTION OF THEIR )  
ASSETS; (2) ALTERNATIVELY FOR APPROVAL OF THE )  
TRANSFER OF ASSETS; 3 FOR A DECLARATORY RULING )  
THAT COMMUNICATIONS 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

**WINDSTREAM KENTUCKY EAST, LLC AND  
WINDSTREAM KENTUCKY WEST, LLC'S RESPONSES  
TO COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION**

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively  
"Applicants"), file the following responses to the Second Request for Information propounded  
by the Commission Staff in accord with the instructions submitted with that request.

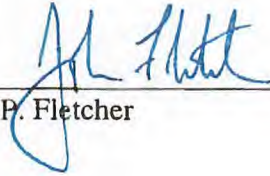
Respectfully submitted,



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VERIFICATION

I, John P. Fletcher, Executive Vice President, Secretary and General Counsel, of Windstream Holdings, Inc., after being duly sworn, state that the facts contained in the responses to data requests for which I am listed as a witness are true and accurate to the best of my knowledge.



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

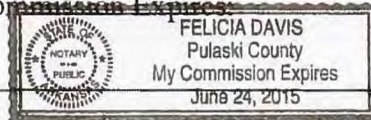
STATE OF ARKANSAS            )  
  )  
COUNTY OF PULASKI        )

Subscribed and sworn before me on this the 31 day of October, 2014.



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

My Commission Expires:



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the Responses to Commission Staff's Second Request for Information was served via United States Postal Service, First Class Mail, postage prepaid, on this the 3rd day of November, 2014 upon:

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Counsel for Windstream Kentucky East, LLC and  
Windstream Kentucky West, LLC



**REQUEST NO. 1:** Refer to the response to Item 3 of Staff's First Request for Information ("Staff's First Request"), which states that the contemplated transaction will have a "minimal" legal effect upon easements and rights of way currently owned by Applicant that will be transferred to the REIT.

a. Explain in detail the basis for your contention that "Windstream will transfer its beneficial rights and interests to CSL but [Windstream] will retain title" to easements currently owned by Applicants.

**RESPONSE: Windstream will retain legal title to all easements and rights of way owned by the Applicants. No assignments of easements will be recorded in any real property records, and no agreements will be amended or assigned to reflect CSL as a party. Other parties to the easements and rights of way will not be given notice of the transfer to CSL, and they will continue to bill Windstream, receive payment from Windstream, and interact with Windstream with respect to all matters associated with the easements and rights of way. Through this transaction, Windstream will transfer the beneficial ownership rights and interests to the easements and rights of way to CSL. In this context, beneficial ownership means that CSL will own the right to all future income, gains or benefits from the easements and rights of way, as well as exposure to all risk of loss associated with those assets.**

**At the time of the transfer of the interest in the easements and rights of way, CSL will immediately and contemporaneously lease the interest back to Windstream for its long-term use under the Master Lease. At the conclusion of these transactions, Windstream will continue utilizing the easements and rights of way in the same manner it does now. There will be no operational impact. Accordingly, Windstream determined that**

**it would be imprudent to transfer title to the easements and rights of way because doing so would have resulted only in unnecessary and duplicate titling and re-titling obligations.**

b. Provide citations to and copies of Kentucky statutory, regulatory, and case law that supports your contention that “Windstream will transfer its beneficial rights and interests to CSL but [Windstream] will retain title” to easements currently owned by Applicants.

**RESPONSE: The law is well-established that beneficial ownership rights to property may be separated from legal title and held by different parties. This issue has been addressed by the United States Supreme Court, which held that “[t]he expression ‘beneficial use’ or ‘beneficial ownership or interest’ in property is quite frequent in the law, and means, in this connection, such right to its enjoyment as exists where the legal title is in one person and the right to such beneficial use or interest is in another, and where such right is recognized by law, and be enforced by the courts at the suit of such owner or of someone on its behalf.” *Montana Catholic Missions v. Missoula County*, 435 U.S. 561 (1978).**

**Windstream is unaware of Kentucky law expressly addressing the right of a party to transfer beneficial rights and interests to easements or rights of way while retaining legal title. However, Kentucky law has long recognized that property is comprised of a number of different rights that may be bundled together or held by different parties. *See, e.g., Kentucky Department of Revenue v. Hobart Manufacturing Company*, 549 S.W.2d 297, 299-300 (Ky. 1977); *Button v. Drake*, 195 S.W.2d 66, 69 (Ky. 1946) (Recognizing that property is not the thing itself, but the rights one has in the object). Under this framework, Kentucky Courts have recognized that “[u]ndoubtedly, beneficial interest and ownership interest are distinct and separate from each other.” *See Sadler v. Buskirk*, 2013 Ky. App. Unpub.**



**LEXIS 1005 \*8 (November 22, 2013). Windstream is simply transferring certain of its rights in the easements and rights of way, and immediately leasing them back from CSL. There is nothing in Kentucky law that prohibits a property owner from taking such action.**

c. Explain in detail the basis for your contention that “Windstream will transfer its beneficial rights and interests to CSL but [Windstream] will retain title” to rights of way currently owned by Applicants.

**RESPONSE: See Response to 1(a).**

d. Provide citations to and copies of Kentucky statutory, regulatory, and case law that supports your contention that “Windstream will transfer its beneficial rights and interests to CSL but [Windstream} will retain title” to rights of way.

**RESPONSE: See Response to 1(b).**

Witness to all of Question 1: John P. Fletcher

2. Refer to the response to Item 4 of Staff's First Request, which states that the contemplated transaction will have a "minimal" legal effect upon pole attachments and pole attachment rates currently charged by Applicants and included in the Applicants' current tariffs.

a. Explain in detail the basis for your contention that transferring legal title to the poles to CSL and then leasing the poles back to Windstream will have minimal legal effect upon pole attachments.

**RESPONSE: The only legal effect that the contemplated transaction will have upon pole attachments is that CSL will hold legal title to the poles. As set forth in Windstream's Response to Item 4 of the Staff's First Request, there will be no change in the nature, scope or manner of use of the poles, and third parties will continue to interact with the Applicants concerning all matters arising from these arrangements. Specifically, the Applicants will continue to be responsible for all of the following: (1) regulatory compliance regarding pole attachments; (2) receipt of revenue from pole attachment fees; (3) network maintenance and make-ready work associated with pole attachment requests; (4) NESC compliance; and (5) inspection and safety requirements.**

b. Provide Kentucky statutory, regulatory, and case law that supports your contention that the proposed transaction will have minimal legal effect upon pole attachments.

**RESPONSE: See Response to 1(b). Windstream is unaware of any Kentucky statutory, regulatory, or case law that addresses this issue specifically.**

c. Explain in detail the basis for your contention the transferring legal title to the poles to CSL and then leasing the poles back to Windstream will have minimal legal effect upon pole attachment rates.

**RESPONSE: The contemplated transaction will have no effect on pole attachment rates. The rates will remain tariffed following the closing of the transaction will remain subject to Commission review and approval.**

d. Provide Kentucky statutory, regulatory, and case law that supports your contention that the proposed transaction will have minimal legal effect upon pole attachments.

**RESPONSE: See Response to 1(b). Windstream is unaware of any Kentucky statutory, regulatory, or case law that addresses this issue specifically.**

Witness to all of Question 2: John P. Fletcher