

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

CMN-RUS, Inc.

Complainant

v.

Windstream Kentucky East, LLC

Respondent

RECEIVED

AUG 27 2018

PUBLIC SERVICE  
COMMISSION

No. 2018-00157

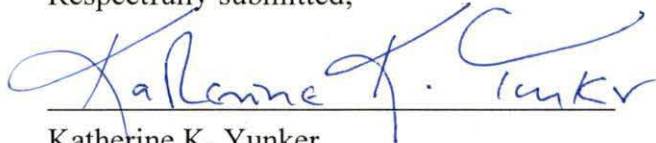
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**Response by CMN-RUS, Inc.  
to Commission Staff's First Request for Information**

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CMN-RUS, Inc. ("CMN"), herewith submits its responses to the Commission Staff's First Request for Information, in accordance with the Commission's scheduling Order issued August 7, 2018 (the "8/7/18 Order"). Signed, notarized verifications of their respective responses by the Response witnesses — Anita Larson and John Greenbank — appear after the Certificate of Service, and before the 1st tab of this Response. The undersigned counsel is responsible for any objections noted for a particular response.

Respectfully submitted,



Katherine K. Yunker

[kyunker@mmlk.com](mailto:kyunker@mmlk.com)

MCBRAYER, MCGINNIS, LESLIE &

KIRKLAND PLLC

201 East Main Street; Suite 900

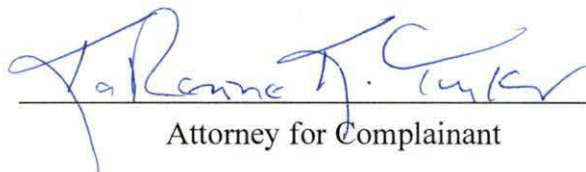
Lexington, KY 40507-1310

859-231-8780, ext. 1137

Attorney for CMN-RUS, Inc.


### CERTIFICATE OF SERVICE


I hereby certify that on August 27, 2018, pursuant to the Commission's 8/7/18 Order ¶2, a conformed copy of the foregoing has been served on the attorneys for Respondent by electronic mail or by hand-delivery to: Casey C. Stansbury <cstansbury@mrrlaw.com>, Tia J. Combs <tcombs@mrrlaw.com>; MAZANEC, RASKIN & RYDER CO.; 230 Lexington Green Circle, Suite 605; Lexington, KY 40503. I will also provide PSC Staff Counsel Benjamin Bellamy with a courtesy copy of this Response in the form served on the attorneys for Respondent.


  
\_\_\_\_\_  
Attorney for Complainant



STATE OF KANSAS )  
 )  
COUNTY OF JOHNSON )

  
Anita Larson

 TAMELA BRUNS  
My Appointment Expires  
July 8, 2020

  
Notary Public

My Commission expires:

DENISE L. UTLEY  
Resident of Vanderburgh County, IN  
Commission Expires: July 27, 2025  
Commission # 703332

### **Request**

1. Provide a copy of the franchise agreement with the Lexington-Fayette Urban County Government (Franchise Agreement) to offer cable television services to residential and business customers within the confines of Lexington and Fayette County referred to on page 2 of CMN's complaint. Identify and briefly describe all sections of the Franchise Agreement that impose a deadline on when CMN must take any action.

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### **Response**

Attached as CMN 00001-44 is the requested Franchise Agreement, signed on December 31, 2017, between the Lexington-Fayette Urban County Government ("LFUCG") and CMN, including the three exhibits:

- A. Ordinance No. 169-2017 (CMN 00005-41)
- B. Bid (CMN 00041)
- C. Resolution No. 745-2017 (CMN 00042-44)

The Franchise Agreement imposes many deadlines for action, such as deadlines for payment of amounts due (*e.g.* Ordinance §§ 9(c), 10(g), 10(h), 12(b)(2)), deadlines for provision of information and notices (*e.g. id.* §§ 8(f), 12(h), 12(k), 22(a)(1), 27(d), 31, 39), deadlines for curing defaults (*e.g. id.* §§ 8(g), 34(c)), deadlines for provision of security (*e.g. id.* §9(a)), deadlines for moving equipment (*e.g. id.* §12(c)), deadlines with respect to installation, repair, and other matters with respect to the provision of service (*e.g. id.* §25(c)).

With respect to deadlines pertaining to construction of CMN's cable system, refer to Section 15 of the Ordinance, which includes the deadline found in Section 15(b)

mandating that CMN's cable system must be technically capable of providing cable services within the Baseline Coverage Area (as defined in Section 1(c)) no later than four (4) years from the Effective Date in early December 2017. Also, please refer to Section 25 of the Ordinance, which imposes a deadline of compliance with various consumer service standards, generally requiring compliance with consumer service standards within two (2) years following the date that CMN starts physical construction of its cable system. Pursuant to the consumer service standards, CMN is required to open, operate, and staff a local office not only during normal office hours but also some evening and weekend hours.

## **FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** made and entered into this 31<sup>st</sup> day of December, 2017, by and between the, the Lexington-Fayette Urban County Government, a political subdivision of the Commonwealth of Kentucky (hereinafter "Lexington"), and CMN-RUS, Inc.

### **WITNESSETH:**

**WHEREAS**, by Ordinance No. 169-2017 adopted November 16, 2017, Lexington created a ten (10) year, non-exclusive franchise for a cable television system within the confines of the Lexington-Fayette Urban County Government; and

**WHEREAS**, by Invitation to Bid 171-2017, Lexington offered at bid a non-exclusive cable television franchise pursuant to Ordinance No. 169-2017; and

**WHEREAS**, by Resolution No. 745-2017 adopted December 5, 2017, Lexington accepted the bid of CMN-RUS, Inc. to acquire said franchise; and

**WHEREAS**, Lexington and CMN-RUS, Inc. have entered into this Franchise Agreement to memorialize the grant by Lexington to CMN-RUS, Inc. of said franchise subject to the terms and conditions reflected in Ordinance No. 169-2017.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of which are hereby acknowledged, Lexington and CMN-RUS, Inc. hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Ordinance No. 169-2017, which is attached hereto as Exhibit "A", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.
2. The bid of CMN-RUS, Inc. for said franchise, which is attached hereto as Exhibit "B", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.



3. Resolution No. 745-2017, which is attached hereto as Exhibit "C", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

4. Lexington has granted unto CMN-RUS, Inc. a non-exclusive franchise for a cable television system within the confines of the Lexington-Fayette Urban County Government, for a term of ten (10) years, subject to the provisions of the Ordinance No 169-2017.

5. The franchise memorialized in this Franchise Agreement shall commence January 1, 2018 , and shall expire as provided in the terms and provisions of Ordinance No. 169-2017.

6. CMN-RUS, Inc. does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this Franchise Agreement, and further to faithfully perform all acts required of it pursuant to said franchise.

7. This Franchise Agreement memorializes the agreement between the parties contained and embodied in the Ordinance No. 169-2017 and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

**IN WITNESS WHEREOF**, Lexington and CMN-RUS, Inc. have executed this Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

[Signatures on following page]

Lexington-Fayette Urban County Government, KY

BY: *Jim Gray*  
MAYOR

ATTEST:

*Math Maller*  
COUNCIL CLERK

CMN-RUS, Inc.

BY: *John A. Weber*

STATE OF Kentucky )  
COUNTY OF Johnson )

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by John Weber CFO, CMN-RUS, Inc. on this the 31 day of December 2017.

My commission expires:

July 8, 2020

*Tamela Bruns*  
NOTARY PUBLIC

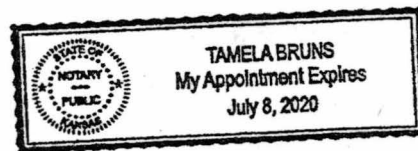


Exhibit List

- A Ordinance No. 169-2017
- B Bid
- C Resolution No. 745-2017

ORDINANCE NO. 169 -2017

AN ORDINANCE CREATING A TEN (10) YEAR, NON-EXCLUSIVE FRANCHISE FOR A CABLE TELEVISION SYSTEM WITHIN THE CONFINES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT SAID FRANCHISE PROVIDING FOR: FULL FINANCIAL AND SHAREHOLDER DISCLOSURE; INDEMNIFICATION BY THE FRANCHISE GRANTEE AND ADEQUATE INSURANCE COVERAGE; A \$50,000.00 LETTER OF CREDIT TO ENSURE FRANCHISE COMPLIANCE; PAYMENT TO THE GOVERNMENT; REQUIREMENTS FOR PROVIDING DATA, TESTING THE SYSTEM, AND MEETING MINIMUM OPERATIONAL STANDARDS; CONDITIONS OF STREET OCCUPANCY; USE OF POLES; MINIMUM CONSTRUCTION STANDARDS; MINIMUM REQUIREMENTS FOR EXTENDING THE SYSTEM; ACCESS TO COMMUNITY FACILITIES; PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS; EMERGENCY ALERT OVERRIDE; ANTENNA SWITCHES; TWO HOUR STAND-BY POWER; TESTING AND ANALYZING THE SYSTEM AND PROOF OF PERFORMANCE; ESTABLISHMENT OF CONSUMER SERVICES STANDARDS; ESTABLISHMENT OF STANDARDS FOR BILLING PRACTICES; ESTABLISHMENT OF A COMPLAINT PROCEDURE; REFUNDS TO SUBSCRIBERS FOR FAILURE OF SERVICE; RATE REGULATION; COUNCIL APPROVAL REQUIRED FOR A TRANSFER OF CONTROL OR ASSIGNMENT OF THE FRANCHISE; STANDARDS AND PROCEDURES ESTABLISHED FOR FORFEITURE OF THE FRANCHISE, ASSESSMENT OF PENALTIES AND VALUATION OF THE SYSTEM; FORECLOSURE AND RECEIVERSHIP PROVISIONS; RESERVING GOVERNMENT RIGHTS IN THE FRANCHISE; ASSURANCES OF NONDISCRIMINATION; PROTECTIONS OF SUBSCRIBER PRIVACY; ADMINISTRATIVE SUPERVISION OF THE FRANCHISE; GOVERNMENT ACCESS TO PROPERTY AND RECORDS.

WHEREAS, pursuant to Kentucky Constitution Section 164 and Kentucky Revised Statute 67.083, the Lexington-Fayette Urban County Government is authorized and empowered to award cable television franchises, and

WHEREAS, Section 621(a)(1) of the Communications Act of 1934 (the "Cable Act") prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services (47 U.S.C. § 541(a)(1)), and

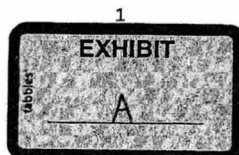
WHEREAS, the Federal Communications Commission ("FCC") in the FCC's Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2006), in *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992* ("FCC Order"), has found that new entrant providers of cable television service, "face 'steep economic challenges' in an 'industry characterized by large fixed and sunk costs,' without the resulting benefits incumbent cable operators enjoyed for years as monopolist in the video services marketplace," (FCC Order at 63) and

WHEREAS, the FCC's record indicates that "a competitive video provider who enters the market today is in a fundamentally different situation from that of the incumbent cable operator" because the new entrant must "win every customer from the incumbent" and thus does not have "anywhere near the number of subscribers over which to spread the costs." (FCC Order at 63), and

WHEREAS, the FCC has determined that its construction of Section 621(a)(1) "best serves the [Communications] Act's purposes of promoting competition and broadband deployment." (FCC Order at 43), and

WHEREAS, the FCC has expressly recognized that it is unlawful for a franchising authority "to refuse to grant a competitive franchise on the basis of unreasonable build-out mandates," (FCC Order at 43) and

WHEREAS, the FCC has found that "[b]uild-out requirements... impose significant financial risks on competitive applicants, who must incur substantial



construction costs to deploy facilities within the franchise area in exchange for the opportunity to capture a relatively small percentage of the market," (FCC Order at 43)

THEREFORE, BE IT ORDAINED BY THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL:

That this Ordinance be and hereby is adopted as the "Revised Competitive Cable Television Ordinance" for the Lexington-Fayette Urban County Government:

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## Section 1. DEFINITIONS

- (a) "Applicant" means a person or party which is applying for a new franchise. Grantees submitting proposals for franchise renewals shall not be considered Applicants.
- (b) "Basic Cable Service" shall have the meaning in this Ordinance as it is defined in Section 602(3) of the Communications Act of 1934, as it may be amended. Currently the definition is: any service tier which includes the retransmission of local television broadcast signals.
- (c) "Baseline Coverage Area" means an area comprised of seventy percent (70%) of the Dwelling Units in the Unserved Area.
- (d) "Cable Service" or "Cable Television Service" shall have the meaning in this Ordinance as it is defined in Section 602(6) of the Communications Act of 1934 as it may be amended. Currently the definition is: the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For avoidance of doubt, "Cable Service" or "Cable Television Service" shall not include any video programming streamed over the public Internet that may be available on the Cable System unless Section 602(6) of the Communications Act of 1934 is amended to include such video services or federal regulations or case law interpret said definition to include such video services.
- (e) "Cable System" or "Cable Television System" shall have the meaning in this Ordinance as it is defined in Section 602(7) of the Communications Act of 1934, as it may be amended. Currently the definition is: a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Federal Communications Act, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Communications Act, 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- (f) "Council" means the Lexington-Fayette Urban County Council.
- (g) "Commencement Date" means two (2) years following the date that Grantee starts physical construction of the Cable System in the Baseline Coverage Area.
- (h) "Communications Act" means the Communications Act of 1934, as amended from time to time (47 U.S.C. § 151 et seq.).
- (i) "Customer Premises Facilities" means any equipment including, but not limited to, fiber drops, customer premises equipment, splitters at fiber distribution points, ancillary equipment, conduit or cabling required to connect a residential home or business to Grantee's Cable System.
- (j) "Dwelling Units" means any residential home or business within any Unserved Area reaching the minimum density of at least twenty (20) dwelling units per cable mile. Density per cable mile shall be computed by dividing the number of Dwelling Units in the Unserved Area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the Dwelling Units in such area in accordance with Grantee's system design parameters. The total cable length shall exclude the drop cable

necessary to serve individual Subscriber premises. This definition does not include multi-dwelling units, residential communities or businesses that require a legal agreement allowing the Grantee to access private property for the purpose of providing Cable Services to residents or businesses.

- (k) "Effective Date" means the date of the passage of this Ordinance.
- (l) "Equipment and apparatus" means any manholes, underground conduits, poles, cables, boxes, wires, fixtures, conductors, or other facilities necessary, essential, used or useful to and operated by the Cable System.
- (m) "FCC" means the Federal Communications Commission, or its lawful successor.
- (n) "Franchise Fee" means for the purposes of this Ordinance any fee that may be imposed by the Government on Grantee as compensation for Grantee's use of public rights-of-way and roads or that is defined by Federal law as a franchise fee under Section 622(g) of the Communications Act (47 U.S.C. § 542(g)) or by Kentucky law under KRS 136.660., Subject to the terms of this Franchise, this definition also includes any fee that may be imposed by the Government on the Grantee as compensation for Grantee's use of public rights-of-way and roads or that is defined by Federal law as a franchise fee on revenue generated from services on Grantee's Mixed Used Facilities, including but not limited to broadband and telecommunications services. Use of this definition in this Ordinance is without prejudice to any rights Grantee or Government may have under Federal and Kentucky law as they may be amended.
- (o) "Government" means (unless otherwise specified) the Lexington-Fayette Urban County Government, an urban county government created pursuant to the Kentucky Revised Statutes, as it now exists in its present territorial limits, or may hereafter be extended or reduced, and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.
- (p) "Grantee" means a party to which a franchise under this Ordinance is granted by the Council, or its successors and assigns.
- (q) "Gross Revenue" means any and all revenue (as determined in accordance with GAAP) collected from Grantee's Subscribers within the Lexington-Fayette Urban County that is derived by the Grantee from the provision of Cable Service through Grantee's Cable System within the Lexington-Fayette Urban County. Gross Revenues include, but are not limited to, revenues from Subscriber rates for pay television, premium channels, video programming service tiers, advertising on video programming channels, Cable Service installations, Cable Service rebates, or commissions received from travel or home shopping services programming channels, commercial leased access of Cable Service channels, and all other Cable Services. Also, unless prohibited or preempted by either federal or state law. However, Gross Revenues does not mean any taxes or fees imposed and/or assessed by law or regulation on Subscribers (including state sales taxes) which a franchised cable operator is obligated to collect and pay in full to the applicable governmental authorities. Gross Revenues shall also exclude uncollected bad debt. Additionally, if at any time federal law allows the Government to impose a Franchise Fee on revenue generated from Grantee's Mixed Used Facilities, subject to the terms of this Franchise, Gross Revenues means any and all revenue (as determined in accordance with GAAP) collected from Grantee's Subscribers within the Lexington-Fayette Urban County that is derived by the Grantee from the provision services on Grantee's Mix-Use Facilities within the Lexington-Fayette Urban County, including, but not limited to, telecommunications or broadband services.
- (r) "Headend" means the control center of a Cable System, where incoming signals are received, amplified, converted, processed, and combined into a common cable, along with any origination cablecasting, for transmission to Subscribers.

- (o) "Mixed Use Facilities" means Grantee's facilities that are or would be used to provide Cable Service are or would also may be used to provide services other than Cable Service, such as, but not limited, to telecommunications and broadband service.
- (p) "Normal Business Hours" means 9 AM to 5 PM, Monday through Friday.
- (q) "Normal Operating Conditions" means, those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, utility company work (including made-ready work) on poles, vehicular accidents which involve utility equipment, severing of Cable System distribution plant by third parties, labor strikes, vandalism, accidents and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and scheduled maintenance of the Cable System.
- (r) "Person" or "Party" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (s) "Public Access Content" means the video/audio stream of scheduled public access programming distributed by a party that operates a public access studio.
- (t) "Road" shall mean the surface of and the space above and below any public road, street, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Government for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Government which shall, within their proper use and meaning entitle the Government and its Grantee to the use thereof for the purposes of installing or transmitting Cable System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable System.
- (u) "Shall" is mandatory, not merely directive.
- (v) "Subscriber" means a person who is legally receiving Cable Television Service from the Grantee. However, if at any time federal law allows the Government to impose a Franchise Fee on revenue generated from Grantee's Mixed Used Facilities, subject to the terms of this Franchise, Subscriber shall also mean a person who is legally receiving any service provided over the Mix Use Facility from the Grantee, including but not limited to broadband and telecommunications services.
- (w) "Substantial Completion" means completion of 80% of the Baseline Coverage Area.
- (x) "Unserved Area" means any area within the Urban Service Boundary of the Lexington-Fayette Urban County where a residential home or business does not have access to communications services delivered through a fiber to the premises network.
- (y) "User" means a party utilizing a Cable System channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

Section 2. FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE

The provisions of this Section 2 shall not apply to cable franchise renewals.

- (a) No new franchise will be granted unless all requirements of this Ordinance regarding financial, contractual, shareholder and system disclosure have been met.
- (b) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall provide access to all agreements and understandings, with any person, firm, group, association or corporation with respect to the ownership of this franchise and the proposed Cable System. This section shall include, but not be limited to, any agreements between local Applicants and national companies with respect to the ownership of this franchise.
- (c) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the Applicant.
- (d) Applicants, including parties with a controlling interest in the Applicant, shall provide access to public information with respect to the numbers of shares of stock, and the holders thereof.
- (e) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding other Cable Systems in which they hold an interest of any nature, including, but not limited to the following:
  - (1) locations of all other franchises and the dates of award for each location;
  - (2) estimated construction costs and estimated completion dates for each system where construction is incomplete as of the date of application;
  - (3) estimated number of miles of construction and number of miles completed in each system as of the date of this application;
  - (4) date for completion of construction as promised in the application for each system.
- (f) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding pending applications for other Cable Systems, including but not limited to the following:
  - (1) location of other franchise applications and date of application for each system;
  - (2) estimated dates of franchise awards;
  - (3) estimated number of miles of construction; and estimated construction costs.

### Section 3. BIDS PROCESS FOR RENEWALS & NEW APPLICANTS

- (a) All bids received by the Government will become the sole property of the Government.
- (b) Subject to applicable law, the Government reserves the right to reject any and all bids and waive all informalities and/or technicalities where the best interest of the Government may be served.
- (c) Bids must be sealed, and submitted at the time and place indicated in the request for proposals. Bids may be modified at any time prior to the opening of

the bids, provided that any modifications must be duly executed in the manner that the bid must be executed. No bid shall be opened or inspected before the public opening.

- (d) Before submitting a bid, each Party must (a) examine the Ordinance thoroughly, (b) familiarize itself with local conditions that may in any manner affect performance under the franchise, (c) familiarize itself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise, and (d) carefully correlate its observations with the requirements of the ordinance.
- (e) The Government may make such investigations as it deems necessary to determine the legal, financial and technical ability of each Party to perform under the franchise, and the Party shall furnish to the Government all such relevant information and data for this purpose as the Government may request. The Government reserves the right, consistent with the standards and procedures established in applicable law, to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the Government that such Party is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

#### Section 4. APPLICATIONS FOR NEW FRANCHISES

The provisions of this Section 4 shall not apply to renewal applications.

- (a) All applications received by the Government from the Applicants will become the sole property of the Government.
- (b) The Government reserves the right to reject any and all applications and waive informalities, and/or technicalities where the best interest of the Government may be served.



(c) All questions regarding the meaning or intent of the Ordinance or application documents shall be submitted to the Government in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Government as having received the application documents. The Government reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of applications will not be answered. Only replies to questions by written Addenda will be binding. All applications must contain an acknowledgment of receipt of all Addenda.

(d) Applications must be submitted at the time and place indicated in the application documents. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the Applicant's application must be executed.

(e) Before submitting its application, each Applicant must (i) examine the Ordinance and the application documents thoroughly, (ii) familiarize itself with local conditions that may in any manner affect performance under the franchise, and (iii) familiarize itself with federal, state and local laws, Ordinances, rules and regulations affecting performance under the franchise.

(f) The Government may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the franchise, and the Applicant shall furnish to the Government all such information and data for this purpose as the Government may request. The Government reserves the right to reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the Government that such Applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional applications will not be accepted.

(g) The Applicant shall prepare a technical report that describes the details of the Cable System construction plans. The technical report shall include the following details and be submitted and approved by the Government before construction:

A. Justification of the site selected, including:

- listing of television stations carried on the system
- location of microwave terminals or Headend
- location of local origination centers
- location of antenna site
- distance from antenna site to farthest area served by the system
- height of tower
- height of antenna site in relation to average terrain
- accessibility of antenna site all year round
- local construction restrictions on tower
- power availability for antenna site
- location of antenna arrays on the tower
- direction of desired signal sources
- analysis of potential sources of interference in the nearby environment.

B. System information, including:

- statement of adherence to construction standards

- drawings of the system
- description of local origination equipment
- identification of trunk and feeder cables.

#### Section 5. GRANT OF NONEXCLUSIVE AUTHORITY

- (a) Any franchise granted pursuant to this Ordinance shall confer to the Grantee the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the Roads now laid out or dedicated and all extensions thereof, and additions thereto within the territorial limits of the Lexington-Fayette Urban County, poles, wires, cables, underground conduits, manholes, and other conductors, processors, equipment and fixtures necessary or useful for the maintenance and operation within the territorial limits of the Lexington-Fayette Urban County of a Cable System for the origination, interception and distribution of television and radio signals and any electronic or optical signal permitted by law.
- (b) The right to use and occupy said Roads for the purposes herein set forth shall not be exclusive, and the Council reserves the right to grant a similar use of said Roads to any party at any time during the period of the franchise.
- (c) The Franchise granted herein is non-exclusive. The Government specifically reserves the right to grant, at any time, one or more additional franchises for a System in accordance with State and federal law.
- (d) In the event a future cable franchise overall provides a more favorable balance of benefits and burdens, than this Franchise, then this Franchise may be amended to provide such more favorable balance. The Government shall be reasonable in its determination regarding amendment of the Grantee's franchise to provide that balance. Before instituting any litigation with respect to this subsection (d), Grantee shall meet with the Government to seek to resolve the matter by mutual agreement and, if requested by the Government, engage in mediation. If a cable franchise is granted to a new entrant, pursuant to this subsection Grantee shall not abandon cable service in any area in which it provides cable service without the consent of the Government.
- (e) Upon the annexation or change of any territory to the Lexington-Fayette Urban County, the right and franchise hereby granted shall extend to the territory so annexed to the extent the Government has authority and all facilities owned, maintained or operated by the Grantee located within, under and over streets and roads of the territory shall hereafter be subject to all terms hereof. The Government shall provide written notice of any territorial annexation or change at least ninety (90) days in advance of such annexation or change.
- (f) Nothing in this Ordinance shall (i) abrogate the right of Grantee to perform any public works or public improvements of any description; (ii) be construed as a waiver of any codes or Ordinances of the Government or of the Government's right to require Grantee or any person utilizing the Cable System to secure the appropriate permits or authorizations for such use, or (iii) be construed as a waiver or release of the rights of the Government in and to the rights-of-way.

#### Section 6. DURATION AND ACCEPTANCE OF FRANCHISE

The renewal franchise and the rights, privileges and authority hereby granted to Grantee shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force and effect for an initial term of ten (10) years, provided that within thirty (30) days after the date of the passage of the franchise the Grantee shall file with the Clerk of the Lexington-Fayette Urban County Government its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to by, or on behalf of the Grantee, before a notary public or other office authorized by law to administer oaths. The Grantee and Government shall

have the right, upon mutual agreement, to extend the franchise for an additional term of five (5) years.

#### Section 7. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

- (a) The Grantee shall, at all times during the life of the franchise, be subject to all lawful exercise of the police power by the Government and to such reasonable regulation as the Government shall hereafter provide, provided such exercise or regulation is not inconsistent with the terms of the franchise granted by this Ordinance.
- (b) If federal or state law or regulations alter the required services, fees, costs, conditions or standards upon which the Cable System is to operate, this Ordinance and the franchise granted hereunder shall be subject to such law or regulations, consistent with the modified laws or regulations.
- (c) In addition to the terms and conditions of this Ordinance, Grantee shall be subject to all of the provisions of the Lexington-Fayette Urban County Government Code of Ordinances, including, but not limited to, Chapter 17C, and the Zoning Ordinance, as well as any future amendments to such ordinances which are generally applicable police-power time, place and manner regulations of the use of the rights-of-way.

#### Section 8. LIABILITY AND INSURANCE

General. The Liability and Insurance provisions of this franchise define the responsibilities of the Grantee to the Government. As used in these Liability and Insurance provisions, the term "Government" shall be defined as follows: "Government" means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

Indemnity. Grantee agrees to indemnify, hold harmless, and defend the Government from any and all losses or claims of whatever kind to the extent that they arise from or are alleged to have arisen, directly or indirectly from the execution, performance or breach of this franchise by Grantee, its employees, agents, servants, owners, principals, lessees, contractors and subcontractors, excluding negligence and misconduct on the part of the Government. This indemnity agreement shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive to the extent permitted by the applicable statute of limitations.

For purposes of this Indemnity provision:

- (1) The word "defend" includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at Grantee's expense, using an attorney selected by the Grantee and approved in writing by the Government which approval shall not be unreasonably withheld.
  - (2) The word "claims" includes, but is not limited to, claims, demands, liens, suits, and other causes of action of whatever kind.
  - (3) The word "losses" includes, but is not limited to: attorneys' fees and expenses; costs of litigation; court or administrative agency costs; judgments; fines; penalties; interest, all environmental cleanup and redemption costs of whatever kind; and any liability arising from death, injury or damage of any kind to any person, including employees and agents of Grantee, its servants, owners, principals, licensees, vendees, lessees, contractors and subcontractors or the Government, and damage to or destruction of any property, including the property of the Government.
- (a) Insurance Requirements. Grantee shall procure and maintain for the duration of the franchise the following insurance against claims for injuries to persons or

damages to property which may arise from or in connection with the performance hereunder by the Grantee:

(1) Commercial General Liability Insurance with:

- A. Limits of not less than \$5,000,000.00 for property damage.
- B. \$5,000,000.00 for personal bodily injury or death to any one person.
- C. \$5,000,000.00 for bodily injury or death aggregate per single accident or occurrence.
- D. Products-Completed Operations coverage.
- E. Personal and Advertising Injury coverage.
- F. Explosion, collapse & underground coverage.
- G. Grantee's certificate of insurance will list as additional insureds, "the Lexington-Fayette Urban County Government, its elected and appointed officials, employees, and, to the extent they have an insurable interest, its agents, boards, consultants, assigns, volunteers and successors in interest."
- H. Additionally, such insurance shall contain endorsement that Grantee's insurance coverage shall be primary insurance with respect to the Government. Any insurance or self-insurance maintained by the Government shall be in excess of the Grantee's insurance and shall not contribute to it.

(2) Comprehensive Automobile Liability Insurance providing limits of not less than \$5,000,000.00.

(3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes and Employers Liability Coverage equal to \$1,000,000 with endorsement that insurer shall agree to waive all rights of subrogation against Government for losses arising from work performed by the Grantee for Government.

(4) The Grantee shall abide by all local, state, and federal insurance regulations.

(5) The limits set forth above may be satisfied through primary and excess or umbrella coverages.

(b) Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in the Commonwealth of Kentucky.

(c) Evidence of Insurance. Prior to written acceptance of this Ordinance as required by Section 6, the Government is to be furnished Certificates of Insurance reflecting the above coverages, and Grantee agrees to provide the Government, the following:

- (1) Signed renewal Certificates for expiring policies;
- (2) New Certificates of Insurance if policies or carriers change during terms of this franchise, showing compliance with the above Insurance requirements; and
- (3) Copies of Insurance policies upon request.

(d) Right to Review, Audit and Inspect. Grantee understands and agrees that the Government may review, audit, and inspect any and all of Grantee's relevant records and operations to insure compliance with these Insurance requirements.

- (e) Safety and Loss Control. Grantee agrees to adhere to and comply with all Federal, State and Local safety and environmental laws, regulations and Ordinances. The Grantee shall provide all safeguards, safety devices and protective equipment necessary to protect the life, health, safety and property of all persons on the job site, the public and the owner as required by applicable Federal, State and local law.
- (f) Maintenance of Insurance. The insurance required in this Section 8 shall not be suspended, voided, canceled by the Grantee, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested to the Government, Division of Risk Management, 200 East Main Street, Lexington, KY 40507.
- (g) Definition of Default. Grantee understands and agrees that the failure to comply with any of these insurance, safety or loss control provisions (including with, among other things, Section 8(f)) within ten (10) business days after notice from the Government that the Grantee is not in compliance shall constitute a default under this Ordinance. The Government may elect, at its option, any single remedy or any combination of remedies, as available, including but not limited to, purchasing insurance and charging Grantee for any such insurance premiums purchased, or terminating the Grantee's franchise. The date of default with respect to Section 8(f) shall relate back to the date of breach, without regard to the date on which notice is provided by the Government.

#### Section 9. LETTER OF CREDIT

- (a) Within thirty (30) days after the grant and acceptance of this franchise, the Grantee shall arrange for, and shall deposit with the Government, a letter of credit from a financial institution in the amount of fifty thousand dollars (\$50,000.00). The letter of credit shall be used to insure the faithful performance by the Grantee of all of the provisions in this Ordinance; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Government having jurisdiction over its acts or defaults under this Ordinance and the payment by the Grantee of any claims, liquidated damages, liens and/or taxes due the Government which may arise by reason of the construction, operation or maintenance of the System.
- (b) The letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) during the entire term of the franchise, even if amounts are withdrawn pursuant to subsections (a) or (c) of this section.
- (c) If the Grantee fails, after receipt of thirty (30) days written notice, to pay to the Government any claims, liquidated damages, liens and/or taxes due the Government, or fails to repay the Government, within such thirty (30) days, any damages, costs or expenses which the Government is compelled to pay by reason of any act or default of the Grantee in connection with the Grantee's franchise; or fails, after thirty (30) days written notice of such failures by the Grantee to comply with any provision of this Ordinance which the Government reasonably determines can be remedied by demand on the letter of credit (subject to compliance with the procedure described in Section 34(c)), the Government may immediately request payment of the amount thereof, from the letter of credit. Upon such request for payment, the Government shall notify the Grantee of the amount and date thereof.
- (d) The rights reserved to the Government with respect to the letter of credit are in addition to all other rights of the Government, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Government may have.
- (e) The letter of credit shall contain the following endorsement:



"It is hereby understood and agreed that this letter of credit may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until thirty (30) days after written notice to the Government of surety's intention to cancel or not to renew."

#### Section 10. PAYMENT TO THE GOVERNMENT

- (a) During any period of time during which the Government opts to forego collecting a Franchise Fee in lieu of participating in the Multichannel Video Programming and Service Tax scheme under KRS 136.600 et seq., Grantee shall not be required to pay Franchise Fees. If at any time the Government opts to exercise its constitutional right to collect Franchise Fees, Grantee's first Franchise Fee payable under this chapter shall be paid to the Government sixty (60) days after the Government gives notice to Grantee that the Government has opted to exercise its constitutional right to collect Franchise Fees.
- (b) The excise tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law to the extent they are not Franchise Fees. Such payments shall be made at the times and in conformance with the requirements of the Cable Ordinance.
- (c) If the Government exercises its constitutional right to collect Franchise Fees, (i) Grantee shall pay Franchise Fees for the reason that the Roads to be used by the Grantee in the operation of its system within the boundaries of the Lexington-Fayette Urban County Government are valuable public properties, acquired and maintained by the Government at great expense to its taxpayers, and that the grant to the Grantee to use said Roads is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and (ii) the Franchise Fee shall be in an amount equal five percent (5%) of Grantee's Gross Revenue.
- (d) Notwithstanding anything to the contrary in this Franchise, Grantee shall not be obligated to pay any Franchise Fee to the Government unless such Franchise Fee is applied equally to all parties who have been granted a franchise to operate a Cable System by the Government.
- (e) Grantee agrees to timely pay all of the fees applicable to Grantee associated with Chapter 17C of the code of ordinances, including any future amendments. Nothing herein shall be deemed a waiver of any right of Grantee to challenge the imposition of any fee as inconsistent with applicable law.
- (f) Subject to Section 622 of the Communications Act and the Kentucky Franchise Law, the payment of the Franchise Fee shall be in addition to any other tax or payment owed to the Government by Grantee.
- (g) If any Franchise Fee is owed to the Government under subsection (c), above, it shall be payable quarterly to the Government and the Grantee shall file a complete and accurate report, signed by and certified as accurate by an officer of the Grantee, of all Gross Revenues received within the territorial limits of the Lexington-Fayette Urban County Government during the previous three month period, and said payment shall be made to the Government no later than forty-five (45) days after the expiration of the quarter when due. The Gross Revenue report from operations of the Grantee within the franchise area shall include: a schedule of Gross Revenue by category by month; a schedule of the number of Subscribers by category of service by month; and a schedule of Gross Revenue upon which the Franchise Fee is based.
- (h) If any Franchise Fee is owed to the Government under subsection (c), above, upon reasonable notice, the Government shall have the right during Normal Business Hours to inspect the Grantee's relevant revenue records at the

Grantee's office, the right to audit and to re-compute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the Government determines that Grantee has underpaid its fees to the Government in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the Government for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants and other consultants. Any additional amount due to the Government as a result of an audit or review shall be paid within the thirty (30) days following written notice to the Grantee by the Government, which notice shall include a copy of the audit report and copies of all invoices for which the Government seeks reimbursement.

- (i) In the event that any franchise payment or recomputed amount is not made to the Government on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.
- (j) The Government reserves the right to require the Grantee, to collect any consumer or other tax or other fee that may be lawfully imposed by the Government, the Commonwealth of Kentucky, or the federal government on Cable Services.
- (k) No acceptance of any payment by the Government shall be construed as an accord and satisfaction that the amount paid is in fact the release of any claim that the Government may have for further or additional sums payable under this Ordinance.

#### Section 11. NON-WAIVER

Except as provided in federal law, Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

#### Section 12. CONDITIONS OF ROAD OCCUPANCY

(a) General Grant of Right. The Grantee acquiring this franchise shall have the right and privilege of constructing, erecting, operating and maintaining a Cable System, equipment and apparatus, upon, through, along, under and over the Roads within the territorial limits of the Lexington-Fayette Urban County Government; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to said Government.

(b) Conditions.

- (1) Grantee must fully comply with the provisions of Chapter 17C of the code, including any future amendments. To the extent of any conflict between or among the provisions of this franchise and Chapter 17C of the code, this franchise shall apply.
- (2) When the Grantee enters upon any Road for the purpose of constructing, erecting, operating, maintaining and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the Roads in the same condition as when it entered the same for said purpose or purposes. To the extent required of other parties with facilities in the rights-of-way, all such repairs shall be maintained by the Grantee pursuant to the requirements of the Lexington-Fayette Urban County Government Code of Ordinances, including, but not limited to, Chapter 17C. In the event the Grantee fails, refuses or neglects to comply with the above provisions, the Government shall have the right, notwithstanding any other provision of this Ordinance,

after notice in writing having first been given to the Grantee, or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the Government by the Grantee within thirty (30) days from the date on which an itemized bill is presented to the Grantee.

- (3) In the construction or reconstruction or maintenance or removal of any of said equipment and apparatus, the Grantee shall have due regard for the rights of the Government and others, and shall not interfere with, or in any way injure the property of the Government or others, under, on, or above the ground. Said Grantee shall comply with all the laws of the Commonwealth of Kentucky and Ordinances of the Government as to placing lights, barricades, flags, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of Grantee's failure or neglect to comply with such Ordinances and laws. Work by the Grantee hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Roads.

(c) Government Changes.

- (1) Whenever the Government or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any Road or shall construct, reconstruct, repair, maintain or alter any other municipal public works (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the Grantee, after receiving thirty (30) days notice by the Government, to change, remove, relay and relocate its equipment and apparatus, poles, wires, cables, conduits and other fixtures, in the Road at its own expense so as to conform to the established grade or line of such Road and so as not to interfere with such municipal public works so constructed, reconstructed or altered.
- (2) The Grantee shall be given access to all Road plans and specifications in possession of the Government.
- (d) The Grantee shall, at the request of any Person holding a moving permit issued by the Government, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than ten (10) business days advance notice to arrange for such temporary wire changes.
- (e) The Grantee shall have the authority to trim trees upon and overhanging public Roads so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. Any trimming, removal or other disturbance of trees shall conform to all Ordinances, requirements and directives of the Government.
- (f) In all areas within the territorial limits of the Lexington-Fayette Urban County Government, where the cables, wires, and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground. Grantee shall be allowed to utilize micro-trenching technology and construction procedures for the placement of its facilities underground throughout the territorial limits of the Lexington-Fayette Urban County Government. Notwithstanding the foregoing, the Division of Engineering reserves the right to disapprove, which disapproval shall not be arbitrary, discriminatorily or unreasonably applied under the circumstances, the use of micro-trenching on a case-by-case basis by Grantee.
- (g) Micro-trenching. Subject to the following requirements, the Grantee shall have the ability to use micro-trenching construction procedures to install cabling in the Roads:

1. The Grantee's application to utilize micro-trenching construction procedures in the Roads shall be complete and meet all the requirements of the Lexington-Fayette Urban County Government Code of Ordinances, including, but not limited to, Chapter 17C (along with the Utility Regulation, collectively the "Construction Ordinances");
  2. The Grantee shall adhere to the micro-trenching construction procedures set forth in Appendix A(1);
  3. The Grantee's use of micro-trenching construction procedures will not adversely affect the health, safety or welfare of any person;
  4. For purposes of crossing roads, the Grantee shall limit its use of micro-trenching construction procedures to areas where the Grantee uses micro-trenching to install its mainline. For the avoidance of doubt, micro-trenching is different than cross street and directional boring. When cross street or directional boring, the Grantee may install its facilities at a depth of 18 to 24 inches below the pavement or surface;
  5. The Grantee shall comply with all reasonable guidelines adopted by the Government from time-to-time to govern micro-trenching construction in the Roads.
- (h) The Grantee shall provide plans and specifications for all construction within streets to the Government for its review at least 30 days prior to the start of construction unless otherwise agreed to by the Government and Grantee in a separate document governing construction procedures. Any generally required approval of the Government is necessary before construction commences. This provision shall apply to each construction sequence if the construction is accomplished in phases.
- (i) In addition to the provisions contained in this section, Grantee shall comply with all generally applicable local Ordinances pertaining to Road occupancy.
- (j) The Government acknowledges that the vast majority, if not all, of Grantee's facilities that are or would be used to provide Cable Service are Mixed Use Facilities. To the extent that such Mixed Use Facilities use or would use public rights-of-way and such use is also governed by an ordinance or written agreement other than this Ordinance, the provisions of this Section 12 shall not apply to Mixed Use Facilities.
- (k) Utility Easements. Pursuant to the Construction Ordinances, the Grantee is not required to obtain a permit or pay fees before installing aerial or underground facilities (including micro-trenching) in utility easements. The Grantee shall provide the Government notice of its activities through issuance of daily "Street Sheets" to the Government identifying where its crews will be working within the Urban Service Boundary the following day(s) and type of installation activity to be performed (e.g. installation of cable, boring, new pole placement, etc.). Notwithstanding the above, Grantee shall be responsible for complying with any other any other permitting requirements in the Construction Ordinances
- (l) Construction Activity. The Government shall use its commercially reasonable best efforts to process all construction permits and perform all inspections required for the Grantee's project in such a manner that the Grantee may complete up to 450,000 feet of underground and aerial construction a month. Such efforts may include, but are not limited to, adding more personnel to review permit applications and perform inspections. Such commitment is expressly conditioned upon the Grantee's complying with all applicable material provisions of this Ordinance, the Franchise and the Construction Ordinances.
- (1) The Grantee will issue daily "Street Sheets" to the Government identifying where its crews will be working and what type of activities will be performed within the Urban Service Boundary the following day(s). To inform residential consumers of the Grantee's construction

activities, Grantee shall perform the notification process set forth in Appendix A(2). The Grantee shall also work with the Government to integrate its residential customer notification process with the Governments' LexCall customer services processes. The Grantee shall not be required to communicate to the Government its activities with respect to customer service installations.

(m) Permitting Fees: The Grantee shall pay the following permitting fees to the Government:

- (1) \$100 if boring does not exceed 3" in diameter and if coring used for potholing does not exceed 6" in diameter, with the understanding that if coring restoration does not perform as intended then it reverts to surface cut requirements (\$250). Notwithstanding the provisions of this subsection, said borings shall qualify as surface cuts in all manners other than fee amount.
- (2) Micro-trenching qualifies as a surface cut (\$250).
- (3) Subject to Section 12(m)(1) and (2), all other permitting fees as set out in the Construction Ordinances.

**Section 13. ERECTION, REMOVAL AND COMMON USES OF POLES** (a) No poles or other wire-holding structures to be used exclusively for the provision of Cable Service and/or Mixed Use Facilities shall be erected by the Grantee without generally required prior approval of the Government with regard to need, location, height, type, and any other pertinent aspect. Notwithstanding the foregoing, the Division of Engineering may promulgate separate policies or regulations governing the placement of Grantee's poles or wireholding structures in the right-of-way and utility easements. However, no location of any pole or wireholding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Government determines that the public health, welfare and/or safety would be enhanced thereby.

(b) Poles. Subject to the following requirements, the Grantee shall have the ability to place poles in the Roads:

1. the Grantee's application to place the requested poles in the Roads shall be complete and meet all the requirements of the Lexington-Fayette Urban County Government Code of Ordinances, including, but not limited to, Chapter 17C (along with the Utility Regulation, collectively the "Construction Ordinances") and those set forth in Appendix A(3);
2. the Grantee is unable to use existing poles in the general area where it wishes to place the requested poles due to high make ready costs or extensive delays gaining access to the existing poles;
3. the requested poles shall be added to an existing pole line;
4. the requested poles shall be located on the same side of the road as an existing pole line;
5. the Grantee will utilize a standoff bracket to attach the Grantee's cable to the requested poles but shall not be allowed to box in other attachers on the poles unless such other attachers are already boxed in;
6. the Grantee agrees to make any reasonable accommodation requested by the Government to improve the aesthetics of the requested poles in the areas where they are to be located;
7. the location of the requested poles shall not adversely affect the health, safety or welfare of any person;
9. The Grantee shall make the requested poles available to any other communications provider on just and reasonable terms subject to loading requirements and space



availability. (c) If Grantee locates distribution facilities to be used exclusively for the provision of Cable Service where poles or other wireholding structures already existing for use in serving the Lexington-Fayette Urban County are available for use by the Grantee, but it does not make arrangements for such use, the Government may require the Grantee to use such poles and structures if it determines that the public health, welfare and/or safety would be enhanced thereby and provided the terms of the use, including the time frames to access the poles and structures, available to the Grantee are just and reasonable.

(d) Where the Government or a public utility serving the Government desires to make use of the poles or other wire-holding structures of the Grantee that are used exclusively for the provision of Cable Service, but agreement thereof with the Grantee cannot be reached, the Council may require the Grantee to permit such use for reasonable and proper consideration consistent with applicable law, if the Council determines that the use would enhance the public health, welfare and/or safety and if such use would not unduly interfere with Grantee's operations.

#### Section 14. CONSTRUCTION STANDARDS AND SPECIFICATIONS

- (a) The Grantee shall at all times comply with the following codes and standards to the extent that such codes and standards are applicable and consistent with local law: (i) National Electrical Code (published by National Bureau of Fire Underwriters)(however the Government reserves the right to require, by generally applicable ordinance, observation of greater standards of safety than said Code); (ii) Standards of Good Engineering Practices for Cable Measurements on Cable Televisions Systems (published by National Cable Television Association); (iii) standards of the Occupational Safety and Health Administration; and (iv) Standards for Steel Antenna Towers and Antenna Supporting Structures (published by the Engineering Department of the Electronic Industry Associations). To the extent that such codes and standards are inconsistent with other provisions of this franchise or with local law, the latter will govern.
- (b) All new construction and new installation shall comply with the National Electrical Safety Code (published by the National Bureau of Standards).
- (c) Installation and physical dimensions of any tower constructed for use in the Cable System shall comply with all appropriate Federal Aviation Agency regulations.
- (d) Any antenna structure in the Cable System shall comply, to the extent applicable, with Construction, Marking and Lighting of Antenna Structures, 47 C.F.R. § 17.1 et. seq.
- (e) The Grantee shall at all times use ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (f) The Grantee shall construct and operate the system and related facilities in accordance with all generally accepted related industry codes and standards that are applicable.
- (g) To the extent that such Mixed Use Facilities use or would use public rights-of-way and such use is also governed by an ordinance or written agreement other than this Ordinance, the provisions of this Section 14 shall not apply to Mixed Use Facilities.

#### Section 15. LINE EXTENSIONS

- (a) The Grantee is hereby authorized to provide Cable Services over a Cable System within the jurisdictional boundaries of the Government, including any areas annexed by the Government during the term of this Franchise. The parties acknowledge that Grantee is the not the first entrant into the wireline video market in the Government's jurisdictional boundaries. The Government

acknowledges the Grantee's position that as a new entrant, investment in and expansion of Grantee's Cable System should be driven by market success, and not a contractual requirement for ubiquitous coverage. The Grantee acknowledges that the Government desires wireline competition throughout the entire Government jurisdictional boundaries so all residents may receive the benefits of competitive Cable Services.

- (b) No later than four years from the Effective Date, Grantee's Cable System shall be technically capable of providing Cable Services as described in the Ordinance, without deployment of additional non-Customer Premises Facilities to all of the Dwelling Units in the Baseline Coverage Area.
- (c) Grantee shall not be obligated to expand its Cable System beyond the Baseline Coverage Area until 27.5% of the Dwelling Units in the Baseline Coverage Area purchase Cable Services from Grantee as reported annually to the Government pursuant to Section 39(d) of the Franchise ("Initial Subscription Threshold"). Once Grantee achieves the Initial Subscription Threshold, Grantee shall expand its Cable System beyond the Baseline Coverage Area so that an additional 5% of the Dwelling Units are able to receive its Cable Services ("Increased Coverage Area"). Thus, once Grantee extends its Cable System to cover all of the Increased Coverage Area, 75% of the Dwelling Units will be able to purchase Cable Services from Grantee. Grantee shall have two years from the close of the fiscal year in which the Initial Subscription Threshold was met to expand its Cable System so that all of the Dwelling Units in the Increased Coverage Area are capable of receiving Grantee's Cable Services. For avoidance of doubt, once the Initial Subscription Threshold is met, Grantee shall be obligated to extend its Cable Services into the Increased Coverage Area regardless of whether Grantee's penetration level in the Baseline Coverage Area falls below the Initial Subscription Threshold at any time thereafter.
- (e) Grantee shall not be obligated under this Franchise to expand Grantee's Cable System beyond the Increased Coverage Area until 27.5% of the Dwelling Units in the Increased Coverage Area purchase Cable Services from Grantee as reported annually pursuant to Section 39(d) of this Franchise ("Additional Subscription Threshold"). Once Grantee achieves the Additional Subscription Threshold, Grantee shall expand its Cable System so that an additional 5% of the Dwelling Units are able to receive Cable Services ("Additional Increased Coverage Area"). Thus, once Grantee extends its Cable System to cover all of the Additional Increased Coverage Area, 80% of the Dwelling Units will be able to receive Cable Services from Grantee. Grantee shall have two years from the close of the fiscal year in which the Additional Subscription Threshold was met to expand its Cable System so that all of the Dwelling Units in the Additional Increased Coverage Area are capable of receiving Grantee's Cable Services. For avoidance of doubt, once the Additional Subscription Threshold is met, Grantee shall be obligated to extend its Cable Services into the Additional Increased Coverage Area regardless of whether Grantee's penetration level in the Increased Coverage Area falls below the Additional Subscription Threshold at any time thereafter.
- (f) The process described in subsection (e) shall be repeated until Grantee is capable of providing service to 98% of the Dwelling Units in the Government ("Maximum Coverage Requirement"). For avoidance of doubt, under no circumstances shall subsection (e) be interpreted to require Grantee to be capable of providing Cable Service to more than 98% of the Dwelling Units in the Government.
- (g) Notwithstanding anything to the contrary in this Section 15, Grantee shall receive credit against future buildout requirements for any voluntary expansions of its Cable System within any Unserved Area beyond the requirement of this Section 15.
- (h) At such time as Grantee is required to meet a 98% coverage obligation, Grantee shall also be required to offer Cable Service to all Dwelling Units within five



thousand (5,000) route-feet of the nearest network aggregation point at which Cable Service is distributed, but shall not be required to relocate or add network aggregation points to so long as the 98% coverage obligation is met.

- (i) Throughout the construction of the Baseline Coverage Area and each subsequent expansion of Grantee's Cable System thereafter, Grantee shall offer Cable Services to Dwelling Units that fall below the median income level as measured by census block group data. During the term of this Franchise, Grantee shall work with the Government in good faith on ways to expand coverage of Grantee's Cable System to Dwelling Units that fall below the median income level.

#### Section 16. ACCESS TO COMMUNICATIONS FACILITIES AND PROGRAMMING

- (a) The Grantee shall provide TDD (or equivalent) equipment at the Grantee's office that will allow such subscribers to contact the Grantee for any reason relating to the system.
- (b) All television signals transmitted on the cable system shall include any associated closed captioning information for the hearing impaired provided by the programming originator and DVR equipment provided by the Grantee shall be capable of recording all television signals transmitted on the cable system which include associated closed captioning information for the hearing impaired.

#### Section 17. PUBLIC EDUCATIONAL AND GOVERNMENTAL (PEG) CHANNELS

- (a) The Grantee shall dedicate and activate at no cost to the Government channels for the carriage of non-commercial public, educational and governmental access which shall be available to all subscribers served by the Cable System as follows:
  - (1) one (1) full-time public access channel;
  - (2) one (1) full-time government access channel (herein after referred to as "LEX TV");
  - (3) one (1) full-time access channel for the Fayette County School system;
  - (4) one (1) full-time access channel for the Fayette County Library; and
  - (5) two (2) full-time access channels for the University of Kentucky;
- (b) All channels designated for PEG access purposes shall be available for PEG access programming on a 24-hour basis subject to the provisions of this section. Neither the Grantee nor the Government shall engage in any program censorship or other control of the content of the access programming on the cable system, except as otherwise permitted or required by law.
- (c) Public Access Channel Interconnection.
  - (1) The Government acknowledges that it is in the public interest for all providers of Cable Service in its jurisdiction to offer a public access channel with the same programming and programming schedule so as to eliminate the need for duplicative production and to ensure consistent and predictable programming schedules between what may be multiple providers of Cable Service within the jurisdiction.
  - (2) To the extent that Grantee does not operate a public access studio of its own, Grantee shall be obligated to make commercially-reasonable efforts to obtain, at Grantee's own expense, Public Access Content from a party that operates a public access studio, to the extent that a party does so.
  - (3) To the extent that Grantee's commercially-reasonable efforts to obtain such content are unsuccessful, Grantee's obligation to provide a public

access channel pursuant to Section 17(a) shall be deemed to have been fulfilled, subject to the following:

- (A) Prior to providing Cable Service without a public access channel, Grantee must have engaged in no less than three (3) months of commercially-reasonable efforts to secure access to the Public Access Content. Such period may have been completely prior to the Effective Date.
  - (B) Commencing on the Effective Date or in the first calendar month in which Grantee offers Cable Service without a public access channel, no less than once per calendar month or within ten (10) business days of written request, but no more frequently than twice in any calendar month, Grantee must provide the Government a written description of commercially-reasonable steps that it has taken in attempting to secure access to the Public Access Content. Grantee's continuing obligation to engage in such commercially-reasonable efforts shall expire six (6) months after beginning to provide Cable Service, although Grantee shall be obligated not to unreasonably refuse a commercially-reasonable offer from a party that operates a public access studio in a manner that would be contrary to Sections 17(c)(4)(A) and (B).
  - (C) For avoidance of doubt, Grantee shall be deemed to be engaging in commercially-reasonable efforts to obtain the Public Access Content during periods in which the Grantee is awaiting provisioning of necessary facilities by a party that provides a public access channel within the Government at the time.
- (4) For purposes of this Section 17(c), Grantee shall not be considered to have been engaged in commercially-reasonable efforts under any of the following conditions:
- (A) It is unwilling to reimburse the party that operates a public access studio no less than annually for a share of reasonable actual public access studio, program processing, and program scheduling costs (which may include an allocation of staffing and overhead) attributable to the creation and processing of Public Access Content based on a reasonable estimate of Grantee's share of the wireline video market in the Government for each of the period of time to which such payment pertains.
  - (B) It is unwilling to pay market-based retail rates for video signal transport facilities reasonably necessary for the Public Access Content to be delivered to Grantee by the party operating a public access studio should such party be unwilling to permit Grantee to acquire the Public Access Content at the Grantee's premises.

#### Section 18. EMERGENCY ALERT OVERRIDE AND CHANNEL

- (a) The Grantee shall comply with applicable Federal and Kentucky law and regulations regarding the Emergency Alert System and, to the extent not consistent therewith, shall incorporate into its cable television system the capability which will permit the Government, in times, of emergency, to override, by remote access, the audio of all channels simultaneously.
- (b) The availability of this service is provided for the benefit of the community and neither the Government nor the Grantee nor any of their agents, employees, or officers shall be liable in any manner for failure to use or for misuse of the override system.

As provided in applicable law, the Grantee shall cooperate with the Government in the use and operation of the emergency alert override system.

Section 19. ANTENNAS AND ANTENNA SWITCHES

The Grantee shall not, as a condition to providing Cable Television Service, require any Subscriber, or potential Subscriber, to remove any existing antenna for the receipt of over-the-air television signals.

Section 20. STANDBY POWER

The Grantee shall install and maintain equipment capable of providing two (2) hours standby power for the headends.

Section 21. PROOF OF PERFORMANCE TESTING

(a) Tests and Measurements Generally. To the extent Grantee's Cable System is subject to the provisions of 47 C.F.R. 76.609, Grantee shall perform tests and measurements to ensure compliance with technical standards in a manner that is consistent with the provisions of 47 C.F.R. 76.609, et seq., to the extent applicable and as amended from time to time.

(b) Government's Rights.

- (1) When there have been similar complaints made, or where there exists other evidence, which, in the reasonable judgment of the Government, casts doubt on the system's compliance with applicable FCC technical standards or any of the standards contained in this Ordinance, the Government shall have the right and authority to compel the Grantee to produce copies of the reports of testing performed to comply with Section 21(a) above with respect to the performance of the Cable System of the Grantee or to test, analyze and report on the performance of the system. Such test or tests shall be made, and the reports of such test or tests shall be delivered to the Government as required in Section 22.
- (2) The Government's right under this provision shall include, but not be limited to, requiring tests, analyses, and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the Government has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard Cable Service.
- (3) Said tests and analyses shall be supervised by a registered professional engineer, not on the permanent staff of the Grantee and selected jointly by the Government and the Grantee. The aforesaid person shall sign all records of special tests and forward to the Government such records with a report interpreting the results of the tests and recommending actions to be taken by the Government. Any tests or measurements required by the Government to be taken pursuant to this Section should be reported to the Government within fourteen (14) days after such tests or measurements are performed. Such report shall include the following information: the nature of the complaint which precipitated the special tests; what system component was tested, the equipment used and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved.
- (4) The costs of testing required under this Franchise shall be borne by Grantee if the tests demonstrate the Grantee is not in compliance with applicable FCC standards. Otherwise, the cost shall be borne by the Government.

Section 22. PROOF OF PERFORMANCE RECORDS

- (a)(1) The results of all tests and measurements required to be taken by the

Grantee in Section 21 of this Ordinance shall be delivered to the Government within thirty (30) days after such tests or measurements are performed upon request.

(a)(2) Upon request, the Grantee shall prepare a technical report that describes details of any initial cable system construction plans as described in this section. The technical report shall include the following details and be submitted and approved by the Government before construction:

A. Justification of the site selected, including:

- i. listing of television and FM radio stations carried on the system
- ii. location of microwave terminals
- iii. location of local origination centers
- iv. location of antenna site
- v. distance from antenna site to farthest area served by the system
- vi. height of tower
- vii. height of antenna site in relation to average terrain
- viii. accessibility of antenna site all year round
- ix. local construction restrictions on tower
- x. power availability for antenna site
- xi. location of antenna arrays on the tower
- xii. direction of desired signal sources
- xiii. analysis of potential sources of interference in the nearby environment.

B. System information, including:

- i. statement of adherence to construction standards
- ii. as-built drawings of the system
- iii. description of local origination equipment
- iv. signal level readings for all active channels at all amplifier locations, trunk input and output, and bridge output
- v. identification of trunk and feeder cables
- vi. calculations of system temperature capabilities.

(b) Should any of the following occur, the Grantee must notify the Government with particulars:

- (1) addition to, deletion of, or change in channel position of a channel;
- (2) change in location of headend; and
- (3) interconnection with other cable systems.

**Section 23. PERFORMANCE EVALUATION SESSIONS**

(a) The Government may hold performance evaluation sessions after providing

written notice to Grantee no less than thirty (30) days prior to such evaluation sessions. All such evaluation sessions shall be open to the public.

- (b) Special Evaluation Sessions. Special evaluation sessions may be held at any time during the term of the franchise at the request of the Government or the Grantee.
- (c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice.
- (d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to: service; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC rulings; and line extension policies.
- (e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the Lexington-Fayette Urban County, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

#### Section 24. OPERATIONAL STANDARDS

- (a) The Grantee shall put, keep, and maintain all parts of the Cable System in good condition throughout the entire franchise period.
- (b) Subject to the terms of Section 15, upon the request for Cable Service by any person located within the franchise territory, the Grantee shall, within 30 days, furnish the requested Cable Service to such person.
- (c) The Grantee shall render efficient service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum Cable System use.
- (d) Grantee shall not allow its cable or other technical equipment to materially interfere with television reception of persons not served by Grantee, nor shall the Cable System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Lexington-Fayette Urban County Government.
- (e) The Grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this Ordinance.
- (f) If a subscriber requests a digital video recorder ("DVR") from the Grantee, the DVR shall be fully operational.

#### Section 25. CONSUMER SERVICE STANDARDS

- (a) Consumer Service Standards Generally. Unless another time frame is expressly set forth below, commencing on the Commencement Date, the customer service standards set forth in this Section 25 shall apply to Grantee. Throughout the term of this franchise, at Grantee's request, the Government and Grantee shall meet from time-to-time to discuss proposed changes to and/or the continuing need for the customer service standards set forth in this Section 25. While considering any proposed changes and/or the continuing applicability of such customer service standards, the Government shall consider in good faith Grantee's customer service record, competition in the marketplace, customer service trends and new customer service technologies.
- (b) Office Hours and Telephone Availability.

- (1) Knowledgeable, qualified, company representatives shall be available to

respond to customer telephone inquiries Monday through Saturday during normal business hours. Telephone inquiries after normal business hours, if not answered by company representatives, shall be answered by automated equipment. Additionally, based on community needs, Grantee shall staff telephones for supplemental hours on weekdays and/or weekends.

- (2) Commencing no later than the Substantial Completion of the Cable System, under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, and the time required to transfer the call, shall not exceed thirty (30) seconds. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on an annual basis.
  - (3) Under Normal Operating Conditions, the customer shall receive a busy signal less than three percent (3%) of the total time that the Grantee's office is open for business.
  - (4) Grantee shall maintain a customer service office within the Lexington-Fayette Urban County capable of accepting payments, adjusting bills, and responding to other service concerns. The customer service office shall be open at least between 9:00 am and 7:00 pm Monday through Friday and 9:00 am and 4:00 pm on Saturday, excluding holidays. Grantee shall operate a call center that can set up installation appointments, resolve complaints and respond to technical service calls and/or technical service e-mails.
  - (5) Customers who are not satisfied after speaking with an initial customer service representative may ask to speak with a supervisor.
  - (6) Grantee shall permit customers to return cable equipment by U.S. mail, UPS or similar delivery method at the Grantee's expense and shall advise customers of this option when customers inquire about returning equipment.
- (c) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following four standards will be met no less than 95% of the time measured on an annual basis.
- (1) Commencing no later than the Substantial Completion of the Cable System, standard installations shall be performed within seven business days after an order has been placed. "Standard installations" are up to 150 feet from the existing distribution system. Subscriber service representatives shall appropriately identify themselves with Grantee-issued picture identification and, upon request, means of verification, before entering the property.
  - (2) Excluding those situations beyond the control of the Grantee, the Grantee shall respond to service interruptions promptly and in no event later than 24 hours. Other service problems will be responded to within 36 hours during the normal work week.
  - (3) Subscribers experiencing service outages for which Grantee or its equipment is responsible shall be credited with one day's service for each day during which the subscriber experiences an outage of four or more hours upon request.
  - (4) The appointment window alternatives for installations, service calls, and other installation activities will be either a specific time or a maximum four-hour time block. Additionally, based on community needs, the Grantee shall schedule supplemental hours during which appointments can be set.

- (5) If at any time an installer or technician is running late, an attempt to



contact the customer shall be made. The appointment may be rescheduled as necessary at a time which is convenient for the customer.

(6) All service technicians and installers shall be appropriately trained.

(d) Grantee shall comply with FCC customer service standards. In the event of an inconsistency between FCC customer service standards and the terms of this Franchise, the Franchise shall control.

(e) Grantee shall designate an employee who shall serve as ombudsman whom the City may contact in order to resolve any outstanding customer service issues. Grantee shall provide to the City the email address and individual business telephone number for such employee.

#### Section 26. COMPLAINT PROCEDURE

(a) Government Official Responsible. The Office of the Mayor is designated by the Government as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(b) Subscriber Notice of Complaint Procedures. The Grantee shall establish procedures for receiving, acting upon, and resolving Subscriber technical, customer service, Cable Service, and billing complaints. The Grantee shall furnish a notice of such procedures to each Subscriber at the time of initial subscription to the system as required by Federal regulations.

(c) Complaint Records. The Grantee shall maintain a written record or "log", listing date and time of written customer technical, customer service, Cable Service, and billing complaints, describing the nature of the technical, customer service, Cable Service, and billing complaints and when and what action was taken by the Grantee in response thereto; such record shall be kept at Grantee's local office, for as long as business needs require (but for not less than two (2) years), and shall be available for inspection by the Government during Normal Business Hours. Nothing herein shall require Grantee to make available any personally identifiable information or other information which Grantee may not disclose under applicable law.

(d) Repetition of Similar Complaints. When there have been similar complaints made, which, in the judgment of the Government cast doubt on the reliability or quality of Cable Service, the government shall have the right and authority to compel the Grantee to test, analyze and report on the performance of the system pursuant to the special testing procedures enumerated in Section 21 of this Ordinance.

(e) Upon request from Subscriber, Grantee shall respond in writing regarding any resolution of Subscriber's complaint.

#### Section 27. BILLING PRACTICES

(a) Each subscriber bill shall itemize the package of services, additional outlets, pay-per-view services, additional services, and clearly state the charge for each.

(b) Each bill shall clearly state (1) the due date for payment; (2) the amount of late payment fees; and (3) a telephone number for billing inquiries.

(c) Upon initial installation, and at least once annually, and at such times as there is a change in the information, each subscriber shall receive written notice of (1) all equipment and services available and the rates/charges for each, including but not limited to the Basic Cable Service rate; (2) billing and complaint procedures, including addresses and telephone numbers where Subscribers may make billing inquiries and/or complaints; (3) notice that complaints not satisfactorily handled by the Grantee may be referred to the Government (telephone number must be provided); (4) availability of parental lock-out devices; and (5) written instructions on how to use the cable service.

- (d) The Government and the subscribers are to be notified of rate changes or channel changes at least thirty (30) days in advance as required by applicable law.
- (e) Grantee shall not charge Subscribers for any services they have not affirmatively requested.
- (f) Upon request from Subscriber, Grantee shall confirm in writing regarding any agreements or bill modifications made over the phone.

Section 28. REFUNDS TO SUBSCRIBERS AND USERS

- (a) If the Grantee fails to provide Cable Service to a Subscriber, the Grantee shall, after being afforded a reasonable opportunity to provide the Cable Service, refund all deposits or advance charges paid for the service in question by said Subscriber promptly. This provision does not alter the Grantee's responsibility to Subscribers under any separate contractual agreements the Grantee might have with Subscribers or relieve the Grantee of liability for damage that might result to the Government or any Subscriber because of the Grantee's failure to provide a service as promised.
- (b) If any Subscriber terminates, for personal reasons, any monthly service prior to the end of a prepaid period, a pro-rata portion of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by the Grantee.

Section 29. FAILURE TO PROVIDE SERVICE AS PROMISED

Failure to provide the Cable Services outlined in this Ordinance shall be deemed a material breach of this ordinance for which the provisions of Section 34 shall apply.

Section 30. CABLE RATES AND RATE REGULATION

- (a) The Grantee shall provide a copy of its current rate schedule to the Government.
- (b) The Government reserves the right to regulate rates for Cable Services to the fullest extent permitted by law and in accordance with such law.
- (c) The Grantee shall provide information regarding its basic Cable Service rate on its website.

Section 31. DISCONNECTION

- (a) No disconnection shall occur for at least thirty (30) days after the due date of said monthly fee or charge. The thirty (30) day period shall include ten (10) days written notice to the delinquent Subscriber of the intent to disconnect.
- (b) After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, the Grantee shall promptly reinstate the Subscriber's Cable Service.

Section 32. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED: BILLING PRACTICES

- (a) The Grantee shall not, as to rates, charges, service, Cable Services facilities, rules, regulations, or in any other respect, make or grant any illegal preference or advantage to any party, nor subject any party to any illegal prejudice or disadvantage; provided, however, that this section shall not prohibit promotional activities of the Grantee or the provision of free service to employees of Grantee.
- (b) Unless otherwise provided in this franchise, Grantee shall not require payment for Cable Services more than ninety (90) days in advance.

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- (c) The Grantee shall make Cable Services available to persons with disabilities as provided by applicable law. Grantee shall provide telecommunication devices for the deaf (TTY) and shall disseminate information on the cost and availability of closed captioning equipment for the hearing impaired and such other services to persons with disabilities as required by applicable law.

**Section 33. TRANSFER OF CONTROL/ASSIGNMENT**

- (a) No transfer of control or assignment shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition, without prior notice to and approval by the Council which shall not be unreasonably refused. The notice shall include full identifying particulars of the proposed transaction, and the council shall act by resolution. The Council shall have one hundred twenty (120) days within which to approve or disapprove a transfer of control or assignment, if no action is taken within such one hundred twenty (120) days; approval shall be deemed to have been given.
- (b) In making a determination on whether to grant an application for a transfer of control or an assignment, the Council may consider the financial, technical and other qualifications of the transferee (assignee) to operate the system; whether the incumbent cable operator is in compliance with this ordinance and, if not, the proposed transferee's (assignee's) commitment to cure such noncompliance and any other criteria allowed by applicable law.
- (c) The consent or approval of the Council to any assignment, lease, transfer, sub-lease, or mortgage of the Grantee shall not constitute a waiver or release of the rights of the Government in and to the streets.
- (d) For the purposes of this section the term "control" is not limited to majority equity ownership, but includes actual working control in whatever manner exercised.
- (e) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty percent (50%) of the voting interests of the Grantee.
- (f) A mortgage or pledge of the cable system equipment of any part thereof or a leasing by a Grantee from another person of said cable system equipment or part thereof for financing purposes or otherwise shall be made only with prior approval of the Council and shall be subject and subordinate to the rights of the Government under this ordinance or applicable law. For purposes of this subsection, "cable system equipment" means equipment used exclusively for the provision of Cable Service within the jurisdiction of the Government that is also valued at or more than a cumulative \$10,000,000.00, and is not used to support Cable Systems outside of the jurisdiction of the Government.

#### Section 34. FORFEITURE OF FRANCHISE

(a) Forfeiture. In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:

- (1) Violates any material provision of the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect;
- (2) Attempts to evade any material provision of the franchise or practices any fraud or deceit upon the Government;
- (3) Knowingly makes a material misrepresentation of any fact in the proposal for renewal, or negotiation of the franchise; or
- (4) Willfully fails to restore Cable Service following ninety-six (96) or more consecutive hours of interrupted service, except when approval of such interruption is obtained from the Government.

(b) Penalties. Penalties shall be recoverable from Grantee as follows:

- (1) For failure to extend the system as required by Section 15: five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (2) For failure to provide data and reports as required by Section 39: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (3) For failure to provide insurance as required by Section 8: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (4) For failure to provide a letter of credit as required by Section 9: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (5) For failure to provide PEG access channel(s) as required by Section 17: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (6) For failure to comply with the operational standards following the Council's resolution directing Grantee to make improvements pursuant to Section 24: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (7) For failure to test, analyze, and report on the performance of the system following the reasonable request of the Government pursuant to Section 21 and 22: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (8) Failure to meet the customer service standards of Section 25: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (9) For failure to comply within thirty (30) days of any Council resolution directing compliance with any other provision of this ordinance: five hundred dollars (\$500.00) per day or part thereof that the violation continues.

(c) Forfeiture and Penalties Procedure.

- (1) Prior to terminating the Franchise under subsection (a) or imposing a penalty under subsection (b), the Government shall make a written

demand that the Grantee comply with the provision of the Franchise or rule, order or determination made pursuant to the Franchise with which the Government believes Grantee is not in compliance and explain the basis for such belief. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Government may place a request for termination of the franchise or imposition of penalties upon a regular Council meeting agenda. The Government shall cause to be served upon Grantee, at least thirty (30) days prior to the date of such Council meeting, a written notice of intent to request such termination or penalties and the time and place of the meeting, legal notice of which shall be published in a newspaper of general jurisdiction within the confines of the Lexington-Fayette Urban County.

- (2) The Council shall consider the request of the Government at an open meeting and shall hear any person interested therein, including Grantee and any persons produced by Grantee, and shall determine in its discretion, whether or not any violation by the Grantee was with just cause. Grantee shall be permitted to have a transcript of the meeting made at Grantee's cost.
  - (3) If such violation by the Grantee is found to have been with just cause, the Council shall direct the Grantee to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.
  - (4) If the Council determines such violation by the Grantee was without just cause, then the Council may, by resolution, declare that the franchise of the Grantee shall be terminated and forfeited as provided in subsection (a) or impose penalties as provided in subsection (b) unless, in either case, there is compliance by the Grantee within such period as the Council may fix which shall be not less than thirty (30) days.
- (d) Notwithstanding any other provisions of this Franchise, Grantee shall not be liable or subject to forfeiture, penalties or any other sanction for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Ordinance due to strike, unavailability of materials, or equipment, war or act of war (whether an actual declaration of war is made or ~~not~~ ~~insurrection~~, riot, civil disturbance, sabotage or vandalism, customer tamper ~~reference~~, act of public enemy, accident, fire, flood, or other events, ~~to the~~ ~~such~~ causes or other events are beyond the control of the Grantee
- (e) Grantee reserves all rights to seek review ~~of~~ any decision by the Council under this Section in an appropriate court.
- (f) In the event of revocation, the Grantee shall have two years from the date on which it ceases operations to remove, at its own expense, all portions of its cable television system from all streets within the confines of the Lexington-Fayette Urban County, and shall restore said streets to a condition reasonably satisfactory to the Government within such period of time.

#### Section 35. FORECLOSURE

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall immediately notify the Government of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of Section 33 of the ordinance, governing the consent of the Council to such change in control of the Grantee, shall apply.

#### Section 36. RECEIVERSHIP

The Council shall have the right to cancel this franchise one hundred and twenty (120)

days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

- (1) Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and
- (2) Such receiver or trustee, within said one hundred and twenty (120) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the Grantee.

#### Section 37. GOVERNMENT RIGHTS IN FRANCHISE

- (a) In the event that the Council terminates this franchise pursuant to appropriate provisions of this ordinance, the Government shall have the right to purchase any portions of the Cable System that are used exclusively for the provision of Cable Service ("Cable-Exclusive System") at a price not to exceed its then fair market value. In determining the fair market value of the Cable System, bona-fide third party offers and/or the original cost of all tangible and intangible property, as well as the salvage value, the book value, the replacement cost, cash flow, and other factors may be considered. Under no circumstances shall any valuation be made for "goodwill" or any right or privilege granted by the franchise.
- (b) Continuity of Service Mandatory. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the system, or the Council terminates this franchise, or the Council elects to purchase the Cable-Exclusive System, the Grantee shall use reasonable commercial efforts to ensure that all Subscribers receive continuous, uninterrupted service. In the event of purchase by the Government or a change of Grantee, the current Grantee shall cooperate with the Government to operate the Cable-Exclusive System for a temporary period in maintaining continuity of service to all Subscribers.
- (c) The right is hereby reserved to the Government to ~~in addition to the provisions contained herein and in existing ordinances~~ in addition to the provisions contained herein and in ~~existing~~ ordinances, such additional regulations as it shall find necessary in exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
- (d) The Government shall have the right to make such inspections during Normal Business Hours it shall find necessary to insure compliance with the terms of the franchise and other pertinent provisions of law.
- (e) The Government shall have the rights upon reasonable notice and during normal business hours, to inspect the books, records, maps, plans, and other like materials of the Grantee in order to evaluate Grantee's compliance with the terms of the Franchise.
- (f) At the expiration without right of renewal of the term for which the franchise is granted, or upon its termination and cancellation, as provided for herein, the Government shall have the right to require the Grantee to remove at its own expense all portions of the Cable-Exclusive System from all streets within the confines of the Lexington-Fayette Urban County.
- (g) In the event the Grantee fails to operate the cable television system for five (5) consecutive days without prior approval of the Government, except for strikes, acts of God, or other circumstances beyond the control of the Grantee, the Government, its agent or contractor, shall have the right to operate the portions



of the Cable System that are also part of the Cable-Exclusive System until such time that the Grantee again operates the system or until a new operator is selected, in the event of revocation. If the Government is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Government for all costs or damages that are the result of the Grantee's failure to perform.

**Section 38. VALUATION OF THE SYSTEM: MEDIATION**

- (a) It is the intent of the Government to provide for the orderly resolution of any controversy or dispute between the Grantee and the Government arising out of the valuation of the Cable-Exclusive System in the event that the Government elects to purchase the system under Section 37(a) of this Ordinance.
- (b) Any mediation under this section shall not be the first resort to resolve the controversy or dispute between the Government and the Grantee, but shall be undertaken only after reasonable time and full effort to reach agreement by negotiation.
- (c) Any controversy or dispute regarding the valuation of the system under Section 37, upon the election of either the Grantee or the Government, shall be submitted to non-binding mediation with a mediator selected by mutual agreement.
- (d) The fee of the mediator selected shall be borne equally between the Grantee and the Government.

**Section 39. REPORTS AND FILINGS**

- (a) Copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction respect to any matters regarding cable television operations authorized pursuant to the franchise, shall be submitted to the Government upon thirty (30) days written request. In so requesting, the Government shall either permit Grantee to fulfill such request by either providing a single electronic copy or descriptions of Internet Uniform Resource Locators (URLs) where such documents can be readily found.
- (b) If requested by the Government in writing, Grantee shall make provide to the Government within thirty (30) days of said request the following :
  - (1) construction information indicating the number of homes passed and the number of cable plant miles constructed;
  - (2) information indicating the number of calls received, number of calls abandoned, number of calls receiving a busy signal and, to the extent it is germane to franchise obligation, the number of customer service representatives in Lexington which handle local calls.
  - (3) installation information indicating: the number of total standard installations performed; the number of standard installations performed within seven days; number of service interruptions responded to within 24 hours; number of other service problems reported; number of other service problems responded to within 36 hours, and all other information necessary to monitor the Grantee's compliance with the Subscriber protection standards of this Ordinance;
  - (4) information indicating the number of Subscribers;
  - (5) a current copy of the Subscriber service agreement; a current list of all rates, charges, and available services, and a current channel list;
  - (6) a summary of the previous year's activities in the development of the system, including, but not limited to, services begun or dropped, the

- previous year's constructions activities, and a summary of any policy changes taking effect during the year;
- (7) a copy of all Grantee's published rules and regulations applicable to Subscribers and users of the Cable System; and a summary of the Grantee's hours of operation;
  - (8) subject to section 631 of the Communications Act, 47 U.S.C. § 551, a summary of written Subscriber or consumer complaints, identifying complaints by number and category, and their disposition; and, where complaints involve recurrent system problems, the nature of each problem and what steps have been taken to correct them;
  - (9) a copy of updated maps depicting the location of all trunks. Strand maps shall be furnished. As-built maps may be viewed at Grantee's office without copying or note-taking. Proprietary maps, shall be afforded confidentiality protection pursuant to state law;
  - (10) a listing of Grantee's closings or holidays for the year;
  - (11) a list of all persons owning or controlling five percent (5%) or more of the stock, partnership shares or assets of the Grantee and a list of any parent corporation, parent entity, or holding company that owns the Grantee or by ownership of other entities controls the Grantee; and
  - (12) if the Grantee is a corporation, a list of officers and members of the board, a copy of the Grantee's report to its shareholders (if it prepared such a report), a list of the board members of any parent corporation; and where a parent corporation's stock is publicly traded, that corporation's annual report.
- (c) If at any time the Grantee is subject to a Franchise Fee, within three (3) months of the close of its fiscal year, the Grantee shall submit an annual report to the Office of the Mayor that includes the following information:
- A gross revenue report on all gross revenue (as defined herein) from operations of the Grantee within the franchised area, prepared by a qualified financial officer [in accordance with the provisions of the Codification of Statements on Auditing Standards promulgated by the American Institute of Certified Public Accountants,] and including: a schedule of gross revenue by ~~category~~ by quarter; a schedule of the number of subscribers by ~~category~~ service by quarter; and a schedule of gross revenue by revenue category by quarter upon which the quarterly license fee is computed and a list of the payments to the Government for the license term.
- (d) Within three (3) months of the close of its fiscal year, the Grantee shall submit an annual report to the Office of the Mayor that provides the number of Cable Service subscribers by quarter by category of service provided as well as the number of dwelling units to which the Grantee is technically capable of providing Cable Service. To the extent that the Grantee is subject to a Franchise Fee, this information may be included in the report described in Section 39(c) rather than being filed as a separate report.

#### Section 40. FRANCHISE RENEWAL

The franchise granted under this Ordinance may be renewed under the authority of 47 U.S.C. § 546 as it may be amended.

#### Section 41. RIGHTS OF INDIVIDUALS

- (a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. Grantee shall comply at all times with all other

applicable federal, state and local laws, and all executive and administrative orders relating to nondiscrimination. Grantee shall not deny service, deny access, or otherwise discriminate against persons owning or renting apartment units.

- (b) The Grantee shall comply with all applicable nondiscrimination and affirmative action requirements of any laws, regulations and executive directives of the United States, the Commonwealth of Kentucky, and the Government.
- (c) The Grantee shall not discriminate in its employment practices against any employee or Applicant for employment because of race, color, religion, national origin, ancestry, sex, age or physical handicap. The Grantee shall take affirmative action to ensure that employees are treated, during employment, without regard to their age, sex, race, color, national origin, ancestry, or physical handicap. This condition includes, but is not limited to the following: recruitment advertising, employment interviews, employment rates of pay, upgrading, transfer, demotion, layoff, and termination.
- (d) The Grantee shall submit to the Government, upon request, a copy of the Grantee's EEO submissions required to be filed with the FCC.
- (e) Grantee shall comply with all privacy laws of the state or federal government applicable to Grantee. Grantee shall strictly observe the privacy and property rights of Subscribers in accordance with applicable law. The Subscriber's rights of privacy shall be protected at all times by the Grantee in accordance with applicable law.

#### Section 42. SUPERVISION OF THE FRANCHISE

- (a) The Mayor (or his/her designee), with the approval of the Council, shall serve as Cable Communications Officer.
- (b) Notwithstanding other provisions of this Ordinance, the Cable Communications Officer shall have the following duties and responsibilities to supervise the provisions of this Ordinance:
  - (1) Serve as liaison between the Government and the Grantee;
  - (2) Monitor Grantee's adherence to construction and installation schedule and line extension policy;
  - (3) Assure compliance of applicable laws and Ordinances;
  - (4) Monitor operation standards as contained in this Ordinance;
  - (5) At the Council's direction, arrange tests and analysis of equipment and performance;
  - (6) Monitor road and traffic disruptions for construction and repair purposes;
  - (7) Assure continuity in service;
  - (8) Receive biannually, examine and recommend action on the logs of written citizen complaints;
  - (9) Assist in evaluating uses of access channels,
  - (10) Receive for examination all data and reports required by this Ordinance;  
and
  - (11) Perform tasks as specified by the Council.

#### Section 43. GOVERNMENT'S RIGHT OF INTERVENTION

The Grantee agrees not to oppose intervention by the Government in any suit or proceeding arising out of the Grantee's performance hereunder.

#### Section 44. FURTHER AGREEMENT AND WAIVER BY GRANTEE

- (a) The Grantee agrees to abide by all provisions of the franchise, and further agrees that it will not at any future time set up as against the Government a claim that the provisions of the franchise were unreasonable, arbitrary, or void on the effective date of the franchise except for subsequent changes in state or federal law which may render provisions unenforceable.
- (b) In any court proceeding involving any claim by Grantee against the Government or any official, member, employee, or agent of the Government arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.
- (c) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Government or by any third person concerning any terms and conditions not expressed in this Ordinance.
- (d) Grantee, in conducting the operation or work to be performed pursuant to this Ordinance is not an agent of the Government.
- (e) The Government, through its Council, Mayor, Cable Communications Officer, or other employee designated in writing by the Mayor, may, at all reasonable times, have access as reasonably necessary to the administration of this franchise to all or any of the property owned or used in part or in whole by the Grantee in its operating and maintaining the cable television system under this franchise. In like manner, the Council or its above-mentioned officers, agents or employees, may at all reasonable times enter in or upon said property to inspect or examine it, and may inspect, examine or verify all or any of the accounts, books, records, contracts, documents or papers of the Grantee reasonably necessary to the administration of this franchise.

#### Section 45. LAW GOVERNS

In any controversy or dispute under this Ordinance, federal law and the law of the Commonwealth of Kentucky, if not conflicting, shall apply.

#### Section 46. SEVERABILITY

If any section, sentence, clause or phrase of ~~this Ordinance~~ is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

#### Section 47. TIME IS OF THE ESSENCE

Whenever this Ordinance sets forth any time for any act to be performed by or on the behalf of the Grantee, such time shall be deemed of the essence and the Grantee's failure to perform within the allotted time shall, in all cases, be sufficient grounds for the Government to invoke the remedies available under the terms and conditions of this Ordinance.

#### Section 48. CONFIDENTIALITY

To the extent permitted by applicable law, the Government shall maintain confidentiality of information provided by the Grantee when Grantee has designated such information as proprietary.

Section 49. EFFECTIVE DATE

This Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: November 16, 2017

MAYOR

ATTESTED:



CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: November 22, 2017-1t

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## APPENDIX A

### 1. Micro-trenching Procedures.

- (a) Open a 1.5-2-inch-wide trench/12-18 inches deep at the curb gutter
- (b) Install fiber cable in High Density Polyethylene (HDPE) conduit
- (c) Replace and compact the grinding material back in the trench
- (d) Seal the trench with fast patch or epoxy
- (e) Locate 12 x 12 handhold access points flush with the ground behind the curb
- (f) Potholing will be used at all existing utility crossings

### 2. Customer Notification Process.

- (a) Send letters to affected residents 1-3 months prior to the start of construction
- (b) Send reminder post cards 1-2 weeks prior to the start of construction
- (c) Place flags in affected yards the week before construction in an LCP is scheduled to start before locates are requested (All homes in an LCP will be flagged at the same time)
- (d) Maintain a website with current construction activity information with the ability for residents to contact the company with questions and concerns
- (e) The Grantee's personnel will handle calls from residents

### 3. Utility Pole Applications

- (a) All applications to locate poles in the Roads shall be submitted to the Government's Division of Engineering; provided however, applications to locate poles in utility easements shall not be required.
- (b) All applications shall contain a site drawing that shows the location of any existing poles and the location(s) of the requested utility poles in the Roads.

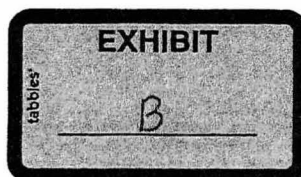


### **Bid #171-2017 Cable Television Franchise**

The Lexington-Fayette Urban County Government (LFUCG) is accepting bids for a non-exclusive telecommunications franchise. Interested parties must submit a letter of intent to enter into a non-exclusive cable television franchise along with a check made payable to the LFUCG in the amount of five hundred dollars (\$500.00) to cover the cost of advertising by November 27, 2017 at 2:00 pm EST. Submittals must be delivered to the LFUCG Division of Central Purchasing at 200 East Main Street, Room 338 Lexington, KY 40507 and prominently marked "**Bid #171-2017 Cable Television Franchise**".

### **Advertisement**

Invitation to Bid 171-2017 The Lexington-Fayette Urban County Government offers at bid a non-exclusive cable television franchise. The bids will be received November 27, 2017 at 2:00 pm EST submitted pursuant to the ordinance language & conducted at: Div. of Central Purchasing 200 E. Main St., Rm. 338 Lexington, KY 40507. Ord. No. 10-2017- An Ordinance creating a ten (10) year, Non-Exclusive Franchise for a cable television system within the confines of the Lexington-Fayette Urban County Government said franchise providing for: full financial and shareholder disclosure; indemnification by the franchise grantee and adequate insurance coverage; a \$50,000.00 letter of credit to ensure franchise compliance; payment to the government; requirements for providing data, testing the system, and meeting minimum operational standards; conditions of street occupancy; use of poles; minimum construction standards; minimum requirements for extending the system; access to community facilities; public, educational and government access channels; emergency alert override; antenna switches; two hour stand-by power; testing and analyzing the system and proof of performance; establishment of consumer services standards; establishment of standards for billing practices; establishment of a complaint procedure; refunds to subscribers for failure of service; rate regulation; ~~and~~ required for a transfer of control or assignment of the franchise; standards and procedures established for forfeiture of the franchise, assessment of penalties and valuation of the system; foreclosure and receivership provisions; reserving government rights in the franchise; assurances of nondiscrimination; protections of subscriber privacy; administrative supervision of the franchise; government access to property and records /s/ Jim Gray, Mayor Attested: /s/ Martha Allen, Acting Clerk of the Urban County Council, Published 11-17-2017



RESOLUTION 745 - 2017

A RESOLUTION ACCEPTING THE BID OF CMN-RUS, INC, IN ACCORDANCE WITH THE PROVISIONS OF ORDINANCE NO. 169-2017, CREATING AND OFFERING FOR SALE A TEN (10) YEAR FRANCHISE FOR THE OPERATION OF A NON-EXCLUSIVE CABLE TELEVISION SYSTEM IN FAYETTE COUNTY, AND AUTHORIZING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A FRANCHISE AGREEMENT WITH CMN-RUS, INC, INCORPORATING THE TERMS AND CONDITIONS OF ORDINANCE NO. 169-2017.

WHEREAS, by Ordinance No. 169-2017 adopted November 16, 2017, the Lexington-Fayette Urban County Government ("Lexington") created a ten (10) year, non-exclusive franchise for a cable television system within the confines of Lexington; and

WHEREAS, by Invitation to Bid 171-2017, Lexington offered at bid a non-exclusive cable television franchise pursuant to Ordinance No. 169-2017; and

WHEREAS, after publication of said advertisement on November 17, 2017, Lexington received a bid from CMN-RUS, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL:

Section 1 - That a ten (10) year, non-exclusive cable television franchise created by Ordinance No. 169-2017 be and hereby is awarded to CMN-RUS, Inc.

Section 2 - That all prior ordinances, or resolutions, or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

Section 3 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized to execute the Franchise Agreement, which is attached hereto and incorporated herein by reference, which memorializes the award of said franchise and incorporates the terms and conditions reflected in Ordinance No. 169-2017 and this Resolution.

Section 4 - That the statements set forth in the Preamble to this Resolution are hereby incorporated in this Resolution by reference, the same as if set forth at length herein.

Section 5 - That if any section, sentence, clause or phrase of this Resolution is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Resolution.



Section 6 - That this Resolution shall be effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: December 7, 2017

MAYOR



ATTEST:



CLERK OF URBAN COUNTY COUNCIL  
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**Request**

2. Identify and describe how CMN intends to deliver the cable television service authorized by the Franchise Agreement to customers.

---

**Response**

CMN is overbuilding the LFUCG service area with a 100% fiber-to-the-premises network. All cable television service authorized by the Franchise Agreement will be delivered over this 100% fiber network. Video content will be transmitted from CMN's video headend located in Evansville, Indiana, via a long haul fiber circuit and through an antenna site in Lexington to a CMN equipment hut also located in Lexington. At the equipment hut, the video content will be aggregated together to form a channel lineup then delivered to end users over CMN's all-fiber network.

### **Request**

3. Identify and describe all products and services other than cable television service that CMN currently intends to provide over the network that will be constructed to provide cable television service authorized by the Franchise Agreement, e.g., 100 megabit broadband, local telephone service, etc. State whether CMN anticipates providing each such product and service as soon as the network is operational.

---

### **Response**

CMN, along with its affiliate Metro Fibernet, LLC (collectively, "Metronet"), will provide (and in some areas of the LFUCG market currently provides) the products described below to businesses and homes. In August 2018, Metronet commenced delivery of services in neighborhoods east of downtown and north of Richmond Road in the area from East New Circle Road to just beyond I-75. As more of Metronet's network becomes operational, additional areas will be added.

Home services include:

- a. Fiber internet with speeds up to 1 GIG.
- b. Fiber TV, with features including an on screen program guide, video on demand and pay per view, caller ID, music channels, free HD channels and free parental controls.
- c. Fiber Phone (*see* response to Staff Request No. 4).
- d. A smart home product including video monitoring, access and energy management.
- e. A streaming service.

Business services include:

- a. Fiber internet with speeds up to 10 GIG and even beyond.
- b. Managed Wi-Fi.
- c. Traditional fiber phone service and hosted PBX phone systems.
- d. Fiber wide area networks (WANs) with bandwidths of 10 GIG and beyond.
- e. Fiber TV (*see* description for home service).
- f. Cloud services through an arrangement with a third party provider.



**Request**

4. Identify all service areas in which CMN is currently providing telephone service and describe the nature of the telephone service offered in each such service area.

---

**Response**

CMN is currently providing telephone service of the same type offered in the area described in response to Staff Request No. 3, in the following communities in Indiana: Connersville, Crawfordsville, Greencastle, Hanover, Huntington, La Fontaine, Lebanon, Logansport, Madison, New Castle, North Manchester, North Vernon, Roanoke, Seymour, Thorntown, Vincennes, Wabash and Warsaw.

All telephony services are delivered over its fiber network to customers utilizing a TDM protocol. Residential (home) phone service features include anonymous call rejection, various types of call forward, call hold, caller ID, call return, call transfer, call waiting, repeat dialing, selective call rejection, speed calling, three-way calling, voicemail and long distance. In addition, for commercial (business) customers, CMN offers a hosted PBX service.

**Request**

5. State whether CMN currently owns or operates any network that is similar to the network it is proposing to build in Lexington and, if so, identify the location of each such network, the years during which each such network was constructed from the approximate date that the work commenced until the network reached substantial completion (if a network has not reached substantial completion then indicate the same), and the approximate number of pole attachments necessary to construct each such network.

---

**Response**

Although CMN has deployed and operates other fiber networks, none of them is of the size or complexity of the network to be deployed in Lexington. Additionally, the home density, soil composition, ratio of aerial and underground footage and number of utility poles all make the Lexington market and fiber network unique.

**Request**

6. Provide a copy of the disputed invoices received by CMN from Windstream KDL, LLC referred to in CMN's complaint pertaining to the cost of make-ready work performed in Indiana.

---

**Response**

Attached hereto are the disputed invoices (CMN 00151-77) and a 3/16/17 Windstream entity letter re "Past due pass through billing on Lafayette and Hanover jobs" (CMN 00150), which refers to the invoices dated January 26, 2017 and March 14, 2017.

WINDSTREAM COMMUNICATIONS, LLC  
11101 Anderson Drive  
Little Rock, Arkansas 72212



March 16, 2017

Metronet Inc.  
Attn: Robert Thurman  
8837 Bond Street  
Overland Park, KS 66214

RE: Past due pass through billing on Lafayette and Hanover jobs

Mr. Thurman,

Currently Metronet Inc. is past due \$1,136,274.06 in connection with the invoices dated January 26, 2017 and March 14, 2017 (a correction invoice). These invoices represent the final charges for the Lafayette and Hanover jobs less a credit for the cancelled Connersville job. These invoices were provided to [ap@qservicesco.com](mailto:ap@qservicesco.com) and Sandra Gill on January 27, 2017 (and March 14, 2017) and remain unpaid.

Please make payment no later than April 14, 2017. If payment is not made, Windstream's ability to process pole applications with Duke Energy will be jeopardized and will likely result in Windstream being unable to process further Metronet pole applications until the outstanding balance is paid in full.

Please note that we have requested that Duke Energy provide us with whatever written evidence it has that the work for these jobs was requested to be provided on an expedited basis. As soon as we receive any information from them, we will pass it along to Metronet.

Thank you in advance for your prompt attention to this matter.

Sincerely

Daniel King  
Senior Counsel  
Windstream Services, LLC

P.O. Box 25410, Little Rock AR 72212  
(812) 759-7973

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6047094**Invoice Date:** 03/14/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
6046647**Account Number****Due By**  
04/13/2017**Amount Due**  
\$20,210.70**Please Make Your Check Payable To:****Windstream Communications, LLC****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com

**Invoice** True-up to Windstream invoice # 6046647.  
**Comment** Bill Calc Spreadsheet Attached  
Initial Charged Amount \$30,208.17  
Corrected Bill Calc Amount: \$50,418.87

<u>Description</u>	<u>Amount</u>
True-up Amount	20,210.70
<b>Total Due</b>	<b>\$20,210.70</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00151

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046624**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160706101**Account Number****Due By**  
02/25/2017**Amount Due**  
\$55,223.99**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1160706101  
**Comment** Location of Work: Hanover Part 1

Description	Amount
Duke Energy Inv # P1160706101, Make Ready Work, Location of Work: Hanover Part 1	48,020.86
15% Markup	7,203.13
<b>Total Due</b>	<b>\$55,223.99</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00152



**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046625**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160717901**Account Number****Due By**  
02/25/2017**Amount Due**  
\$2,772.63**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1160717901**Comment** Location of Work: Hanover Path 2

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160717901, Make Ready Work, Location of Work: Hanover Path 2	2,410.98
15% Markup	361.65
<b>Total Due</b>	<b>\$2,772.63</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

KPSC 2018-00157 | CMN 00153

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046626**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160786501**Account Number****Due By**  
02/25/2017**Amount Due**  
\$3,165.78**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1160786501  
**Comment** Location of Work: Hanover Group 2

Description	Amount
Duke Energy Inv # P1160786501, Make Ready Work, Location of Work: Hanover Group 2	2,752.85
15% Markup	412.93
<b>Total Due</b>	<b>\$3,165.78</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00154

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046627**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160795501**Account Number****Due By**  
02/25/2017**Amount Due**  
\$6,730.75**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com .

**Invoice** Duke Energy Inv # P1160795501  
**Comment** Location of Work: Hanover Group 3

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160795501, Make Ready Work, Location of Work: Hanover Group 3	5,852.83
15% Markup	877.92
<b>Total Due</b>	<b>\$6,730.75</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00155

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046628**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160888601**Account Number****Due By**  
02/25/2017**Amount Due**  
\$24,583.12

Please Make Your Check Payable To:

**Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

**Invoice** Duke Energy Inv # P1160888601  
**Comment** Location of Work: Lafayette Part 3 & 4

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com .

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160888601, Make Ready Work, Location of Work: Lafayette Part 3 & 4	21,376.63
15% Markup	3,206.49
<b>Total Due</b>	<b>\$24,583.12</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00156

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046629**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160901201**Account Number****Due By**  
02/25/2017**Amount Due**  
\$16,799.42**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1160901201**Comment** Location of Work: Lafayette Phase 10 Part 1 & 2**Description****Amount**

Duke Energy Inv # P1160901201, Make Ready Work, Location of Work: Lafayette Phase 10 Part 1 & 2	14,608.19
15% Markup	2,191.23

**Total Due****\$16,799.42****Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00157

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046630**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160909801**Account Number****Due By**  
02/25/2017**Amount Due**  
\$15,891.10**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1160909801  
**Comment** Location of Work: Lafayette Phase 12

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160909801, Make Ready Work, Location of Work: Lafayette Phase 12	13,818.35
15% Markup	2,072.75
<b>Total Due</b>	<b>\$15,891.10</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00158



**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046631**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160964901**Account Number****Due By**  
02/25/2017**Amount Due**  
\$1,111.72**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com .

**Invoice** Duke Energy Inv # P1160964901**Comment** Location of Work: Lafayette Phase 4 Part 1 Rev

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160964901, Make Ready Work, Location of Work: Lafayette Phase 4 Part 1 Rev	966.71
15% Markup	145.01
<b>Total Due</b>	<b>\$1,111.72</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

RPSC 2018-00157 | CMN 00159

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046632**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160969801**Account Number****Due By**  
02/25/2017**Amount Due**  
\$158,935.98**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1160969801  
**Comment** Location of Work: Lafayette Phase 8 Part 1

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160969801, Make Ready Work, Location of Work: Lafayette Phase 8 Part 1	138,205.20
15% Markup	20,730.78
<b>Total Due</b>	<b>\$158,935.98</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

KPSC 2018-00157 | CMN 00160

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046633**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160979101**Account Number****Due By**  
02/25/2017**Amount Due**  
\$152,803.04

Please Make Your Check Payable To:

**Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com .

**Invoice** Duke Energy Inv # P1160979101**Comment** Location of Work: Lafayette Phase 3 Part 2

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160979101, Make Ready Work, Location of Work: Lafayette Phase 3 Part 2	132,872.21
15% Markup	19,930.83
<b>Total Due</b>	<b>\$152,803.04</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00161

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046634**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160985601**Account Number****Due By**  
02/25/2017**Amount Due**  
\$12,015.57

Please Make Your Check Payable To:

**Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1160985601**Comment** Location of Work: Lafayette Phase 2 Part 3**Description****Amount**

Duke Energy Inv # P1160985601, Make Ready Work, Location of Work: Lafayette Phase 2 Part 3	10,448.32
15% Markup	1,567.25

**Total Due****\$12,015.57****Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

RPSC 2018-00157 | CMN 00162

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046635**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160990501**Account Number****Due By**  
02/25/2017**Amount Due**  
\$3,548.88**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1160990501  
**Comment** Location of Work: Lafayette Backbone Part 5

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160990501, Make Ready Work, Location of Work: Lafayette Backbone Part 5	3,085.98
15% Markup	462.90
<b>Total Due</b>	<b>\$3,548.88</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

RPSC 2018-00157 | CMN 00163

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046636**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1160998201**Account Number****Due By**  
02/25/2017**Amount Due**  
\$60,838.44**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

**Invoice** Duke Energy Inv # P1160998201  
**Comment** Location of Work: Lafayette Group 1

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1160998201, Make Ready Work, Location of Work: Lafayette Group 1	52,902.99
15% Markup	7,935.45
<b>Total Due</b>	<b>\$60,838.44</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

RPSC 2018-00157 | CMN 00164



**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046637**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161009701**Account Number****Due By**  
02/25/2017**Amount Due**  
\$34,029.75**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1161009701  
**Comment** Location of Work: Lafayette Group 3

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161009701, Make Ready Work, Location of Work: Lafayette Group 3	29,591.09
15% Markup	4,438.66
<b>Total Due</b>	<b>\$34,029.75</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

RPSC 2018-00157 | CMN 00165

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046638**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161020301**Account Number****Due By**  
02/25/2017**Amount Due**  
\$99,597.22

Please Make Your Check Payable To:

**Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

**Invoice** Duke Energy Inv # P1161020301  
**Comment** Location of Work: Lafayette Group 4

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161020301, Make Ready Work, Location of Work: Lafayette Group 4	86,606.28
15% Markup	12,990.94
<b>Total Due</b>	<b>\$99,597.22</b>

**Please Return One Copy With Payment**

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RPSC 2018-00157 | CMN 00166

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046639**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161073501**Account Number****Due By**  
02/25/2017**Amount Due**  
\$57,937.83

Please Make Your Check Payable To:

**Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

**Invoice** Duke Energy Inv # P1161073501  
**Comment** Location of Work: Lafayette Group 2

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763  
Email: joseph.w.mcclure@windstream.com

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161073501, Make Ready Work, Location of Work: Lafayette Group 2	50,380.72
15% Markup	7,557.11
<b>Total Due</b>	<b>\$57,937.83</b>

**Please Return One Copy With Payment**

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KFSC 2018-00157 | CMN 00167

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046640**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161082901**Account Number****Due By**  
02/25/2017**Amount Due**  
\$81,385.19

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

**Invoice** Duke Energy Inv # P1161082901  
**Comment** Location of Work: Lafayette Group 5

For questions regarding this invoice, please contact  
Mary Calva at 501-748-4827  
Email: Mary.Calva@Windstream.com .

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161082901, Make Ready Work, Location of Work: Lafayette Group 5	70,769.73
15% Markup	10,615.46
<b>Total Due</b>	<b>\$81,385.19</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

RPSC 2018-00157 | CMN 00168

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046641**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161096501**Account Number****Due By**  
02/25/2017**Amount Due**  
\$56,225.46**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

**Invoice** Duke Energy Inv # P1161096501  
**Comment** Location of Work: Lafayette Group 7

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763  
Email: joseph.w.mcclure@windstream.com .

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161096501, Make Ready Work, Location of Work: Lafayette Group 7	48,891.70
15% Markup	7,333.76
<b>Total Due</b>	<b>\$56,225.46</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

RPSC 2018-00157 | CMN 00169

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046642**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161104301**Account Number****Due By**  
02/25/2017**Amount Due**  
\$63,584.42**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1161104301  
**Comment** Location of Work: Lafayette Group 6

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161104301, Make Ready Work, Location of Work: Lafayette Group 6	55,290.80
15% Markup	8,293.62
<b>Total Due</b>	<b>\$63,584.42</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

KPSC 2018-00157 | CMN 00170

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046643**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161130301**Account Number****Due By**  
02/25/2017**Amount Due**  
\$44,562.47**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

**Invoice** Duke Energy Inv # P1161130301  
**Comment** Location of Work: Lafayette Group 8

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763  
Email:joseph.w.mcclure@windstream.com .

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161130301, Make Ready Work, Location of Work: Lafayette Group 8	38,749.97
15% Markup	5,812.50
<b>Total Due</b>	<b>\$44,562.47</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

KFSC 2018-00157 | CMN 00171



**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046644**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161140101**Account Number****Due By**  
02/25/2017**Amount Due**  
\$25,086.11

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

**Invoice** Duke Energy Inv # P1161140101  
**Comment** Location of Work: Lafayette Group 11

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161140101, Make Ready Work, Location of Work: Lafayette Group 11	21,814.01
15% Markup	3,272.10
<b>Total Due</b>	<b>\$25,086.11</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

KPSC 2018-00157 | CMN 00172

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046645**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161174301**Account Number****Due By**  
02/25/2017**Amount Due**  
\$721.23**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email: joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1161174301  
**Comment** Location of Work: Lafayette Group 12

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161174301, Make Ready Work, Location of Work: Lafayette Group 12	627.16
15% Markup	94.07
<b>Total Due</b>	<b>\$721.23</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

KPSC 2018-00157 | CMN 00173

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046646**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161262401**Account Number****Due By**  
02/25/2017**Amount Due**  
\$18,321.00**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

**Invoice** Duke Energy Inv # P1161262401  
**Comment** Location of Work: Lafayette Group 14

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763  
Email:joseph.w.mcclure@windstream.com

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161262401, Make Ready Work, Location of Work: Lafayette Group 14	15,931.30
15% Markup	2,389.70
<b>Total Due</b>	<b>\$18,321.00</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

KPSC 2018-00157 | CMN 00174

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046647**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161272701**Account Number****Due By**  
02/25/2017**Amount Due**  
\$30,208.15

Please Make Your Check Payable To:

**Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS, INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park, KS 66214

**Invoice** Duke Energy Inv # P1161272701  
**Comment** Location of Work: Lafayette Phase 2 Part 1 & 2

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763  
Email: joseph.w.mcclure@windstream.com

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161272701, Make Ready Work, Location of Work: Lafayette Phase 2 Part 1 & 2	191,116.56
Credits due to Previous Payments exceeding Lafayette Job Costs	-164,848.59
15% Markup	3,940.18
<b>Total Due</b>	<b>\$30,208.15</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

KPS 2018-00157 | CMN 00175

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046648**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161300201**Account Number****Due By**  
02/25/2017**Amount Due**  
\$75,264.88**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC

ap@qservicesco.com

8837 Bond Street

Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com .

**Invoice** Duke Energy Inv # P1161300201**Comment** Location of Work: Lafayette Phase 7 Part 1 & 2

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161300201, Make Ready Work, Location of Work: Lafayette Phase 7 Part 1 & 2	65,447.72
15% Markup	9,817.16
<b>Total Due</b>	<b>\$75,264.88</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balances.

KT SC 2018-00157 | CMN 00176

**Windstream KDL, LLC**

P O Box 18317  
Little Rock, AR 72222

**INVOICE****Invoice Number:** 6046649**Invoice Date:** 01/26/2017**Customer #**  
Cinergy Metrone**Customer Reference**  
P1161311201**Account Number****Due By**  
02/25/2017**Amount Due**  
\$14,719.23**Please Make Your Check Payable To:****Windstream Communications, Inc.****Attn: Misc Billing****P O Box 18317****Little Rock, AR 72222**

Cinergy Metronet CMN-RUS,INC  
ap@qservicesco.com  
8837 Bond Street  
Overland Park,KS 66214

For questions regarding this invoice, please contact Joe  
McClure at 501-748-7763

Email:joseph.w.mcclure@windstream.com

**Invoice** Duke Energy Inv # P1161311201  
**Comment** Location of Work: Lafayette Phase 11 Part 1 -4

<b>Description</b>	<b>Amount</b>
Duke Energy Inv # P1161311201, Make Ready Work, Location of Work: Lafayette Phase 11 Part 1 -4	12,799.33
15% Markup	1,919.90
<b>Total Due</b>	<b>\$14,719.23</b>

**Please Return One Copy With Payment**

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

KT SC 2018-00157 | CMN 00177

## Request

7. Describe the nature of the dispute regarding the invoices from Windstream KDL, LLC to CMN referred to in CMN's complaint by describing the nature of the work that gave rise to the invoices and who performed it, CMN's basis for disputing the invoices, and CMN's understanding of why Windstream KDL, LLC and the other utility contend that the invoices are owed.

---

## Response

KDL has an agreement with Duke Energy pursuant to which Duke allows KDL to attach its facilities to Duke poles (*see* CMN 00045-59, attached to the response to Staff Request No. 8). CMN, through an agreement with KDL (*see* CMN 00060-131, also attached to the response to Staff Request No. 8), may ask KDL to facilitate the attachment of CMN's facilities to Duke poles. CMN is required to pay for make ready work performed to attach CMN's facilities to Duke poles. Because of KDL's direct contract with Duke, Duke invoices KDL, and KDL in turn invoices CMN. The invoices are pass throughs from Duke with a 15% administrative markup charged by KDL. After CMN requests to attach to a Duke pole, CMN receives an estimate of the cost to perform make ready work. This estimate is generated by Duke, provided to KDL, which in turn passes it along to CMN with the KDL 15% markup. Based upon this estimate, CMN is able to determine if it wishes to proceed with attaching facilities or not. If the estimate is acceptable to CMN, it will authorize the make ready to proceed. After make ready is finished and the actual cost of make ready work is known, Duke will issue a "true up" invoice to KDL, which KDL passes along to CMN. If make ready work cost more than estimated, Duke will issue to KDL a "true up" invoice demanding the actual cost in excess of the estimate. KDL will pass this "true up" amount to CMN with KDL's 15% markup.

In January 2017 and March 2017, KDL presented CMN with the Duke invoices attached to CMN's response to Staff Request No. 6. The invoices are for "true up" of estimated make ready costs demanded by Duke. The invoices total \$1,136,274.06. In 2013 through 2016, CMN had paid estimated make ready charges. The invoices presented in January and March of 2017 are "truing up" actual charges on top of the estimated charges paid by CMN as far back as 2013. Not only are the invoices provided in some instances three years after the estimated charges were incurred, but also in some instances, the "true up" amount is several times more than the original estimate. Despite the large amount involved, the delay in invoicing, and vast difference between actual charges and the estimated amounts, Duke did not provide any documentation supporting the "true up" charges.

CMN disputed the invoices directly with Duke because Duke failed to provide a reasonable estimate of the costs to perform the make ready work and failed to provide a reasonable explanation and documentation for the "true up" invoices, as is required by law and by the agreements KDL has with Duke and CMN agreement (*see* CMN 00046 Section 7 and CMN 00061 Section 5). All of the make ready work in question was performed in Indiana, a state where poles are regulated by the FCC. The FCC has ruled that utilities are obligated to provide reasonable make ready estimates with information reasonably sufficient to substantiate make ready charges. A utility must provide an explanation and documentation for all invoices for engineering, make ready and similar work performed and to provide access to any engineering or other records that will



facilitate an attacher's access to poles. This long-standing FCC position was recently reiterated in the Third Report and Order and Declaratory Ruling adopted on August 2, 2018, starting at ¶ 109.

On information CMN has, KDL has not yet paid Duke the invoiced amounts and, accordingly, KDL has a payable on its books to Duke for this amount, and a corresponding receivable from CMN equal to the payable. On information CMN has, KDL is in accord that the invoices are not legitimately owed. KDL is protected by the same FCC rules that protect CMN, and KDL validly disputed the charges with Duke in good faith (*see* 9/5/17 9:38 AM email from James Lloyd re "Windstream KDL Unpaid Make Ready" (CMN 00179) attached hereto). Duke has requested payment from KDL, after KDL and CMN disputed the invoices, but to CMN's knowledge, Duke has not delayed or refused to allow KDL to continue to attach to its poles.

Date: 9/5/2017 10:24:01 AM  
Sent: 9/5/2017 10:23:50 AM  
Subject: FW: Windstream KDL Unpaid Make Ready  
From: King, Daniel <Daniel.King@windstream.com>  
To: John Campbell <John.Campbell@metronetinc.com>; Anita Larson <Anita.Larson@metronetinc.com>;  
John:

As Kevin requested, we asked Duke to reverse the make-ready invoices and bill them directly to MetroNet. Please see the response we received from Duke below.

I believe that Kevin agreed that if Duke would not agree to reverse the changes and bill MetroNet directly that the next step was for MetroNet to reach out to Duke to set up a three way call among the parties to discuss the matter. We would appreciate it if MetroNet could get this call set up with Duke as quickly as possible.

Thanks.

Dan

Daniel J. King  
Senior Counsel – Commercial Contracts Team | Windstream  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** Gibson, Jeremy B [mailto:Jeremy.Gibson@duke-energy.com]  
**Sent:** Tuesday, September 05, 2017 9:05 AM  
**To:** Lloyd, James <James.Lloyd@windstream.com>; Freeburn, Scott <Scott.Freeburn@duke-energy.com>;  
Asche, Dustin K <Dustin.Asche@duke-energy.com>  
**Cc:** Latham, Joyce <Joyce.Latham@windstream.com>; King, Daniel <Daniel.King@windstream.com>; Rucker, Jamie <Jamie.Rucker@windstream.com>  
**Subject:** RE: Windstream KDL Unpaid Make Ready

James,

Thank you for your response back. Duke Energy will not reverse the invoices to Windstream KDL as per section 9 of the agreement 'KDL shall reimburse the applicable Operating Company for the cost of all such work'. Windstream KDL submitted the routes and is therefore responsible for all make ready and engineering cost associated with the projects. Any invoices to Windstream KDL should be paid upon receipt and not held up due to a side agreement between Windstream KDL and Metronet.

Thank you,  
Jeremy  
Jeremy Gibson  
Sr. Joint Use Facilities Specialist  
859-816-7386 Cell

[Jeremy.gibson@duke-energy.com](mailto:Jeremy.gibson@duke-energy.com)

**From:** Lloyd, James [<mailto:James.Lloyd@windstream.com>]

**Sent:** Tuesday, September 05, 2017 9:38 AM

**To:** Gibson, Jeremy B

**Cc:** Latham, Joyce; King, Daniel; Rucker, Jamie

**Subject:** RE: Windstream KDL Unpaid Make Ready

\*\*\* Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*

Jeremy,

In regards to your email below, and as we have shared before, we dispute the amounts being billed to us by Duke Energy. Since we are disputing these amounts, and since these invoices are for work that MetroNet will ultimately be responsible for paying, we would like for Duke Energy to consider reversing the invoices to Windstream and billing the amounts directly to MetroNet.

If this is not possible, please let us know as soon as possible.

Sincerely,

**James Lloyd**  
Manager – Engineering Support  
Windstream Communications, LLC  
11101 Anderson Drive  
Little Rock, Arkansas 72212  
(501) 748-7538  
Email: [James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)



**From:** Gibson, Jeremy B [<mailto:Jeremy.Gibson@duke-energy.com>]

**Sent:** Monday, August 21, 2017 10:01 AM

**To:** Sanchez, Sherry H <[Sherry.Sanchez@windstream.com](mailto:Sherry.Sanchez@windstream.com)>; McClure, Joseph W

<[Joseph.W.McClure@windstream.com](mailto:Joseph.W.McClure@windstream.com)>; Windstream Jointuse <[Windstream.Jointuse@windstream.com](mailto:Windstream.Jointuse@windstream.com)>

**Cc:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>; Asche, Dustin K <[Dustin.Asche@duke-energy.com](mailto:Dustin.Asche@duke-energy.com)>

**Subject:** Windstream KDL Unpaid Make Ready

**Importance:** High

Sherry and Joe,

I wanted to follow up with you to see where Windstream KDL was on paying the unpaid make ready true up invoices from the Lafayette and Hanover routes. These invoices are still outstanding at this time. Last communication was back in March and we have not heard anything back in regards to these.

Please let me know when Duke can expect payment on these.

Thank you,

Jeremy

Jeremy Gibson

Sr. Joint Use Facilities Specialist

859-816-7386 Cell

[Jeremy.gibson@duke-energy.com](mailto:Jeremy.gibson@duke-energy.com)

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**Request**

8. Provide a copy of all agreements and contracts regarding pole attachments under which the work that is the subject of the disputed invoices from Windstream KDL, LLC was performed.

---

**Response**

Attached hereto are copies of agreements and contracts between Duke and KDL and between KDL and CMN, as follows:

1. Duke and KDL: Fiber Agreement, dated October 1, 2000 (CMN 00045-59)
2. KDL and CMN:
  - a. Pole Attachment Rights / Dark Fiber Rights Exchange Agreement, eff. February 7, 2005 (CMN 00060-127)\*
  - b. Amendment to Pole Attachment Rights / Dark Fiber Rights Exchange Agreement, eff. November 7, 2010 (CMN 00128)
  - c. Amendment to Pole Attachment Rights / Dark Fiber Rights Exchange Agreement, dated October 25, 2011 (CMN 00129)
  - d. 5/14/15 Letter Agreement (CMN 00130-31)

\* NOTE: Because they contain route details and are of limited or no relevance to the disputed invoices, the multiple Exhibits B to this agreement — CMN 00084-126 — have not been provided; the “Bates stamps” for the attached documents thus skip from CMN 00083 to 00127.

COPY

## FIBER AGREEMENT

This Agreement is made as of this 1st day of October 2000, by and between **The Cincinnati Gas & Electric Company** ("CG&E"), an Ohio corporation, **PSI Energy, Inc.** ("PSI"), an Indiana corporation, **The Union Light Heat & Power Company** (ULH&P), a Kentucky corporation, **The Lawrenceburg Gas Company** ("LGC"), an Indiana corporation, **The West Harrison Gas And Electric Company** ("WHG&E"), an Indiana corporation, and **Kentucky Data Link, Inc.** ("KDL"), a Kentucky corporation. CG&E, PSI, ULG&P, LGC and WHG&E, are herein collectively called the "Operating Companies" and individually called an "Operating Company." The Operating Companies are subsidiaries of Cinergy Corp. ("Cinergy"), a Delaware corporation.

In consideration of the mutual covenants and terms and conditions contained in this Agreement, the parties agree as follows:

### **GENERAL AGREEMENTS AND UNDERSTANDINGS**

1. The Operating Companies provide electricity and natural gas to customers in the states of Indiana, Ohio and Kentucky. In connection with those operations and throughout the above states, the Operating Companies own or control certain poles, towers, conduits and related facilities (collectively called "Utility Structures") and rights of way related to such Structures (the "Cinergy Service Territory"). The Operating Companies require dark fiber strands or Fiber Optic Capacity throughout the Cinergy Service Territory, for their internal intra-company communications in connection with the above described operations. KDL desires to install fiber optic routes on behalf of the Operating Companies throughout portions of the Cinergy Service Territory along Routes determined by KDL from time to time on the terms and conditions stated in this Agreement.
2. Fiber installed along a Route under this Agreement will be owned by the Operating Company(ies) that owns or controls the Utility Structures and rights of way along such Route (called the "Applicable Operating Company"); the Applicable Operating Company shall retain two (2) dark fiber strands, or Fiber Optic Capacity (as defined in the Glossary Section), along each such Route for its internal telecommunication and data transmission needs. Additionally, the Applicable Operating Company shall have the option of retaining more than two (2) dark fiber strands in accordance with Footnote 1 at the bottom of page 3 below. The Applicable Operating Company will lease unneeded dark fibers to KDL via an indefeasible right of use ("IRU") in consideration for KDL's construction, maintenance and repair of the Fiber along that Route.
3. KDL has entered into this Agreement in an effort to expand its telecommunications business throughout the states of Indiana, Ohio and Kentucky.
4. The Operating Companies have entered into this Agreement to implement their planning for their long-term telecommunications and data transmission needs for the safe, reliable, and efficient operation of their electric and gas systems.

5. By working together on the Fiber Projects covered by this Agreement, the parties believe they can effect economies in the development of their desired fiber resources and in the continued operation and maintenance thereof.
6. Each defined term shall have the meaning ascribed to such term in the attached "Glossary of Terms."

## PROJECT PLANNING

7. At such time that KDL desires to add a Fiber Project to this Agreement, it shall inform the Applicable Operating Company of such decision. The parties shall then work together, in good faith and in compliance with applicable laws, to schedule the timing of the installation of the Route(s) to be covered by such Fiber Project in a manner that will allow each to meet its desired completion date for that Fiber Project. Further, the Applicable Operating Company shall diligently work to provide KDL with both (a) a reasonable estimate of the costs to perform any make ready work required for the contemplated Fiber Project and (b) the fiber count the Applicable Operating Company desires for that Fiber Project, subject to terms set forth in this Agreement. If the parties are able to agree on the timing schedule and make ready estimate, in accordance with the Operating Companies' Telecom Queuing Process, KDL shall provide the Applicable Operating Company with a Project Description for that Fiber Project. Unless otherwise agreed, the Project Description shall be in the form of Exhibit A attached hereto. Upon receipt of a signed Project Description from KDL, the Applicable Operating Company shall countersign and return a fully signed original of such Project Description to KDL unless there is a statutory, administrative or physical impediment. Each such Project Description will be added to this Agreement and shall be governed by the terms set forth herein. Prior existing Agreements may be governed by the terms and conditions of this Agreement, subject to the agreement of the parties hereto.

## CONSTRUCTION

8. Engineering/Planning. The Operating Companies and KDL agree that KDL shall engineer and otherwise design each Route that is made a part of this Agreement in accordance with the Operating Companies' Guide for Installing Fiber Optic Cable. KDL shall be responsible for the costs incurred by it in connection with such efforts.
9. Make-Ready. The Applicable Operating Company shall diligently perform all make ready work along each Route that is made a part of this Agreement. KDL shall reimburse the applicable Operating Company for the cost of all such work.

10. Construction and Installation. After the Applicable Operating Company performs the necessary make ready work, KDL, at its cost<sup>1</sup>, shall have the Fiber constructed along the Route. All such work shall comply (i) with reasonable and customary construction practices and (ii) with the minimum requirements of applicable governmental regulations and codes, including, but not limited to, the National Electrical Code ("NEC") and National Electrical Safety Code ("NESC").

## MAINTENANCE

11. Fiber. KDL shall, at its own expense, perform all maintenance required to keep the Fiber, including that fiber retained by the Operating Companies, in good working order, condition and repair, ordinary wear and tear excepted, throughout the useful life of the Fiber (and at its discretion, KDL may replace certain of the Fiber from time to time). KDL's maintenance shall be done in accordance with telecommunication industry standards. In the event maintenance is required on Fibers that are located in the Power Zone on Operating Company Utility Structures (distribution or transmission), unless otherwise required by law, such maintenance shall be coordinated by KDL, who will employ the Operating Company or a qualified contractor (such qualifications to be reasonably set by Operating Company) to perform such maintenance. KDL shall be responsible for the actual cost associated with such work<sup>2</sup>.

- (a) KDL shall give at least two days' notice to the Applicable Operating Company before performing any non-emergency maintenance on any of the Fiber installed on that Operating Company's Utility Structures. For any emergency maintenance, KDL shall give the Applicable Operating Company at least one hour's notice. Such notice shall be given to the Applicable Operating Company at 1-800-262-3000

<sup>1</sup> The Applicable Operating Company may increase the number of fiber strands it retains (*i.e.* the fiber strands it does not lease to KDL) along a Route from two (2) fiber strands to that number of fiber strands, which equals five percent (5%) of the total number of strands KDL installs along that Route, rounded to the nearest even number (for example, if KDL installs a 96 count along a particular Route, the Applicable Operating Company may increase the number of fiber strands it retains along that Route to 4; if KDL installs a 144 count along a particular Route, the Applicable Operating Company may increase the number of fiber strands it retains along that Route to 8.). The election to increase such count shall be made prior to construction and reflected in the Project Description for that Fiber Project; and the Applicable Operating Company shall be responsible for its pro-rata share of Fiber costs related to such increased fiber count.

<sup>2</sup> If the Applicable Operating Company increases the number of fiber strands controlled by it along a Route above two (2), it shall reimburse KDL for the pro-rata share (based on the ratio of the number of such excess strands on the Route to the number of all strands on the Route) of KDL's reasonable out-of-pocket costs for maintenance and repair work related to such increased fiber count.



- (b) KDL shall give at least two days' notice to the Applicable Operating Company before performing any non-emergency maintenance on any of the Fiber installed on that Operating Company's Utility Structures. For any emergency maintenance, KDL shall give the Applicable Operating Company at least one hour's notice. Such notice shall be given to the Applicable Operating Company at 1-800-262-3000
- (c) In the event emergency maintenance needs to be performed on the Applicable Operating Company's Utility Structures, that Operating Company reserves the right to commence and complete any such electric maintenance or restoration work prior to allowing KDL access to repair or maintain its Fiber. If requested by that Operating Company's personnel, KDL shall cease repair work and vacate the repair site until that Operating Company's maintenance and restoration procedures are complete.

12. Relocation. This Agreement is subject to the right of the Operating Company, without liability to KDL or its customers, to relocate, modify the geographic routing of, or to remove, replace or change, the location of any of its facilities in such a manner as will best enable the Operating Company, in its sole discretion, to fulfill its electric or gas service or other business requirements. When facilities are to be moved or replaced, the Operating Company will give KDL advanced written notice, where practical, of such move or replacement and cooperate with KDL in planning such move or replacement in order to preserve the connectivity and continuity of services of KDL and that of its customers. When Operating Company facilities are to be removed, the Operating Company shall give advance written notice to KDL of such removal so that KDL may make alternative arrangements for its facilities and equipment affected by such removal. KDL shall be responsible for its pro-rata share of any costs of relocation, modification of the geographic routing of, removal, replacement or change in the location of its facilities that affects KDL's facilities and related service, insofar as such changes are caused by KDL, such as attachment to an Operating Company supporting structures that must be upgraded to accommodate KDL's attachment or an upgrade of KDL's attachment to a supporting structure.

In the event that any relocation of Operating Company Utility Structures is necessitated by the lawful requirements of governmental authorities or a need to replace Operating Company Utility Structures that are, in the Operating Company's sole reasonable judgment, deteriorated or worn out, the Parties, if required to by law, shall share the cost, on a pro-rata basis, as reasonably determined by Operating Company, of restoring the facilities that the Parties physically share. If the parties are not, by law, required to share such costs, the Applicable Operating Company shall be responsible for any such costs. Nothing in this Agreement is meant to limit the right of either Party to seek compensation from any governmental authority for the costs of such relocation or replacement.

13. Operating Company Utility Structures. The Operating Companies shall, throughout the Term of this Agreement, at their expense maintain their Utility Structures in good working order, condition and repair.

## INTERESTS/RIGHTS

14. Legal Title/Lease Arrangement. The Applicable Operating Company shall own all of the Fiber installed pursuant to this Agreement; and KDL shall automatically and without further action,

have an indefeasible, fully paid-up (with no periodic lease payments), fully transferable lease on the portion of the Fiber controlled by it along the Routes (the "IRU Fibers"). This indefeasible right to use ("IRU") is an exclusive and irrevocable right, subject to termination only as provided herein, to use the IRU Fibers; provided that the grant of such IRU does not convey legal title to KDL in the IRU Fibers. On the lease commencement date, the Applicable Operating Company agrees that all of such Operating Company's rights and remedies under any manufacturer's or similar warranties that apply to the leased Fiber shall be automatically assigned to KDL. All right, title and interest in all of KDL's other facilities and associated equipment to be placed along the Route(s) (transmission hardware, etc.) shall at all times remain exclusively with KDL.

15. Rights/Restrictions.

- (a) The Fiber controlled by KDL may be used for any lawful purpose by KDL or any third party KDL allows to use such Fiber. KDL understands and agrees that such leasehold is subject to such restrictions and conditions as are, in the Operating Company's sole reasonable judgment, necessary to ensure the safety, reliability and operating efficiency of the Operating Company's electric and gas operations.
- (b) The Fiber controlled by the Applicable Operating Company is nontransferable except as specified in section 20 of this Agreement and may only be used by the Operating Companies for their own internal intra-company communications needs.

16. Liens and Encumbrances. So long as KDL is not in default under the Fiber Lease, PSI hereby agrees and covenants that it will not cause or permit an event of default to occur and continue under its Indenture dated September 1, 1939, as amended and supplemented (the "PSI Mortgage") such that the Trustee or the bondholders under the PSI Mortgage take possession of, foreclose upon, or sell the leased fibers free and clear of the rights of the Lessee under the Fiber Agreement.

So long as KDL is not in default under the Fiber Agreement, CG&E hereby agrees and covenants that it will not cause or permit a completed default to occur and continue under its First Mortgage dated as of August 1, 1936, as amended and supplemented (the "CG&E Mortgage") such that the Trustee or the bondholders under the CG&E Mortgage take possession of, foreclose upon, or sell the leased fibers free and clear of the rights of the Lessee under the Fiber Agreement.

The Operating Companies shall keep the Fiber leased to KDL, free from any and all liens and claims, except for the above referred to PSI mortgage and CG&E mortgage.

PSI represents to KDL that Section 7 of Article X of the PSI Mortgage provides that, so long as PSI is not in default thereunder, PSI may execute and deliver a lease or leases in the usual form for any of its non-utility property that the interest of the lessee or lessees under any such lease shall be free from the lien of the PSI Mortgage; and that upon the request of the Company the Trustee shall execute and deliver such documents as in the opinion of counsel may be necessary to free from the lien of the PSI Mortgage the interest of the lessee under any such lease, but the interest of PSI, as lessor under any such lease, shall be subject to the lien of the PSI Mortgage. PSI further represents that the term "opinion of counsel" is defined in the PSI Mortgage as an opinion in writing signed by counsel appointed by the Board of Directors of PSI and approved by the Trustee. As soon as

practicable after the execution and delivery of the Fiber Agreement, PSI agrees to request the Trustee under the PSI Mortgage to execute and deliver such documents as in the opinion of counsel may be necessary to free from the lien of the PSI Mortgage the interest of the Lessee under the Fiber Agreement pursuant to Section 7 of Article X of the PSI Mortgage.

In connection with the sale of the leased fibers by KDL to CG&E, KDL shall retain a vendor's lien or purchase money mortgage lien on such leased fibers to secure CG&E's obligation to pay the purchase price of such lease Fibers as set forth in the Fiber Agreement, which lien shall exist on the date of acquisition of such leased fibers by CG&E and continue for the term of the Fiber agreement. CG&E agrees to execute and deliver and file such Uniform Commercial Code financing statements and other documents as shall be reasonably requested by KDL from time to time to perfect such lien.

17. Interconnection. At each end of a Route, and at the splice points designated in the applicable Project Description, each party shall be responsible for, and pay all costs associated with, installing equipment and facilities necessary in order to utilize fiber strands under its control and each shall also be responsible for, and pay all costs associated with, interconnecting its fiber strands to such equipment. All access to the Fiber shall be arranged through, and performed by, KDL or a KDL contractor, in accordance with section 11 of this Agreement.

#### GENERAL TERMS & CONDITIONS

18. Term. This Agreement shall become effective upon its execution and shall continue in effect for a term of ninety-nine (99) years. Thereafter, the Agreement shall automatically renew on a year to year basis, unless and until terminated by either party on six (6) months notice.

(a) Significant Regulatory Change. If an applicable legislature, Court of competent jurisdiction, or administrative agency alters or amends a statute, rule, or order such that it is economically unreasonable for the affected party to continue under this Agreement or any Fiber Project related to this Agreement, as applicable, and the parties are not able, after negotiating in good faith, to come to a mutually agreeable equitable solution, the affected party may immediately terminate this Agreement or the affected Fiber Project, as applicable, after providing the other party with notice of such altered or amended statute, rule, or order.

(b) Regulatory Changes not Applicable to 18 (a). If neither party exercises its rights pursuant to Section 18(a) of this Agreement then to the extent that utility costs directly assignable to transactions under this Agreement may change due to municipal ordinance, statute, rule, order, contract, or settlement and such costs are unrecoverable through rates, each party will assume its pro-rata share of such costs, as reasonably determined by Operating Company.

(c) Because substantially all of the moneys paid by KDL in connection with Fiber Project under this Agreement are paid for up front by KDL, the parties agree that, if any then existing Fiber Project terminates prior to the ninety-nine (99) year term, KDL shall have the right to purchase all Fiber controlled or leased by it in connection with such Fiber Project (ie excluding strands controlled by the Applicable Operating Company) at a cost of ten dollars (\$10) from the

Operating Companies. Thereafter, KDL shall be allowed to benefit from any of the Operating Companies' pole attachment rights and rights-of-way, if any, that might extend to KDL in connection with such Fiber.

19. Taxes. Notwithstanding who has legal title to the Fiber, it is understood and agreed as between the parties that for accounting and federal and all applicable state and local tax purposes, KDL shall be treated as the owner of the fiber strands it controls; and the applicable Operating Company shall be treated as the owner of the fiber strands it controls.

20. Successors and Assigns.

(a) *Generally.* This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors and permitted assigns. Unless otherwise set forth herein, neither of the parties may assign this Agreement to any other person or entity without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

(b) *Exceptions.* Notwithstanding the foregoing,

(i) the parties may assign this Agreement without the consent of the other party to any affiliate of such party, to the surviving entity into which such party may merge or consolidate, or to any entity to which the party transfers all, or substantially all, of its business and assets; and

(ii) KDL shall also have the right, without the consent of the Operating Companies, to assign or otherwise transfer this Agreement as collateral to any lender to KDL (or lender to any successor or assign of KDL); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement.

21. Notices. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, and shall be deemed to have been duly given (a) on the date of personal delivery, (b) on the date of delivery to a nationally recognized overnight delivery service, (c) on the date of deposit in the U. S. mails, postage prepaid, by certified mail, return receipt requested, or (d) on the date of transmission by telephonic facsimile transmission, in each case addressed as follows, or to such other addresses or facsimile numbers as shall be designated from time-to-time by the parties pursuant to this paragraph 21:

If to KDL to:

If to the Operating Companies to:

Kentucky Data Link, Inc.  
1419 W. Lloyd Expressway, Suite 100  
Evansville, Indiana 47710  
Attention: John Greenbank  
President  
Fax: 812/461-3363

Cinergy Corp.  
221 East Fourth Street  
Cincinnati, OH 45202  
Attention: Paul Kling  
Manager T & D Engineering  
Fax: 513/287-3698

With copy to:  
Kentucky Data Link, Inc.  
8829 Bond Street  
Overland Park, KS 66214  
Attention: Legal Department  
Fax: (913) 492-1684

With copy to:  
Cinergy Corp.  
1000 East Main Street  
Plainfield, IN 46168  
Attention: Legal Department  
Fax: (317) 838-1842

22. Force Majeure. In the event KDL or the Operating Companies are delayed in or prevented from performing any of its respective obligations under this Agreement due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, acts of insurrection, acts of civil or military authority, including orders and decisions by applicable administrative agencies, fires, floods or earthquakes, fiber cuts or other causes beyond the reasonable control of the party delayed, then such delay or nonperformance shall be excused. If any such delay or nonperformance due to the foregoing causes or events occurs or is anticipated, the party affected shall promptly notify the other party in writing of such event or expected event and the cause and estimated duration of such event. The party affected by such event shall, at no cost to the other party, exercise due diligence to shorten or avoid the delay or nonperformance and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay or nonperformance.
23. Limitation of Liability. NEITHER PARTY SHALL HAVE ANY RESPONSIBILITY, LIABILITY OR OBLIGATION TO THE OTHER OR THE OTHER'S AFFILIATES, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS OR PERMITTED ASSIGNS FOR ANY SPECIAL, INCIDENTAL CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF REPLACEMENT SERVICES, LOSS OF CUSTOMERS OR AGENTS, LOSS OF USE, OR PENALTIES IMPOSED BY OTHERS, REGARDLESS OF ANY ACT OF OMISSION OR COMMISSION IN CONNECTION WITH OR UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DEFECT IN, DELAY IN OR LOSS OF AVAILABILITY, OR FAILURE OF THE FIBER.
24. Indemnification.



- (a) Operating Company shall defend, indemnify and hold harmless KDL and each of its officers, directors, employees and agents, from and against, and shall pay the full amount of, any loss, liability, claim, damages, expense, including costs of investigation and defense and reasonable attorney's fees, whether or not involving a third-party claim (collectively, Damages), arising, directly or indirectly, from Operating Company's acts or omissions in connection with this Agreement, except to the extent caused by KDL. Such indemnity shall apply regardless of whether the Damages result from any asserted or actual negligence or willful misconduct of, or breach of warranty by, KDL or any of its officers, directors, employees or agents. Such indemnity shall not apply, however, to the extent that KDL receives insurance proceeds in respect of any such Claim.
- (b) KDL shall defend, indemnify and hold harmless the Operating Company and each of its officers, directors, employees and agents, from and against, and shall pay the full amount of, any loss, liability, claim, damages, expense, including costs of investigation and defense and reasonable attorney's fees, whether or not involving a third-party claim (collectively, Damages), arising, directly or indirectly, from KDL's acts or omissions in connection with this Agreement, except to the extent caused by Operating Company. Such indemnity shall apply regardless of whether the Damages result from any asserted or actual negligence or willful misconduct of, or breach of warranty by, the Operating Company or any of its officers, directors, employees or agents. Such indemnity shall not apply, however, to the extent that Operating Company receives insurance proceeds in respect of any such Claim.
- (c) Procedure for Indemnification. Within 10 days after receipt by Indemnitee of written notice of any claim or the commencement of any action, suit, litigation or other proceeding against it (Proceeding) with respect to which it is eligible for indemnification hereunder, Indemnitee shall notify Indemnitor thereof. Failure to so notify Indemnitor shall not relieve Indemnitor of its indemnification obligation, unless Indemnitor establishes that defense thereof has been prejudiced by such failure. Thereafter, Indemnitor shall be entitled to participate in such Proceeding and, at its election upon notice to Indemnitee to assume the defense of such Proceeding. If Indemnitee has given timely notice to Indemnitor of the commencement of such Proceeding, but Indemnitor has not, within 10 days after receipt of such notice, given notice to such Indemnitee of its election to assume the defense thereof, Indemnitor shall be bound by any determination made in such Proceeding or any compromise or settlement made by Indemnitee. A claim for indemnification for any matter not involving a third-Party claim may be asserted by notice from Indemnitee to Indemnitor.

25. Disclaimer. THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

26. Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same document.

27. Expenses. Except as otherwise expressly provided herein or therein, each party shall bear the costs and expenses incurred by it in negotiating, entering into and performing any of its obligations under this Agreement.

28. Headings. The headings of this Agreement are inserted for convenience only and shall not be deemed to be a part hereof.

29. Severability. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby. If this Agreement shall be held to be unenforceable against either party, the enforceability of such agreement against the other party hereto shall not in any way be affected or impaired thereby.

30. Dispute Resolution. KDL and the Operating Companies plan to use due diligence to work together to implement this Agreement. However, the parties understand that unforeseen issues and conflicts may arise. It is the intention of the parties that this Agreement not terminate prior to the expiration of the Term. Rather, the parties acknowledge their desire to reach a working solution to such issues and conflicts by employing the following dispute resolution process:

- (a) To the extent that any issue of or relating to this Agreement cannot be reasonably resolved by KDL and the Operating Companies, a designated representative of each party shall meet promptly in an effort to resolve the dispute extrajudicially.
- (b) If the dispute is not resolved as a result of such meeting, the dispute shall be immediately referred in writing to the members of senior management of each party. The members of senior management shall meet to attempt to resolve the dispute within twenty (20) days after the meeting described in paragraph 30(a) above.
- (c) No less than ten (10) days prior to the meeting of senior managers, the parties shall exchange written statements of the issues in dispute, the facts and evidence supporting each side, and the name of the member of senior management designated and authorized to resolve the dispute.
- (d) If the good faith attempts to resolve the dispute as stated in paragraphs 30(a), (b) and (c) are unsuccessful, either party may start binding arbitration in Evansville, Indiana. The arbitration will be before a three-arbitrator panel. KDL will select one arbitrator to

represent its interest, at its sole expense; and the Operating Companies will select one arbitrator to represent their collective interests. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator. The decision(s) of a majority of the arbitrators shall be final and binding on the parties.

- (e) Notwithstanding the foregoing, either party may resort to a court by applying for interim relief if such party reasonably determines that such relief is necessary to prevent irreparable injury to it or to a third party.

31. Binding Agreement. This Agreement, including the attachments, embodies the entire agreement between the parties hereto and supersedes any prior or contemporaneous oral or written agreements between the parties, and once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties.

32. Governing Law. This Agreement shall be construed and enforced under and in accordance with the laws of the State in which the affected Operating Company resides, without regard to conflicts of laws principles.

33. Customer Information Disclosure. The Operating Companies and the KDL understand and agree that KDL shall not have access to, share or have the opportunity to obtain the Operating Companies' customer information except to the extent that is otherwise permitted to any telecommunications company under applicable state and federal law, rules and regulations, and tariffs, including law affecting the privacy and disclosure of customer information, as they exist today and as changed from time to time.

34. Confidentiality. In light of the competitive circumstances, including regulatory changes, in both the energy and telecommunications markets, the Parties understand and agree that they will be exchanging information and entering into agreements for the construction and lease of facilities, the disclosure of which is likely to harm their competitive positions in their respective markets. Therefore, they agree that the business information, materials, and business plans that they provide to or discuss with each other, along with the terms and conditions thereof are deemed to be confidential unless the disclosing Party indicates otherwise.

Each Party shall, during the term of this Agreement and thereafter, take all steps reasonably necessary to hold in trust and confidence and to protect from disclosure to the public or third parties information of the other that it knows or has reason to know is the trade secret or confidential information of the other.

Confidential information does not include:




- (a) information that is now or hereafter becomes, through no act or omission of the Party receiving the information, generally known or available in the relevant industry or industries, or is now in or later enters the public domain through no act or omission of the Party receiving the information;
- (b) information that was acquired by the receiving Party prior to entering into this Agreement and without restrictions of the information's use and disclosure;
- (c) information that has been or is hereafter received by the receiving Party from a third party who has rightfully and lawfully disclosed the information to the receiving Party;
- (d) information that the receiving Party discloses pursuant to written permission of the Party whose confidential information is to be disclosed under such permission.

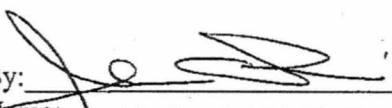
If a Party receives a request for disclosure of the confidential information of the other Party pursuant to lawful order, such as discovery requests or court or administrative agency order, that Party will give immediate notice to the other of such request and the Parties will cooperate to obtain a protective order or other lawful protection against disclosure of such confidential information in the public record or otherwise.


**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and to become effective as of the date first written above.

**Kentucky Data Link, Inc.**


By:   
 Name: Albert E. Cinelli  
 Title: Chairman

**PSI Energy, Inc.**

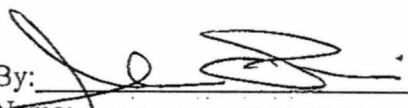
By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU  
**The Lawrenceburg Gas Company**

By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU

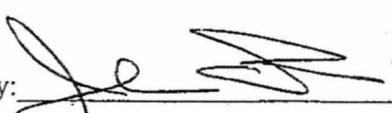
**The Cincinnati Gas & Electric Company**

By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU

**The Union Light Heat & Power Company**

By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU

**The West Harrison Gas and Electric Company**

By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU

### GLOSSARY OF TERMS

"Agreement" means this Agreement and all extensions and modifications hereof, together with all addenda, attachments, appendices, exhibits and schedules.

"Fiber" means fiber cable, up to 144 single-mode fiber strands (or copper strands, as applicable) and attachment hardware to be installed on and between the Applicable Operating Company's Utility Structures pursuant to this Agreement.

"Fiber Optic Capacity" means on-net transmission capacity (1 T1, 1 DS3 or 1 OC3) between any two (2) KDL points-of-presence ("KDL POP") located along a specific Route described in a Project Description or located at an end of a Route described in a Project Description

"Fiber Projects" means those projects described in the Project Descriptions attached as Exhibit A.

"Power Zone" is that area of a standard utility pole above the Communications Zone and Neutral Zone in the proximity of electrical conductors.

"Project Descriptions" are the forms attached as Exhibit A that describe the Fiber Projects covered by this Agreement.

"Route" means a continuous path of Utility Structures, on and between which KDL installs Fiber pursuant to this Agreement.

**EXHIBIT A- PROJECT DESCRIPTIONS**  
**PROJECT DESCRIPTION # \_\_\_\_\_**

**1. Project Defined.**

**Section 1**

Fiber: KDL, at its cost, to install one (1) fiber optic cable or FOG Wire and related fiber strands, splices and terminations.

Route: \_\_\_\_\_

It is understood that the Fiber may, at KDL's discretion, be placed in the Power Zone along such Route. It is also understood that KDL will be allowed to place the Fiber in a position that will require the least amount of make ready work. (Approximately \_\_\_\_\_ miles).

Both parties will use best efforts to have Fiber described in this Section 1 installed on or before \_\_\_\_\_, 2\_\_\_\_\_.

**2. Applicable Operating Company Strands/KDL Strands Defined.**

On the terms of the Agreement, the Applicable Operating Company will retain \_\_\_\_\_ of the single-mode fiber strands installed along the Route described in Section 1 above. On the terms of the Agreement, the Applicable Operating Company may elect two (2) fiber strands or that number of fiber strands, which equals five percent (5%) of the total number of strands KDL installs along that Route, rounded to the nearest even number (See Footnote 1 from Section 10 of the Agreement and Footnote 2 from Section 13 of the Agreement). Alternatively, the Applicable Operating Company may elect zero (0) fiber strands, in which case KDL would provide transmission capacity (1 T1, 1 DS3 or 1 OC3) between any two (2) of the following KDL points-of-presence ("KDL POP"): a KDL POP located along the

Route described in Section 1 above or a KDL POP located at an end of the Route described in Section 1 above.

KDL will lease the fiber strands installed along this Route that are not retained by the Operating Company,.

3. **Special Terms.**

*Ground Space (Optional at KDL's Discretion).* The Applicable Operating Company hereby leases to KDL for fair market value of \$\_\_\_\_\_, receipt of which is hereby acknowledged, and KDL hereby leases from such Company for fair market value of \$\_\_\_\_\_, a \_\_\_\_\_ square foot portion of ground space on property already owned by such Company at an Operating Company's substation along with ingress and egress thereto, sufficient for KDL to construct up to a \_\_\_\_\_ square foot building and to locate certain equipment associated with the operation of its fiber optic network. The parties agree to use their best efforts to identify the exact ground space and to prepare, sign and file in the appropriate court office a Memorandum of said Lease within ninety (90) days of the date KDL first intends to use such ground space.

4. **Basic Agreement.** This Project Description is hereby incorporated in its entirety into the Agreement between The Cincinnati Gas & Electric Company, PSI Energy, Inc., The Union Light Heat & Power Company, The Lawrenceburg Gas Company, The West Harrison Gas And Electric Company, and Kentucky Data Link, Inc., and is effective as of this \_\_\_\_ day of \_\_\_\_ 2\_\_\_\_\_.

Kentucky Data Link, Inc.

The Applicable Operating Company

By: \_\_\_\_\_

By: \_\_\_\_\_

## POLE ATTACHMENT RIGHTS/DARK FIBER RIGHTS EXCHANGE AGREEMENT

This POLE ATTACHMENT RIGHTS/DARK FIBER RIGHTS EXCHANGE AGREEMENT ("Agreement") is effective as of the 7<sup>th</sup> day of February, 2005 by and between Kentucky Data Link, Inc. ("KDL"), a Kentucky corporation, and Cinergy MetroNet, Inc. ("CMN"), an Indiana corporation. KDL and CMN are sometimes referred to herein collectively as the "Parties" or individually as a "Party".

1. Purpose. Pursuant to that certain Fiber Agreement dated October 1, 2000, by and between KDL and certain of Duke Energy Corporation's affiliate companies (collectively "Duke") which is attached hereto as Exhibit A ("Fiber Agreement"), KDL has secured the right to locate fiber optic cable on utility poles owned or controlled by Duke. CMN wishes to install and use fiber optic cable along certain Duke utility pole routes (collectively the "Duke Routes" each individually a "Duke Route"). KDL wishes to obtain rights to, and use of, dark fiber along the Duke Routes. The Parties, therefore, wish to enter into this Agreement, the terms of which will govern the exchange of dark fiber rights for pole attachment rights and maintenance services as more particularly set forth below.

2. Request for Duke Routes. At any time during the term of this Agreement, CMN may request the right to locate fiber optic cable along a Duke Route by sending KDL written notice. Upon receipt of such notice, KDL shall promptly review CMN's request and shall notify CMN in a timely manner if KDL does not have the rights under the Fiber Agreement to satisfy CMN's request. If KDL is able to accommodate CMN's request under the terms of the Fiber Agreement, the Parties shall promptly start working on a Project Description as more particularly described in Section 3 below for the requested Duke Route. Upon completion, KDL shall promptly submit the Project Description to Duke for approval and shall use commercially reasonable efforts to secure such approval in a reasonable time frame.

3. Incorporation of Duke Routes. Each Duke Route covered by this Agreement shall be identified and described in an Exhibit B Project Description that incorporates itself into this Agreement by reference and that is signed by both Parties. Each such Exhibit B shall set forth the following information for each Duke Route: (i) a description of the utility pole route; (ii) the total number of fiber strands to be located along the utility pole route; (iii) the number of fiber strands being retained for use by KDL along the utility pole route pursuant to the terms of this Agreement; and (iv) the number of fiber strands to be utilized by CMN along the utility pole route. Unless otherwise agreed to by the Parties, each Exhibit B Project Description shall be in the form of Exhibit B attached hereto.

4. Make Ready and Installation Work. KDL shall perform, or oversee the performance of, all make ready and installation work associated with the location of CMN fiber optic cable on each Duke Route set forth in an Exhibit B Project Description that is approved by Duke. All such work shall be performed by KDL in accordance with telecommunications industry standard practices. CMN shall pay all Costs of make ready and installation work. For purposes of this Agreement, the term "Costs" shall be the sum of: (a) all actual costs paid or payable by KDL including, without limitation, labor costs, pass through costs paid to third parties, and materials costs and (b) an overhead allocation equal to fifteen percent (15%) of the sum of the costs set forth in (a).

5. Cost Estimate. Prior to the commencement of any make ready and installation work, KDL shall provide CMN with a reasonable estimate of the Costs associated with such work ("Cost Estimate"). If CMN approves the Cost Estimate, KDL shall then diligently perform, or oversee the performance of, the make ready and installation work. Notwithstanding the foregoing, KDL may require CMN to pay all or any portion of the Cost Estimate in advance as a condition of commencing with the make ready and installation work. In such case, when the make ready and installation work has been completed, KDL shall provide CMN with documentation of the actual Costs associated with such work. If the actual Costs are less than the Cost Estimate, KDL shall issue CMN a credit equal to the difference. If the actual Costs are greater than the Cost Estimate, KDL shall invoice CMN for the difference.

6. Billing and Payment. KDL shall invoice CMN for all amounts due under this Agreement. All invoices shall be due and payable within thirty (30) days of receipt by CMN. KDL reserves the right to apply a late charge equal to one and half percent (1.5%) per month (or the maximum legal rate, if less) on any unpaid balance. CMN shall reimburse KDL for all fees KDL incurs collecting any past due undisputed charges from CMN including, but not limited to, attorneys fees and collection fees. Should CMN dispute any of the charges on an invoice, it shall notify KDL in writing within sixty (60) days after CMN's receipt of invoice of the disputed charges and CMN's reason for disputing the same. If CMN does not deliver a challenge or dispute to any invoice within sixty (60) days after CMN's receipt of that invoice, the invoice will be considered final and accepted without recourse or later dispute by CMN.

7. Transfer of Title. Pursuant to the terms of the Fiber Agreement, Duke is required to retain title to all fiber optic cable, including the cable sheath, installed by KDL along each Duke Route. Therefore, automatically, without further action, CMN hereby conveys to KDL title and ownership in all of the CMN fiber optic cable, including the cable sheath, installed along each Duke Route covered by this Agreement now and in the future (collectively the "Installed Fibers"). As a condition of such transfer, KDL agrees to convey to Duke, title and ownership to the Installed Fibers located on each Duke Route covered by this Agreement.

8. Grant of IRU. KDL shall retain the greater of: (i) eight (8) fibers; or (ii) ten percent (10%) of the Installed Fibers (rounded up to the nearest even number) for its use and Duke's use. In return, KDL hereby grants CMN a fully paid-up (with no periodic lease payments), fully transferable indefeasible right of use ("IRU") in the remaining ninety percent (90%) of the Installed Fibers. Such IRU shall be an exclusive and irrevocable right, for the duration of this Agreement.

9. Gaps in Duke Routes. CMN may request that KDL obtain rights to install fiber optic cable along a route that commences on Duke utility poles but has segments that are not covered by Duke utility poles (e.g. segments that go underground, across bridges or on utility poles owned by third parties) before again being connected to Duke utility poles ("Gap Segments"). It is understood by the Parties that without having rights in fiber optic cable located along the Gap Segments such routes would be incomplete and of little value to KDL. Therefore, CMN agrees to secure and maintain the underlying rights necessary to install fiber optic cable along the Gap Segments and hereby grants KDL an IRU in the greater of: (i) eight (8) fibers; or (ii) ten percent (10%) of the CMN fibers (rounded to the nearest even number) located along the Gap Segments. KDL shall be responsible for installing and maintaining the CMN fiber optic cable along the Gap



Segments in accordance with the terms set forth in Sections 4 and 11 of this Agreement. For avoidance of doubt, CMN shall own the fiber optic cable along the Gap Segments.

10. Use. Each Party shall use the fibers granted or used by such Party pursuant to this Agreement in a manner that does not cause material technical interference with the other Party's network, fiber, or any equipment or element thereof. Each Party shall be responsible for the operation and maintenance of any equipment it attaches or uses in conjunction with the fibers granted or used by such Party pursuant to this Agreement. Neither KDL, nor any affiliate of KDL, shall use any of the IRU fibers to directly provide voice, video and/or Internet services to residential or small business consumers in competition with voice, video and/or Internet services provided by CMN. Notwithstanding the foregoing, KDL or any KDL affiliate may use the IRU fibers: (i) to provide wholesale transport services to any carrier including, without limitation, carriers providing voice, video and data services to residential and business consumers; (ii) to provide services to any school or post secondary school; or (iii) for any other purpose not prohibited under this Agreement.

11. Maintenance of the Installed Fibers. As additional consideration for the rights granted to KDL under this Agreement, throughout the useful life of the Installed Fibers, KDL shall use commercially reasonable efforts to ensure that the Installed Fibers are maintained in good working order, condition and repair, ordinary wear and tear excepted. KDL shall also perform, or oversee the performance of, all relocation activities involving the Installed Fibers. CMN shall reimburse KDL for all Costs associated with the maintenance and relocation of the Installed Fibers.

12. Term. The term of this Agreement shall be coterminous with the term of the Fiber Agreement.

13. Taxes. Notwithstanding who has legal title to the Installed Fibers in any of the Duke Routes or the fibers located along the Gap Segments, it is understood and agreed as between the Parties that for accounting and federal and all applicable state and local tax purposes, each Party shall be treated as the owner of that portion of the fibers it controls.

14. Representations and Warranties. Each Party represents and warrants that this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, and creditors' rights. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INSTALLED FIBERS OR ANY OF THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

15. Limitation of Liability. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT TO THE EXTENT CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

16. Specific Performance. The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance as its sole remedy for a breach under this Agreement.

17. Limitation of Rights. All rights, duties and obligations set forth in this Agreement are expressly subject and subordinate to the terms and conditions of the Fiber Agreement and KDL's rights and obligations thereunder. KDL shall have no liability whatsoever to CMN if KDL fails to perform any duty or obligation under this Agreement as a result of (i) losing any of its rights under the Fiber Agreement for any reason; (ii) the terms and conditions of the Fiber Agreement; or (iii) any act or omission of Duke.

18. Post Termination Obligations. If the Fiber Agreement is terminated, so long as KDL has the ability, KDL shall exercise its rights under Section 18(c) of the Fiber Agreement to purchase the Installed Fibers. In such event, with the exception of the Installed Fibers that will be retained by KDL, KDL shall immediately pass title to CMN in all of the remaining Installed Fibers including the cable sheath. CMN, in turn, shall pass title to KDL in the greater of: (i) eight (8) fibers; or (ii) ten percent (10%) of the CMN fibers (rounded to the nearest even number) located along the Gap Segments. Thereafter, unless otherwise agreed to by the Parties, CMN shall be responsible for obtaining and paying all amounts associated with any third party underlying rights required to keep in place the Installed Fibers located along the Duke Routes and the CMN fiber optic cable located along the Gap Segments. KDL shall reimburse CMN for ten percent (10%) of the amounts paid to any third parties to secure and maintain such underlying rights. This Section 18 shall survive termination of the Agreement unless the Agreement is terminated pursuant to Section 20 below in which case it shall be of no further force or effect.

19. Abandonment. Each Party reserves the right to abandon its portion of the Installed Fibers or fibers located along the Gap Segments by delivering written notice to the other Party. Upon receipt of such notice, the non terminating Party shall have the option of taking title to the terminating Party's abandoned fibers in which case the Parties shall sign any documents necessary to consummate such transfer. For avoidance of doubt, once a Party has abandoned any Fibers and/or Gap Segment fibers pursuant to this Section 19, it shall have no further liability to the other Party under this Agreement for such abandoned Fibers and/or Gap Segment fibers.

20. Loan Agreement Obligations. The Parties previously entered into a Services Agreement by and among KDL, CMN and Norlight, Inc. (f/k/a Cinergy Communications Company) dated March 1, 2004, as amended ("Services Agreement"). The Services Agreement was approved by the United States Department of Agriculture's Rural Utilities Service Division (the "RUS"). The purpose of this Agreement is to further clarify the Parties' obligations under an arrangement the Parties believe is permitted under the Services Agreement. KDL, however, acknowledges and understands that CMN's rights and obligations under this Agreement are expressly subject and subordinate to the Loan and Security Agreement dated November 14, 2005, by and between CMN and the United States of America ("Loan Agreement"). Notwithstanding anything to the contrary herein, if this Agreement is determined by the RUS to be in violation of the Loan Agreement, upon written notice to KDL from CMN, this Agreement



shall immediately terminate and neither Party shall have any further obligation to the other Party hereunder. CMN shall endeavor to provide KDL with as much advance notice of termination as possible under the circumstances.

21. Assignment. Neither Party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Parties may assign this Agreement without the consent of the other Party to any affiliate of such Party, to the surviving entity into which such Party may merge or consolidate, or to any entity to which the Party transfers all, or substantially all, of its business and assets. Each Party shall also have the right, without the consent of the other Party, to assign or otherwise transfer this Agreement as collateral to any lender of such Party (or lender to any successor or assign of such Party); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement. In the event any such lender assigns any rights it has under this Agreement, the non assigning Party agrees to accept performance of this Agreement by the assignee so long as the assignee is subject to the provisions of this Agreement.

22. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications given to KDL at:

Kentucky Data Link, Inc.  
3701 Communications Way  
Evansville, IN 47715  
Attn: President

with a copy to:

Kentucky Data Link, Inc.  
8829 Bond Street  
Overland Park, KS 66214  
Attn: Legal Dept

All notices and other communications shall be given CMN at:

Cinergy MetroNet, Inc.  
3701 Communications Way  
Evansville, IN 47715  
Attn: President

Cinergy MetroNet, Inc.  
8829 Bond Street  
Overland Park, KS 66214  
Attn: Legal Department

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may change the address to which future notices or other communications shall be sent by sending the other Party notice.

23. Force Majeure. Neither Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; government codes, ordinances, laws, rules, regulations or restrictions (collectively, "Regulations"); war or civil disorder; strikes or other labor disputes; or any cause beyond the reasonable control of such Party. The Party claiming relief under this Section 23 shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay.

24. Non Exclusive. This Agreement is non exclusive and each Party reserves the right to enter into separate agreements or arrangements with Duke or any other third party regarding pole attachment rights or dark fiber rights involving the Duke Routes or Gap Segments.

25. Dispute Resolution. The Parties hereto plan to use due diligence and use their best efforts and work together to implement this Agreement and amicably resolve their differences. However, the Parties understand that issues and conflicts may arise where they reach an impasse. The Parties acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either Party may start by delivering to the other Party a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of the Parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved 30 days after receipt of the Demand, either Party may start binding arbitration in Evansville, Indiana. The Parties will use their best efforts to conclude the arbitration as expediently as possible but in no event later than 60 days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the Parties from resolving the Dispute within such 60 day period. If such interim relief or court action is sought, then the Parties will use their best efforts to conclude the arbitration within 60 days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each Party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the Party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either Party may apply to a court of law to have a judge select an

impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication, and the Parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators. No statements by, or communications between, the Parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each Party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided, No interest shall be applied to any arbitration award. It is the intent of the Parties to first allow the arbitrators an opportunity to meet and negotiate a decision. However, if an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the Parties.

Notwithstanding the foregoing, either Party hereto may resort to a court by applying for interim relief, without the requirement to post a bond or security, if such Party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party. The venue for any such proceeding shall be in Evansville, Indiana.

26. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Indiana, without reference to its choice of law principles.

27. Waiver. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment of its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

28. Jointly Drafted. No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

29. No Third Party Rights. Nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement.

30. No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section 30 and shall be entitled to enforce the obligations of this Section 30.

31. Relationship of the Parties. The relationship between CMN and KDL shall not be that of partners, agents, or joint venture.


32. Interpretation. The captions or headings in this Agreement are for convenience or reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement. Where context requires, singular terms shall include references to the plural and vice versa. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular article, section or provision of this Agreement. The format, words and phrases used in this Agreement shall have the meaning generally understood in the broadband and communications industries.

33. Survival. The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.

34. Entire Agreement. This Agreement, along with Exhibit A and Exhibit B sets forth the entire understanding and supersedes all prior agreements and understanding between the Parties relating to the subject matter hereof. This Agreement may not be amended or otherwise modified except by an instrument in writing signed by an authorized representative of each Party. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise regarding the subject matter hereto other than as expressly stated in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written above.

**Kentucky Data Link, Inc.**

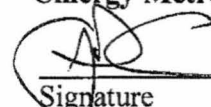
  
\_\_\_\_\_  
Signature

John Greenbank  
Name

Pres  
Title

8/15/10  
Date

**Cinergy MetroNet, Inc.**

  
\_\_\_\_\_  
Signature

John Cinelli  
Name

as its president  
Title

8/15/10  
Date

## EXHIBIT A

COPY

### FIBER AGREEMENT

This Agreement is made as of this 1st day of October 2000, by and between The Cincinnati Gas & Electric Company ("CG&E"), an Ohio corporation, PSI Energy, Inc. ("PSI"), an Indiana corporation, The Union Light Heat & Power Company (ULH&P), a Kentucky corporation, The Lawrenceburg Gas Company ("LGC"), an Indiana corporation, The West Harrison Gas And Electric Company ("WHG&E"), an Indiana corporation, and Kentucky Data Link, Inc. ("KDL"), a Kentucky corporation. CG&E, PSI, ULG&P, LGC and WHG&E, are herein collectively called the "Operating Companies" and individually called an "Operating Company." The Operating Companies are subsidiaries of Cinergy Corp. ("Cinergy"), a Delaware corporation.

In consideration of the mutual covenants and terms and conditions contained in this Agreement, the parties agree as follows:

#### GENERAL AGREEMENTS AND UNDERSTANDINGS

1. The Operating Companies provide electricity and natural gas to customers in the states of Indiana, Ohio and Kentucky. In connection with those operations and throughout the above states, the Operating Companies own or control certain poles, towers, conduits and related facilities (collectively called "Utility Structures") and rights of way related to such Structures (the "Cinergy Service Territory"). The Operating Companies require dark fiber strands or Fiber Optic Capacity throughout the Cinergy Service Territory, for their internal intra-company communications in connection with the above described operations. KDL desires to install fiber optic routes on behalf of the Operating Companies throughout portions of the Cinergy Service Territory along Routes determined by KDL from time to time on the terms and conditions stated in this Agreement.
2. Fiber installed along a Route under this Agreement will be owned by the Operating Company(ies) that owns or controls the Utility Structures and rights of way along such Route (called the "Applicable Operating Company"); the Applicable Operating Company shall retain two (2) dark fiber strands, or Fiber Optic Capacity (as defined in the Glossary Section), along each such Route for its internal telecommunication and data transmission needs. Additionally, the Applicable Operating Company shall have the option of retaining more than two (2) dark fiber strands in accordance with Footnote 1 at the bottom of page 3 below. The Applicable Operating Company will lease unneeded dark fibers to KDL via an indefeasible right of use ("IRU") in consideration for KDL's construction, maintenance and repair of the Fiber along that Route.
3. KDL has entered into this Agreement in an effort to expand its telecommunications business throughout the states of Indiana, Ohio and Kentucky.
4. The Operating Companies have entered into this Agreement to implement their planning for their long-term telecommunications and data transmission needs for the safe, reliable, and efficient operation of their electric and gas systems.

5. By working together on the Fiber Projects covered by this Agreement, the parties believe they can effect economies in the development of their desired fiber resources and in the continued operation and maintenance thereof.
6. Each defined term shall have the meaning ascribed to such term in the attached "Glossary of Terms."

#### PROJECT PLANNING

7. At such time that KDL desires to add a Fiber Project to this Agreement, it shall inform the Applicable Operating Company of such decision. The parties shall then work together, in good faith and in compliance with applicable laws, to schedule the timing of the installation of the Route(s) to be covered by such Fiber Project in a manner that will allow each to meet its desired completion date for that Fiber Project. Further, the Applicable Operating Company shall diligently work to provide KDL with both (a) a reasonable estimate of the costs to perform any make ready work required for the contemplated Fiber Project and (b) the fiber count the Applicable Operating Company desires for that Fiber Project, subject to terms set forth in this Agreement. If the parties are able to agree on the timing schedule and make ready estimate, in accordance with the Operating Companies' Telecom Queuing Process, KDL shall provide the Applicable Operating Company with a Project Description for that Fiber Project. Unless otherwise agreed, the Project Description shall be in the form of Exhibit A attached hereto. Upon receipt of a signed Project Description from KDL, the Applicable Operating Company shall countersign and return a fully signed original of such Project Description to KDL unless there is a statutory, administrative or physical impediment. Each such Project Description will be added to this Agreement and shall be governed by the terms set forth herein. Prior existing Agreements may be governed by the terms and conditions of this Agreement, subject to the agreement of the parties hereto.

#### CONSTRUCTION

8. Engineering/Planning. The Operating Companies and KDL agree that KDL shall engineer and otherwise design each Route that is made a part of this Agreement in accordance with the Operating Companies' Guide for Installing Fiber Optic Cable. KDL shall be responsible for the costs incurred by it in connection with such efforts.
9. Make-Ready. The Applicable Operating Company shall diligently perform all make ready work along each Route that is made a part of this Agreement. KDL shall reimburse the applicable Operating Company for the cost of all such work.

10. Construction and Installation. After the Applicable Operating Company performs the necessary make ready work, KDL, at its cost<sup>1</sup>, shall have the Fiber constructed along the Route. All such work shall comply (i) with reasonable and customary construction practices and (ii) with the minimum requirements of applicable governmental regulations and codes, including, but not limited to, the National Electrical Code ("NEC") and National Electrical Safety Code ("NESC").

#### MAINTENANCE

11. Fiber. KDL shall, at its own expense, perform all maintenance required to keep the Fiber, including that fiber retained by the Operating Companies, in good working order, condition and repair, ordinary wear and tear excepted, throughout the useful life of the Fiber (and at its discretion, KDL may replace certain of the Fiber from time to time). KDL's maintenance shall be done in accordance with telecommunication industry standards. In the event maintenance is required on Fibers that are located in the Power Zone on Operating Company Utility Structures (distribution or transmission), unless otherwise required by law, such maintenance shall be coordinated by KDL, who will employ the Operating Company or a qualified contractor (such qualifications to be reasonably set by Operating Company) to perform such maintenance. KDL shall be responsible for the actual cost associated with such work<sup>2</sup>.

- (a) KDL shall give at least two days' notice to the Applicable Operating Company before performing any non-emergency maintenance on any of the Fiber installed on that Operating Company's Utility Structures. For any emergency maintenance, KDL shall give the Applicable Operating Company at least one hour's notice. Such notice shall be given to the Applicable Operating Company at 1-800-262-3000

<sup>1</sup> The Applicable Operating Company may increase the number of fiber strands it retains (*i.e.* the fiber strands it does not lease to KDL) along a Route from two (2) fiber strands to that number of fiber strands, which equals five percent (5%) of the total number of strands KDL installs along that Route, rounded to the nearest even number (for example, if KDL installs a 96 count along a particular Route, the Applicable Operating Company may increase the number of fiber strands it retains along that Route to 4; if KDL installs a 144 count along a particular Route, the Applicable Operating Company may increase the number of fiber strands it retains along that Route to 8.). The election to increase such count shall be made prior to construction and reflected in the Project Description for that Fiber Project; and the Applicable Operating Company shall be responsible for its pro-rata share of Fiber costs related to such increased fiber count.

<sup>2</sup> If the Applicable Operating Company increases the number of fiber strands controlled by it along a Route above two (2), it shall reimburse KDL for the pro-rata share (based on the ratio of the number of such excess strands on the Route to the number of all strands on the Route) of KDL's reasonable out-of-pocket costs for maintenance and repair work related to such increased fiber count.



- (b) KDL shall give at least two days' notice to the Applicable Operating Company before performing any non-emergency maintenance on any of the Fiber installed on that Operating Company's Utility Structures. For any emergency maintenance, KDL shall give the Applicable Operating Company at least one hour's notice. Such notice shall be given to the Applicable Operating Company at 1-800-262-3000
- (c) In the event emergency maintenance needs to be performed on the Applicable Operating Company's Utility Structures, that Operating Company reserves the right to commence and complete any such electric maintenance or restoration work prior to allowing KDL access to repair or maintain its Fiber. If requested by that Operating Company's personnel, KDL shall cease repair work and vacate the repair site until that Operating Company's maintenance and restoration procedures are complete.

12. Relocation. This Agreement is subject to the right of the Operating Company, without liability to KDL or its customers, to relocate, modify the geographic routing of, or to remove, replace or change, the location of any of its facilities in such a manner as will best enable the Operating Company, in its sole discretion, to fulfill its electric or gas service or other business requirements. When facilities are to be moved or replaced, the Operating Company will give KDL advanced written notice, where practical, of such move or replacement and cooperate with KDL in planning such move or replacement in order to preserve the connectivity and continuity of services of KDL and that of its customers. When Operating Company facilities are to be removed, the Operating Company shall give advance written notice to KDL of such removal so that KDL may make alternative arrangements for its facilities and equipment affected by such removal. KDL shall be responsible for its pro-rata share of any costs of relocation, modification of the geographic routing of, removal, replacement or change in the location of its facilities that affects KDL's facilities and related service, insofar as such changes are caused by KDL, such as attachment to an Operating Company supporting structures that must be upgraded to accommodate KDL's attachment or an upgrade of KDL's attachment to a supporting structure.

In the event that any relocation of Operating Company Utility Structures is necessitated by the lawful requirements of governmental authorities or a need to replace Operating Company Utility Structures that are, in the Operating Company's sole reasonable judgment, deteriorated or worn out, the Parties, if required to by law, shall share the cost, on a pro-rata basis, as reasonably determined by Operating Company, of restoring the facilities that the Parties physically share. If the parties are not, by law, required to share such costs, the Applicable Operating Company shall be responsible for any such costs. Nothing in this Agreement is meant to limit the right of either Party to seek compensation from any governmental authority for the costs of such relocation or replacement.

13. Operating Company Utility Structures. The Operating Companies shall, throughout the Term of this Agreement, at their expense maintain their Utility Structures in good working order, condition and repair.

#### INTERESTS/RIGHTS

14. Legal Title/Lease Arrangement. The Applicable Operating Company shall own all of the Fiber installed pursuant to this Agreement; and KDL shall automatically and without further action,



have an indefeasible, fully paid-up (with no periodic lease payments), fully transferable lease on the portion of the Fiber controlled by it along the Routes (the "IRU Fibers"). This indefeasible right to use ("IRU") is an exclusive and irrevocable right, subject to termination only as provided herein, to use the IRU Fibers; provided that the grant of such IRU does not convey legal title to KDL in the IRU Fibers. On the lease commencement date, the Applicable Operating Company agrees that all of such Operating Company's rights and remedies under any manufacturer's or similar warranties that apply to the leased Fiber shall be automatically assigned to KDL. All right, title and interest in all of KDL's other facilities and associated equipment to be placed along the Route(s) (transmission hardware, etc.) shall at all times remain exclusively with KDL.

15. Rights/Restrictions.

- (a) The Fiber controlled by KDL may be used for any lawful purpose by KDL or any third party KDL allows to use such Fiber. KDL understands and agrees that such leasehold is subject to such restrictions and conditions as are, in the Operating Company's sole reasonable judgment, necessary to ensure the safety, reliability and operating efficiency of the Operating Company's electric and gas operations.
- (b) The Fiber controlled by the Applicable Operating Company is nontransferable except as specified in section 20 of this Agreement and may only be used by the Operating Companies for their own internal intra-company communications needs.

16. Liens and Encumbrances. So long as KDL is not in default under the Fiber Lease, PSI hereby agrees and covenants that it will not cause or permit an event of default to occur and continue under its Indenture dated September 1, 1939, as amended and supplemented (the "PSI Mortgage") such that the Trustee or the bondholders under the PSI Mortgage take possession of, foreclose upon, or sell the leased fibers free and clear of the rights of the Lessee under the Fiber Agreement.

So long as KDL is not in default under the Fiber Agreement, CG&E hereby agrees and covenants that it will not cause or permit a completed default to occur and continue under its First Mortgage dated as of August 1, 1936, as amended and supplemented (the "CG&E Mortgage") such that the Trustee or the bondholders under the CG&E Mortgage take possession of, foreclose upon, or sell the leased fibers free and clear of the rights of the Lessee under the Fiber Agreement.

The Operating Companies shall keep the Fiber leased to KDL, free from any and all liens and claims, except for the above referred to PSI mortgage and CG&E mortgage.

PSI represents to KDL that Section 7 of Article X of the PSI Mortgage provides that, so long as PSI is not in default thereunder, PSI may execute and deliver a lease or leases in the usual form for any of its non-utility property that the interest of the lessee or lessees under any such lease shall be free from the lien of the PSI Mortgage; and that upon the request of the Company the Trustee shall execute and deliver such documents as in the opinion of counsel may be necessary to free from the lien of the PSI Mortgage the interest of the lessee under any such lease, but the interest of PSI, as lessor under any such lease, shall be subject to the lien of the PSI Mortgage. PSI further represents that the term "opinion of counsel" is defined in the PSI Mortgage as an opinion in writing signed by counsel appointed by the Board of Directors of PSI and approved by the Trustee. As soon as

practicable after the execution and delivery of the Fiber Agreement, PSI agrees to request the Trustee under the PSI Mortgage to execute and deliver such documents as in the opinion of counsel may be necessary to free from the lien of the PSI Mortgage the interest of the Lessee under the Fiber Agreement pursuant to Section 7 of Article X of the PSI Mortgage.

In connection with the sale of the leased fibers by KDL to CG&E, KDL shall retain a vendor's lien or purchase money mortgage lien on such leased fibers to secure CG&E's obligation to pay the purchase price of such lease Fibers as set forth in the Fiber Agreement, which lien shall exist on the date of acquisition of such leased fibers by CG&E and continue for the term of the Fiber agreement. CG&E agrees to execute and deliver and file such Uniform Commercial Code financing statements and other documents as shall be reasonably requested by KDL from time to time to perfect such lien.

17. Interconnection. At each end of a Route, and at the splice points designated in the applicable Project Description, each party shall be responsible for, and pay all costs associated with, installing equipment and facilities necessary in order to utilize fiber strands under its control and each shall also be responsible for, and pay all costs associated with, interconnecting its fiber strands to such equipment. All access to the Fiber shall be arranged through, and performed by, KDL or a KDL contractor, in accordance with section 11 of this Agreement.

#### GENERAL TERMS & CONDITIONS

18. Term. This Agreement shall become effective upon its execution and shall continue in effect for a term of ninety-nine (99) years. Thereafter, the Agreement shall automatically renew on a year to year basis, unless and until terminated by either party on six (6) months notice.

(a) Significant Regulatory Change. If an applicable legislature, Court of competent jurisdiction, or administrative agency alters or amends a statute, rule, or order such that it is economically unreasonable for the affected party to continue under this Agreement or any Fiber Project related to this Agreement, as applicable, and the parties are not able, after negotiating in good faith, to come to a mutually agreeable equitable solution, the affected party may immediately terminate this Agreement or the affected Fiber Project, as applicable, after providing the other party with notice of such altered or amended statute, rule, or order.

(b) Regulatory Changes not Applicable to 18 (a). If neither party exercises its rights pursuant to Section 18(a) of this Agreement then to the extent that utility costs directly assignable to transactions under this Agreement may change due to municipal ordinance, statute, rule, order, contract, or settlement and such costs are unrecoverable through rates, each party will assume its pro-rata share of such costs, as reasonably determined by Operating Company.

(c) Because substantially all of the moneys paid by KDL in connection with Fiber Project under this Agreement are paid for up front by KDL, the parties agree that, if any then existing Fiber Project terminates prior to the ninety-nine (99) year term, KDL shall have the right to purchase all Fiber controlled or leased by it in connection with such Fiber Project (ie excluding strands controlled by the Applicable Operating Company) at a cost of ten dollars (\$10) from the

Operating Companies. Thereafter, KDL shall be allowed to benefit from any of the Operating Companies' pole attachment rights and rights-of-way, if any, that might extend to KDL in connection with such Fiber.

19. Taxes. Notwithstanding who has legal title to the Fiber, it is understood and agreed as between the parties that for accounting and federal and all applicable state and local tax purposes, KDL shall be treated as the owner of the fiber strands it controls; and the applicable Operating Company shall be treated as the owner of the fiber strands it controls.

20. Successors and Assigns.

(a) *Generally.* This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors and permitted assigns. Unless otherwise set forth herein, neither of the parties may assign this Agreement to any other person or entity without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

(b) *Exceptions.* Notwithstanding the foregoing,

(i) the parties may assign this Agreement without the consent of the other party to any affiliate of such party, to the surviving entity into which such party may merge or consolidate, or to any entity to which the party transfers all, or substantially all, of its business and assets; and

(ii) KDL shall also have the right, without the consent of the Operating Companies, to assign or otherwise transfer this Agreement as collateral to any lender to KDL (or lender to any successor or assign of KDL); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement.

21. Notices. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, and shall be deemed to have been duly given (a) on the date of personal delivery, (b) on the date of delivery to a nationally recognized overnight delivery service, (c) on the date of deposit in the U. S. mails, postage prepaid, by certified mail, return receipt requested, or (d) on the date of transmission by telephonic facsimile transmission, in each case addressed as follows, or to such other addresses or facsimile numbers as shall be designated from time-to-time by the parties pursuant to this paragraph 21:

If to KDL to:

If to the Operating Companies to:

Kentucky Data Link, Inc.  
1419 W. Lloyd Expressway, Suite 100  
Evansville, Indiana 47710  
Attention: John Greenbank  
President  
Fax: 812/461-3363

Cinergy Corp.  
221 East Fourth Street  
Cincinnati, OH 45202  
Attention: Paul Kling  
Manager T & D Engineering  
Fax: 513/287-3698

With copy to:  
Kentucky Data Link, Inc.  
8829 Bond Street  
Overland Park, KS 66214  
Attention: Legal Department  
Fax: (913) 492-1684

With copy to:  
Cinergy Corp.  
1000 East Main Street  
Plainfield, IN 46168  
Attention: Legal Department  
Fax: (317) 838-1842

22. Force Majeure. In the event KDL or the Operating Companies are delayed in or prevented from performing any of its respective obligations under this Agreement due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, acts of insurrection, acts of civil or military authority, including orders and decisions by applicable administrative agencies, fires, floods or earthquakes, fiber cuts or other causes beyond the reasonable control of the party delayed, then such delay or nonperformance shall be excused. If any such delay or nonperformance due to the foregoing causes or events occurs or is anticipated, the party affected shall promptly notify the other party in writing of such event or expected event and the cause and estimated duration of such event. The party affected by such event shall, at no cost to the other party, exercise due diligence to shorten or avoid the delay or nonperformance and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay or nonperformance.

23. Limitation of Liability. NEITHER PARTY SHALL HAVE ANY RESPONSIBILITY, LIABILITY OR OBLIGATION TO THE OTHER OR THE OTHER'S AFFILIATES, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS OR PERMITTED ASSIGNS FOR ANY SPECIAL, INCIDENTAL CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF REPLACEMENT SERVICES, LOSS OF CUSTOMERS OR AGENTS, LOSS OF USE, OR PENALTIES IMPOSED BY OTHERS, REGARDLESS OF ANY ACT OF OMISSION OR COMMISSION IN CONNECTION WITH OR UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DEFECT IN, DELAY IN OR LOSS OF AVAILABILITY, OR FAILURE OF THE FIBER.

24. Indemnification.

- (a) Operating Company shall defend, indemnify and hold harmless KDL and each of its officers, directors, employees and agents, from and against, and shall pay the full amount of, any loss, liability, claim, damages, expense, including costs of investigation and defense and reasonable attorney's fees, whether or not involving a third-party claim (collectively, Damages), arising, directly or indirectly, from Operating Company's acts or omissions in connection with this Agreement, except to the extent caused by KDL. Such indemnity shall apply regardless of whether the Damages result from any asserted or actual negligence or willful misconduct of, or breach of warranty by, KDL or any of its officers, directors, employees or agents. Such indemnity shall not apply, however, to the extent that KDL receives insurance proceeds in respect of any such Claim.
- (b) KDL shall defend, indemnify and hold harmless the Operating Company and each of its officers, directors, employees and agents, from and against, and shall pay the full amount of, any loss, liability, claim, damages, expense, including costs of investigation and defense and reasonable attorney's fees, whether or not involving a third-party claim (collectively, Damages), arising, directly or indirectly, from KDL's acts or omissions in connection with this Agreement, except to the extent caused by Operating Company. Such indemnity shall apply regardless of whether the Damages result from any asserted or actual negligence or willful misconduct of, or breach of warranty by, the Operating Company or any of its officers, directors, employees or agents. Such indemnity shall not apply, however, to the extent that Operating Company receives insurance proceeds in respect of any such Claim.
- (c) Procedure for Indemnification. Within 10 days after receipt by Indemnitee of written notice of any claim or the commencement of any action, suit, litigation or other proceeding against it (Proceeding) with respect to which it is eligible for indemnification hereunder, Indemnitee shall notify Indemnitor thereof. Failure to so notify Indemnitor shall not relieve Indemnitor of its indemnification obligation, unless Indemnitor establishes that defense thereof has been prejudiced by such failure. Thereafter, Indemnitor shall be entitled to participate in such Proceeding and, at its election upon notice to Indemnitee to assume the defense of such Proceeding. If Indemnitee has given timely notice to Indemnitor of the commencement of such Proceeding, but Indemnitor has not, within 10 days after receipt of such notice, given notice to such Indemnitee of its election to assume the defense thereof, Indemnitor shall be bound by any determination made in such Proceeding or any compromise or settlement made by Indemnitee. A claim for indemnification for any matter not involving a third-Party claim may be asserted by notice from Indemnitee to Indemnitor.

25. Disclaimer. THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

26. Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same document.

27. Expenses. Except as otherwise expressly provided herein or therein, each party shall bear the costs and expenses incurred by it in negotiating, entering into and performing any of its obligations under this Agreement.

28. Headings. The headings of this Agreement are inserted for convenience only and shall not be deemed to be a part hereof.

29. Severability. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby. If this Agreement shall be held to be unenforceable against either party, the enforceability of such agreement against the other party hereto shall not in any way be affected or impaired thereby.

30. Dispute Resolution. KDL and the Operating Companies plan to use due diligence to work together to implement this Agreement. However, the parties understand that unforeseen issues and conflicts may arise. It is the intention of the parties that this Agreement not terminate prior to the expiration of the Term. Rather, the parties acknowledge their desire to reach a working solution to such issues and conflicts by employing the following dispute resolution process:

- (a) To the extent that any issue of or relating to this Agreement cannot be reasonably resolved by KDL and the Operating Companies, a designated representative of each party shall meet promptly in an effort to resolve the dispute extrajudicially.
- (b) If the dispute is not resolved as a result of such meeting, the dispute shall be immediately referred in writing to the members of senior management of each party. The members of senior management shall meet to attempt to resolve the dispute within twenty (20) days after the meeting described in paragraph 30(a) above.
- (c) No less than ten (10) days prior to the meeting of senior managers, the parties shall exchange written statements of the issues in dispute, the facts and evidence supporting each side, and the name of the member of senior management designated and authorized to resolve the dispute.
- (d) If the good faith attempts to resolve the dispute as stated in paragraphs 30(a), (b) and (c) are unsuccessful, either party may start binding arbitration in Evansville, Indiana. The arbitration will be before a three-arbitrator panel. KDL will select one arbitrator to

represent its interest, at its sole expense; and the Operating Companies will select one arbitrator to represent their collective interests. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator. The decision(s) of a majority of the arbitrators shall be final and binding on the parties.

- (e) Notwithstanding the foregoing, either party may resort to a court by applying for interim relief if such party reasonably determines that such relief is necessary to prevent irreparable injury to it or to a third party.

31. Binding Agreement. This Agreement, including the attachments, embodies the entire agreement between the parties hereto and supersedes any prior or contemporaneous oral or written agreements between the parties, and once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties.

32. Governing Law. This Agreement shall be construed and enforced under and in accordance with the laws of the State in which the affected Operating Company resides, without regard to conflicts of laws principles.

33. Customer Information Disclosure. The Operating Companies and the KDL understand and agree that KDL shall not have access to, share or have the opportunity to obtain the Operating Companies' customer information except to the extent that is otherwise permitted to any telecommunications company under applicable state and federal law, rules and regulations, and tariffs, including law affecting the privacy and disclosure of customer information, as they exist today and as changed from time to time.

34. Confidentiality. In light of the competitive circumstances, including regulatory changes, in both the energy and telecommunications markets, the Parties understand and agree that they will be exchanging information and entering into agreements for the construction and lease of facilities, the disclosure of which is likely to harm their competitive positions in their respective markets. Therefore, they agree that the business information, materials, and business plans that they provide to or discuss with each other, along with the terms and conditions thereof are deemed to be confidential unless the disclosing Party indicates otherwise.

Each Party shall, during the term of this Agreement and thereafter, take all steps reasonably necessary to hold in trust and confidence and to protect from disclosure to the public or third parties information of the other that it knows or has reason to know is the trade secret or confidential information of the other.

Confidential information does not include:


- (a) information that is now or hereafter becomes, through no act or omission of the Party receiving the information, generally known or available in the relevant industry or industries, or is now in or later enters the public domain through no act or omission of the Party receiving the information;
- (b) information that was acquired by the receiving Party prior to entering into this Agreement and without restrictions of the information's use and disclosure;
- (c) information that has been or is hereafter received by the receiving Party from a third party who has rightfully and lawfully disclosed the information to the receiving Party;
- (d) information that the receiving Party discloses pursuant to written permission of the Party whose confidential information is to be disclosed under such permission.


If a Party receives a request for disclosure of the confidential information of the other Party pursuant to lawful order, such as discovery requests or court or administrative agency order, that Party will give immediate notice to the other of such request and the Parties will cooperate to obtain a protective order or other lawful protection against disclosure of such confidential information in the public record or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and to become effective as of the date first written above.


Kentucky Data Link, Inc.


The Cincinnati Gas & Electric Company

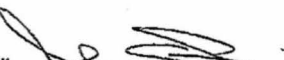
By:   
 Name: Albert E. Cinelli  
 Title: Chairman


By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU  
 The Union Light Heat & Power Company

PSI Energy, Inc.

By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU  
 The Lawrenceburg Gas Company

By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU  
 The West Harrison Gas and Electric Company

By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU

By:   
 Name: JOHN C. PROCARIO  
 Title: VP & COO  
 ENERGY DELIVERY BU



#### GLOSSARY OF TERMS

"Agreement" means this Agreement and all extensions and modifications hereof, together with all addenda, attachments, appendices, exhibits and schedules.

"Fiber" means fiber cable, up to 144 single-mode fiber strands (or copper strands, as applicable) and attachment hardware to be installed on and between the Applicable Operating Company's Utility Structures pursuant to this Agreement.

"Fiber Optic Capacity" means on-net transmission capacity (1 T1, 1 DS3 or 1 OC3) between any two (2) KDL points-of-presence ("KDL POP") located along a specific Route described in a Project Description or located at an end of a Route described in a Project Description

"Fiber Projects" means those projects described in the Project Descriptions attached as Exhibit A.

"Power Zone" is that area of a standard utility pole above the Communications Zone and Neutral Zone in the proximity of electrical conductors.

"Project Descriptions" are the forms attached as Exhibit A that describe the Fiber Projects covered by this Agreement.

"Route" means a continuous path of Utility Structures, on and between which KDL installs Fiber pursuant to this Agreement.

**EXHIBIT A- PROJECT DESCRIPTIONS**  
**PROJECT DESCRIPTION #**

**1. Project Defined.**

**Section 1**

Fiber: KDL, at its cost, to install one (1) fiber optic cable or FOG Wire and related fiber strands, splices and terminations.

Route: \_\_\_\_\_

It is understood that the Fiber may, at KDL's discretion, be placed in the Power Zone along such Route. It is also understood that KDL will be allowed to place the Fiber in a position that will require the least amount of make ready work. (Approximately \_\_\_\_\_ miles).

Both parties will use best efforts to have Fiber described in this Section 1 installed on or before \_\_\_\_\_, 2\_\_\_\_\_.

**2. Applicable Operating Company Strands/KDL Strands Defined.**

On the terms of the Agreement, the Applicable Operating Company will retain \_\_\_\_\_ of the single-mode fiber strands installed along the Route described in Section 1 above. On the terms of the Agreement, the Applicable Operating Company may elect two (2) fiber strands or that number of fiber strands, which equals five percent (5%) of the total number of strands KDL installs along that Route, rounded to the nearest even number (See Footnote 1 from Section 10 of the Agreement and Footnote 2 from Section 13 of the Agreement). Alternatively, the Applicable Operating Company may elect zero (0) fiber strands, in which case KDL would provide transmission capacity (1 T1, 1 DS3 or 1 OC3) between any two (2) of the following KDL points-of-presence ("KDL POP"): a KDL POP located along the

Route described in Section 1 above or a KDL POP located at an end of the Route described in Section 1 above.

KDL will lease the fiber strands installed along this Route that are not retained by the Operating Company,.

3. **Special Terms.**

*Ground Space (Optional at KDL's Discretion).* The Applicable Operating Company hereby leases to KDL for fair market value of \$ \_\_\_\_\_, receipt of which is hereby acknowledged, and KDL hereby leases from such Company for fair market value of \$ \_\_\_\_\_, a \_\_\_\_\_ square foot portion of ground space on property already owned by such Company at an Operating Company's substation along with ingress and egress thereto, sufficient for KDL to construct up to a \_\_\_\_\_ square foot building and to locate certain equipment associated with the operation of its fiber optic network. The parties agree to use their best efforts to identify the exact ground space and to prepare, sign and file in the appropriate court office a Memorandum of said Lease within ninety (90) days of the date KDL first intends to use such ground space.

4. **Basic Agreement.** This Project Description is hereby incorporated in its entirety into the Agreement between The Cincinnati Gas & Electric Company, PSI Energy, Inc., The Union Light Heat & Power Company, The Lawrenceburg Gas Company, The West Harrison Gas And Electric Company, and Kentucky Data Link, Inc., and is effective as of this \_\_\_\_ day of \_\_\_\_ 2\_\_\_\_\_.

Kentucky Data Link, Inc.

The Applicable Operating Company

By: \_\_\_\_\_

By: \_\_\_\_\_

## EXHIBIT B

The 22 two-page Exhibits B  
- CMN 0084-127 -  
have been intentionally omitted,  
as noted in the response to  
1 PSC-CMN 8

### Amendment to Pole Attachment Rights/Dark Fiber Rights Exchange Agreement

This Amendment modifies the Pole Attachment Rights/Dark Fiber Rights Exchange Agreement entered between Kentucky Data Link ("KDL"), a Kentucky corporation, and Cinergy MetroNet, Inc. ("CMN"), an Indiana corporation, effective February 7, 2005 ("Agreement"). KDL and CMN are referred to herein collectively as "the Parties" and individually as a "Party."

Section 10 of the Agreement shall be modified to the following:

10. Use of Fibers. KDL and CMN shall use their respective fibers in an Eligible System covered by this Agreement in a manner that does not cause material technical interference with the other Party's network, fiber, or any equipment of element thereof. Each Party shall be responsible for the operation and maintenance of any equipment it attaches or uses in conjunction with the fibers granted or used by such Party in an Eligible System. Neither KDL, nor any affiliate of KDL, shall use any of the IRU fibers to directly (or indirectly via rights to dark fiber as set forth below) provide voice, video and/or Internet services to residential consumers in competition with the voice, video and/or Internet services provided by CMN. Notwithstanding the foregoing, KDL or any KDL affiliate, may use the IRU fibers: (i) to provide wholesale transport services to any carrier, provided that, for avoidance of doubt, KDL may not license, sell or otherwise grant a third party any rights to the dark fibers that comprise the IRU fibers to provide voice, video and/or Internet services to residential consumers; or (ii) to provide services to any school or post secondary school; or (iii) for any other purpose not prohibited by this Agreement.

Except as modified herein, all other terms and conditions of the Agreement remain unmodified and in full force and effect. The Agreement and this Amendment constitute the Parties' entire agreement related to the subject matter contained in each.

This Amendment shall be effective as of the last date entered below and may be executed in several counterparts, each of which shall constitute one binding agreement on the Parties hereto and each executed counterpart shall be deemed an original. Facsimile signatures shall be accepted as valid and binding for all purposes.

The Parties each aver that the signatories below have authority to sign this Amendment.

Kentucky Data Link, Inc:

By: 

Printed Name: John Greenbank

Title: as President

Date: 11/7/10

Cinergy MetroNet, Inc:

By: 

Printed Name: John Cinelli

Title: as President

Date: 11/05/10

**AMENDMENT TO POLE ATTACHMENT RIGHTS/ DARK FIBER RIGHTS  
EXCHANGE AGREEMENT  
(EXHIBIT B, BLOOMINGTON TO SEYMOUR)**

This Amendment to Pole Attachment Rights/Dark Fiber Rights Exchange Agreement (the "Amendment") is made as of the 25<sup>th</sup> day of October, 2011 ("Amendment Date") by and between Cinergy MetroNet, Inc. ("CMN") and Windstream KDL, Inc. f/k/a Kentucky Data Link, Inc. ("KDL").

Whereas, CMN and KDL are parties to that Pole Attachment Rights/Dark Fiber Rights Exchange Agreement effective February 7, 2005 (the "Agreement"); and,

Whereas, pursuant to the terms of the Agreement, CMN and KDL each have rights to use a specified number of fibers along the Duke Route described in Exhibit B, Bloomington-Seymour, on page 45 of the Agreement (for the purposes of this Amendment, "Exhibit B"); and,

Whereas, a Duke Operating Company, as such term is defined in the Fiber Agreement, desires to acquire additional fiber along a segment of the Duke Route described in Exhibit B, more specifically, the segment from Bedford, IN to Bloomington, IN (the "Bedford to Bloomington Segment"); and,

Whereas, CMN wishes to provide additional fiber to KDL along the Bedford to Bloomington Segment for use by the Duke Operating Company; and,

Now therefore, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

As of the Amendment Date, Sections (iii) and (iv) of Exhibit B shall be deleted in their entirety and shall be replaced with the following:

"(iii) KDL Fiber Count: 8 fibers, except along the portion of the Route between Bedford, IN and Bloomington, IN where the KDL fiber count shall be 10 fibers.

(iv) CMN Fiber Count: 40 fibers, except along the portion of the Route between Bedford, IN and Bloomington, IN where the CMN fiber count shall be 38 fibers."

This Amendment shall serve to expressly modify Exhibit B of the Agreement. Except as expressly revised, modified, altered or amended hereby, the Agreement shall remain in full force and effect in accordance with its terms and constitutes the legal and binding obligations of the parties.

Agreed to as of the date first above written.

Windstream KDL, Inc.

By: [Signature]  
Name: John C. Greenbank  
Title: SVP, Fiber Transport Services  
Date: 10-11-2011

Cinergy MetroNet, Inc.

By: [Signature]  
Name: John H. Weber  
Title: Treasurer  
Date: 10/25/11

WINDSTREAM

Mailstop B1F03-71A  
4001 Rodney Parham Road  
Little Rock, Arkansas 72212

Daniel J. King  
Counsel II

812.759-7873  
Email: [Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)

windstream. 

May 14, 2015

Mr. John Campbell  
VIA email: [John.Campbell@qservicesco.com](mailto:John.Campbell@qservicesco.com)

Re: **Letter Agreement between MetroNet and Windstream Communications, LLC  
("Windstream")**

Dear John:

I am writing this letter to memorialize a recent agreement reached by the parties. In connection with the Pole Attachment Rights / Dark Fiber Rights Exchange Agreement between Kentucky Data Link, Inc. (now Windstream KDL, LLC) and CMN-RUS, Inc. f/k/a Cinergy MetroNet, Inc. ("MetroNet") dated February 7, 2005, Windstream KDL, LLC interacts directly with Duke Energy in order to obtain access to Duke Energy poles. As you are aware, Duke Energy has recently begun using the SPANS system, which is an electronic data entry system, to manage pole proposal submissions. In order to handle the work load associated with data entry into the SPANS system, Windstream Communications, LLC, an affiliate of Windstream KDL, LLC, has agreed to provide an additional resource to handle this work.

Windstream agrees that it will provide an individual who will, as his or her primary role, enter into the SPANS system the necessary information provided by MetroNet in connection with a Windstream KDL, LLC request to access Duke Energy poles (the "Data Entry Specialist"). The Data Entry Specialist, though, will not provide data entry services in connection with any requests for MetroNet service drops. Windstream will allow MetroNet to directly interface with the Supervisor of the Data Entry Specialist for purposes of managing priorities and ascertaining the status of various work.

In exchange for Windstream's commitment to provide the Data Entry Specialist, MetroNet will agree to pay Windstream the amount of \$3,700.00 per month (the "Monthly Payment"), in advance, with payments being due on the 15<sup>th</sup> day of each month for as long as this Letter Agreement is in effect. Each payment will cover the work performed by the Data Entry Specialist from the 15<sup>th</sup> day of the month that the payment is due until the 14<sup>th</sup> day of the following month (the "Service Period"). If MetroNet ceases to pay the Monthly Payment for any reason, then Windstream will have no further obligation to provide the services of the Data Entry Specialist to MetroNet beginning upon the 15<sup>th</sup> day of the month that the payment is due.

Along with the first payment due on May 15, 2015, MetroNet agrees to pay an additional prorated payment in the amount of \$2,343.33, which represents the Service Period from April 27, 2015 to May 14, 2015.

MetroNet understands and agrees that it will continue to be responsible for all fees charged by Duke Energy in connection with the pole application process and that such fees are not included as part of the Monthly Payment.

Either party may terminate this Letter Agreement upon expiration of the then current Service Period by providing written notice to the other party at least fifteen (15) days prior to the expiration of the then current Service Period.

May 14, 2015  
Page 2

If MetroNet agrees with the terms contained in this Letter Agreement, please sign on behalf of MetroNet in the appropriate place below and return a copy of this Letter Agreement to me.

Sincerely,

Daniel J. King  
Counsel II

The terms of this Letter Agreement are hereby accepted.

MetroNet

By: 

Dated: 5/15/15

Windstream Communications, LLC

By: 

Joyce Latham, Director - OSP Engineering

Dated: 5-15-2015



---

**Request**

9. Provide the total number of poles to which CMN estimates that it will need to attach in order to complete the network authorized by the Franchise Agreement. Identify all parties that own or control those poles, and identify the approximate number of poles owned and controlled by each such party. Provide a copy of all agreements and contracts with those parties regarding applications for pole attachments and make-ready work.

---

**Response**

UTILITY	Approved to attach	Waiting on Approval	Waiting to submit	Total
Kentucky Utilities Company	6472	3439	700	10611
Blue Grass Energy Cooperative Corporation	106	550	0	656
Windstream	907	621	7055	8583
TOTAL	7485	4610	7755	19850

Agreements with each identified owner/controller of the poles include or incorporate the utility's pole attachment tariff on file with the Commission; in the case of Windstream, that is the agreement. The additional agreement documents for Kentucky Utilities Company and Blue Grass Energy Cooperative Corporation are attached as follows:

1. Kentucky Utilities Company:
  - a. 11/2/17 Contract for Attachments to Company Structures (CMN 00132-34)
  - b. High Volume Pole Attachment Application Plan between Kentucky Utilities Company and Metro Fibernet, LLC, materials submitted to the Commission and effective February 17, 2018 (CMN 00135-46)
2. Blue Grass Energy Cooperative Corporation: March 2018 Agreement (CMN 00147-49)

## Contract for Attachments to Company Structures

This contract made and entered into this 24 day of November, 2017 by and between Kentucky Utilities ("Company") and Metro Fibernet ("Attachment Customer").

### Witnesseth:

The Attachment Customer is either a cable television system operator or a telecommunications carrier that is not an incumbent local exchange carrier with a joint use agreement with the Company.

The Attachment Customer desires to affix and install its Attachments to or otherwise use Company's Structures under the provisions of the Company's PSA Rate Schedule.

The Company agrees to grant the Attachment Customer the non-exclusive right to affix and install its Attachments on Company Structures in accordance with the provisions of the Company's PSA Rate Schedule and the Company's General Terms and Conditions.

Semi-annually the Attachment Customer will pay to the Company for each attachment affixed and installed on a Company Structure in the preceding billing period an amount determined in accordance with the PSA Rate Schedule.

Any notice or request that the PSA Schedule requires the Company to provide to the Attachment Customer shall be sent to:

Metro Fibernet, LLC  
3701 Communications Way  
Evansville, IN 47715  
Attn: President

With a copy to:

Metro Fibernet, LLC  
8837 Bond Street  
Overland Park, KS 66214  
Attn: Legal Department

The Attachment Customer may change the designation of its representative to be notified, his address and/or telecopier number at any time by providing the Company notice in accordance with the provisions of the PSA Rate Schedule.

It is mutually agreed that the Company's General Terms and Conditions and the PSA Rate Schedule, as from time to time approved by and on file with the Public Service Commission of Kentucky ("the Commission"), are incorporated into and made a part of this contract as fully as if written herein. It is further agreed that any changes or amendments to Company's General Terms and Conditions and the PSA Rate, as permitted or approved by the Commission, shall also be a part of this Contract upon the effective date of such change or amendment.

The Attachment Customer shall provide to the Company or before January 31 of each year a sworn written statement from its highest ranking officer located in Kentucky that the Attachment Customer has complied with all notification requirements of the PSA Schedule.

Before deploying any strand-mounted wireless communications devices other than strand-mounted wi-fi access points, Attachment Customer shall at least 60 days prior to planned deployment advise the Company of the proposed deployment and the nature of device to permit the Company to assess the safety and loadbearing implications of the proposed deployment.

In Witness Whereof, the parties hereto have caused this contract to be executed by their duly authorized representatives the day and date shown above.

**Kentucky Utilities**

By: Denise Simon

Denise Simon  
Name

Dir - Dist Reliability,  
Title  
Analytics, Admin.

**Metro Fibernet, LLC**

By: [Signature]

John Greenbank  
Name

Executive Vice President  
Title



Matthew G. Bevin  
Governor

Charles G. Snively  
Secretary  
Energy and Environment Cabinet



Commonwealth of Kentucky  
**Public Service Commission**

211 Sower Blvd.  
P.O. Box 615  
Frankfort Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

February 16, 2018

Michael J. Schmitt  
Chairman

Robert Cicero  
Vice Chairman

Talina R. Mathews  
Commissioner

Sheri Gardner  
LGE and KU Services Company  
220 W. Main Street  
5th Floor  
Louisville, KY 40202

RE: Filing No. **TFS2018-00027**  
Special contract filing between Kentucky Utilities Company/Metro Fibernet LLC

Dear Sheri Gardner:

The above referenced filing has been received and reviewed. An accepted copy is enclosed for your files. You may also use the following link to access documents related to this filing.

<https://psc.ky.gov/trf/TRFListFilings.aspx?ID=TFS2018-00027>

Sincerely,

A handwritten signature in cursive script that reads "Gwen R. Pinson".

Gwen R. Pinson  
Executive Director

**HIGH VOLUME  
POLE ATTACHMENT APPLICATION PLAN**

**between**

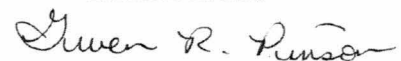
**KENTUCKY UTILITIES COMPANY**

**and**

**METRO FIBERNET, LLC**

**KENTUCKY**  
PUBLIC SERVICE COMMISSION

**Gwen R. Pinson**  
Executive Director



EFFECTIVE

**2/17/2018**

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

KPSC 2018-00157 | CMN 00136

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**KENTUCKY**  
PUBLIC SERVICE COMMISSION

**Gwen R. Pinson**  
Executive Director

*Gwen R. Pinson*

EFFECTIVE

**2/17/2018**

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

KPSC 2018-00157 | CMN 00137

## HIGH VOLUME POLE ATTACHMENT APPLICATION PLAN

This High Volume Pole Attachment Application Plan ("Plan") is made as of the 11<sup>th</sup> day of January, 2018, by and between Kentucky Utilities Company ("KU" or "Licensor" or "Company") and Metro Fibernet, LLC ("MetroNet" or "Licensee" or "Attachment Customer"), each a "Party" and together the "Parties."

### RECITALS

KU is an electric utility company providing services in Kentucky, including in and around the city of Lexington. KU offers pole attachment services under its Pole and Structure Attachment Charges Rate Schedule ("PSA Rate Schedule"), which is on file with and approved by the Kentucky Public Service Commission ("the Commission") as part of KU's Electric Service Tariff.

MetroNet is a telecommunications carrier that desires to build a fiber network within KU's service area in or near Lexington, Kentucky. MetroNet contemplates that its fiber network construction project in or near Lexington, Kentucky (the "Project") will require approximately 40,000 Attachments to KU-owned poles, or foreign-owned poles to which KU has attached its electric supply lines, over the course of two years.

MetroNet further contemplates that the size of its Project, and the desired speed of completing its Project, will require High Volume Applications, as defined in the PSA Rate Schedule.

The Parties have entered into an Attachment Customer Agreement, as defined in the PSA Rate Schedule, with an effective date of November 2, 2017.

The Parties enter into this Plan for purposes of accommodating MetroNet's intent to submit High Volume Applications and for the purposes set forth in Section 7.h. of the PSA Rate Schedule. The Parties recognize that the Project is of exceptional scope and this Plan is necessary and integral to completion of the Project.

The Parties recognize that this Plan is a special contract and that it must be filed with the Commission for review and approval before becoming effective (or, in the absence of Commission approval, such other action by the Commission that allows the terms of this Plan to become effective, as determined in KU's sole discretion).

### AGREEMENT

NOW THEREFORE, in consideration of the promises and the mutual covenants herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used in this Plan shall have the meanings set forth in the PSA Rate Schedule and the Attachment Customer Agreement, unless otherwise defined herein.
2. PSA Rate Schedule and Attachment Customer Agreement. E otherwise in this Plan, the rates, terms and conditions set forth in the PSA Rate Schedule and the Attachment Customer Agreement between the Parties are adopted and incorporated

<b>KENTUCKY PUBLIC SERVICE COMMISSION</b> Gwen R. Pinson Executive Director
 <b>2/17/2018</b> PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

KPSC 2018-00157 | CMN 00138



as if fully set forth herein. Any amendments to the PSA Rate Schedule will, when approved by the Commission, be adopted and incorporated as if fully set forth herein. In the event of a conflict between this Plan and either the PSA Rate Schedule or the Attachment Customer Agreement, this Plan shall control.

3. Scope. This Plan applies only to wireline attachments to Distribution Poles. This Plan does not apply to Wireless Facilities and does not apply to any Duct, conduit or other Structure (including but not limited to Transmission Poles). To the extent MetroNet seeks to attach to any Structure other than a Distribution Pole, or seeks to attach Wireless Facilities to any Structure, it shall do so under the terms of the PSA Rate Schedule and the Attachment Customer Agreement.
4. High Volume Applications.
  - a. Ramp-Up. During the first thirty (30) day period of the Project, MetroNet may submit High Volume Applications for up to 625 poles. During the second thirty (30) day period of the Project, MetroNet may submit High Volume Applications for up to 1,250 poles. During the third thirty (30) day period of the Project, MetroNet may submit High Volume Applications for up to 1,875 poles. Thereafter, MetroNet may submit High Volume Applications for up to 2,500 poles during any thirty (30) day period. The purpose of this ramp-up schedule is to acclimate the Parties and their contract resources to the maximum volume of applications allowed under this Plan. The Parties agree to cooperate in good-faith for any revisions to, or extension of, this ramp-up period as necessary to achieve the objective stated in this Section 4.a.
  - b. Application Requirements. Each High Volume Application shall include: (1) the location and other identifying information for each pole (such as transformer location number or pole number) to which MetroNet seeks to make an Attachment, and the amount of space required thereon; (2) the physical attributes of all proposed Attachments; (3) a pole loading study; (4) an annotated picture of each pole with heights of existing facilities; (5) any issues then known to MetroNet regarding space, engineering, access or other matters that might require resolution before installation of Attachments; and (6) proposed make ready drawings. KU, in its reasonable discretion, may request additional information be included with the High Volume Application. MetroNet shall provide such additional information before KU further processes the High Volume Application.
  - c. Design Review. Within thirty (30) days after receipt of a complete High Volume Application, KU shall (i) perform any survey, inspection, pole loading analysis, or other engineering necessary, in KU's sole discretion, to determine whether the make-ready drawings or other design materials require revision; and (ii) notify MetroNet of any required revisions to the make-ready drawings or other design materials. Such work shall be performed by the contract designers described in Section 5.d. below.
  - d. Contract Designers.



- i. In order to process the High Volume Applications anticipated in connection with the Project, KU will retain at least two (2) contract designers for the duration of the Project. The entire cost of such contract designers, plus the overhead and any reasonable costs associated with the oversight of such contract designers, will be reimbursed by MetroNet within thirty (30) days after presentation of monthly invoices by KU. The invoices shall separately set forth the cost associated with the contract designers (including any overhead) and any oversight of such contract designers. The contract designers shall be dedicated to the Project, but may be utilized by KU for other work so long as such other work does not in any way delay or otherwise impede the progress of the Project.
- ii. KU will initially retain two (2) contract designers, and engage additional contract designers if and as needed to process MetroNet's High Volume Applications. If at any time, MetroNet anticipates applying for access to fewer poles than the number contemplated in Section 4.a. above, MetroNet may request in writing, with not less than thirty (30) days' notice, that KU reduce the number of contract designers accordingly at the beginning of the following month. Such notice shall state with specificity the anticipated volume of applications. KU, in its reasonable discretion, shall determine whether the anticipated reduction in the volume of applications warrants a reduction in the number of contract designers. KU may delay the reduction of contract designers in order to process the High Volume Applications already submitted to KU in accordance with the time frames provided for in this Agreement. After a decrease in the number of contract designers as set forth in this Section, MetroNet may subsequently request an increase in the number of contract designers for the following month, with not less than thirty (30) days' written notice. Any increase in contract designers as set forth in the preceding sentence shall be subject to a ramp-up period as determined in KU's reasonable discretion.
- e. Estimates. KU shall not be responsible for preparing any estimate of the Supply Space make-ready required for the approval of a High Volume Application. MetroNet is responsible for obtaining any such estimates directly from the Approved Contractor performing the Supply Space make-ready pursuant to Section 5.a. below.
- 5. Construction of Attachments. Upon completion of design review by KU, and notification to MetroNet of any required revisions to the make-ready drawings or other design materials within a High Volume Application, construction shall proceed as follows:

a. Supply Space Make-Ready.

- i. KU-owned poles. For any approved High Volume Applications requiring Supply Space make-ready, including rearranging or replacement of KU poles (and transfer of KU poles to MetroNet), KU will be writing whether to perform some or all of such Supply Space make-ready.

<b>KENTUCKY</b> <b>PUBLIC SERVICE COMMISSION</b> <b>Gwen R. Pinson</b> <i>Gwen R. Pinson</i> <b>EFFECTIVE</b> <b>2/17/2018</b> PURSUANT TO 807 KAR 5:011 SECTION 9 (1)
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If KU elects to perform some, but not all, of the Supply Space make-ready within an approved High Volume Application, KU shall designate with specificity the portion of Supply Space make-ready it elects to perform. KU shall complete any such work it elects to perform, at MetroNet's expense, within sixty (60) days of election. If KU approves a High Volume Application without so electing, MetroNet shall complete such work through the use of an Approved Contractor within sixty (60) days following KU's approval of the High Volume Application. In the event MetroNet does not complete such work within sixty (60) days, MetroNet will notify KU of the delay in completion, the reason for such delay and the need for an extension, including anticipated completion date, if known. KU may object to the extension, and the parties shall work in good faith to reach a mutually acceptable completion time frame.

- ii. Foreign-owned poles. For any Supply Space make-ready required on foreign-owned poles (such as poles owned by the incumbent local exchange carrier), including rearrangement of KU facilities or transfer of KU facilities to a replacement pole, MetroNet shall present the make-ready drawings to KU for review and approval. KU shall elect in writing whether to perform some or all of such Supply Space make-ready. If KU elects to perform some, but not all, of the Supply Space make-ready within the make-ready drawings, KU shall designate with specificity the portion of Supply Space make-ready it elects to perform. KU shall complete any such work it elects to perform, at MetroNet's expense, within sixty (60) days of election. For any Supply Space make-ready work KU does not elect to perform, MetroNet shall complete such work through the use of an Approved Contractor within sixty (60) days following KU's approval of the make-ready drawings. In the event MetroNet does not complete such work within sixty (60) days, MetroNet will notify KU of the delay in completion, the reason for such delay and the need for an extension, including anticipated completion date, if known. KU may object to the extension, and the parties shall work in good faith to reach a mutually acceptable completion time frame.

- b. Approved Contractor. The Approved Contractor shall provide notice to KU, in the form and manner directed by KU, at least one week prior to performing any Supply Space make-ready. MetroNet shall provide the Approved Contractor with Supply Space make-ready drawings or other design materials as approved by KU, and the Approved Contractor shall document receipt of such drawings or materials, in the manner directed by KU, for each pole requiring Supply Space make-ready. Supply Space make-ready work shall be performed in accordance with KU's electric design and construction standards and applicable requirements of the KENTUCKY PUBLIC SERVICE COMMISSION, all other applicable codes and laws, and KU's construction and safety practices. Each Approved Contractor performing Supply Space make-ready shall (i) execute a Structure Access Agreement and performing such work, and (ii) procure all materials for approved in writing by KU. The cost of the Approved Contractor shall be paid by MetroNet.

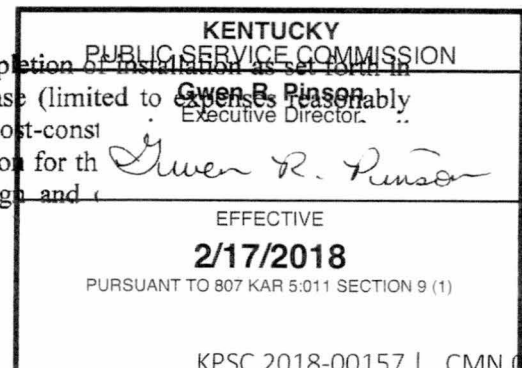


materials and other labor necessary to complete the Supply Space make-ready, shall be paid entirely by MetroNet. Supply Space make-ready shall be completed prior to third-party make-ready or installation of Attachments.

- c. Supply Space Make-Ready Inspectors. During the performance of any Supply Space make-ready by Approved Contractors under this Plan, an inspector designated by KU shall accompany the Approved Contractor(s). The inspector, in his or her sole discretion, may direct that work be performed in a manner other than as approved in a High Volume Application, based on the then-existing circumstances in the field. The reasonable cost of such inspector(s) shall be reimbursed by MetroNet within thirty (30) days after presentation of monthly invoices by KU.
- d. Third-Party Make-Ready. In the event an approved High Volume Application requires another Attachment Customer to rearrange or transfer its facilities on one or more poles, MetroNet shall coordinate the rearrangement or transfer with such third party and shall pay the costs related thereto. MetroNet shall not install its Attachments on any pole until all necessary third-party make-ready for that pole is complete.
- e. Installation of Attachments. MetroNet shall complete installation of its Attachments on KU poles within sixty (60) days of the later of the following: (i) approval of a High Volume Application; or (ii) if an approved High Volume Application requires make-ready work, completion of such make-ready work. In the event MetroNet does not complete installation within one sixty (60) days, MetroNet will notify KU of the delay in installing, the reason for such delay and the need for an extension, including anticipated installation date, if known. KU may object to the extension, and the parties shall work in good faith to reach a mutually acceptable installation time frame. MetroNet shall provide notice to KU of completion of installation of Attachments, with as-built drawings, within thirty (30) days of completion of installation.
- f. Election Not to Proceed. If MetroNet elects not to proceed with construction of any portion of an approved High Volume Application, MetroNet shall so notify KU in writing.
- g. Identification of Contractors. At all times while performing work on or near KU's poles, MetroNet shall cause its contractors to visibly identify themselves and their work vehicles as such.

6. Inspection and Corrective Action.

- a. Within sixty (60) days of notification of completion of installation as set forth in Section 5.e. above, and at MetroNet's expense (limited to expenses reasonably incurred by KU), KU shall conduct a post-construction inspection of all Attachments with the High Volume Application for which such Attachments comply with all KU design and



applicable requirements of the NESC, NEC, and all other applicable codes and laws.

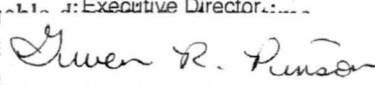
- b. The process for correcting any non-compliance with any such requirements discovered during such inspection shall be as set forth in the PSA Rate Schedule, except that MetroNet shall, in addition to complying with the requirements in the PSA Rate Schedule, pay as liquidated damages the amount of \$50 per pole for each pole on which violations are discovered during the post-construction inspection.
7. Process Flow Chart. The process described in Sections 4 through 6 above is illustrated in the flow chart attached as Exhibit A, hereto.
8. Regular Coordination Meeting. On a regular basis during the term of this Plan, but no less than twice per month, the Parties, through their designated Project representatives, shall meet in person or by telephone for the purpose of discussing progress of the Project, resolving issues and other coordination necessary for the efficient completion of the Project.
9. Denial of Access. In the normal course, KU contemplates approving each High Volume Application submitted by MetroNet pursuant to this Plan. Nothing in this Plan, though, shall be interpreted as requiring KU to grant approval to make Attachments to any particular pole. KU reserves the right to deny access to any pole for reasons of insufficient capacity, safety, reliability and generally applicable engineering concerns.
10. No Ownership Interest. No payment for materials or labor associated with Supply Space make-ready pursuant to this Plan shall establish any ownership interest in KU's poles or other facilities. All such poles and facilities, including but not limited to those KU poles replaced by MetroNet pursuant to this Plan, shall be and remain the sole property of KU.
11. Additional Reimbursement. Given the extraordinary scope of the Project contemplated by this Plan, the Parties recognize that KU may incur different and additional costs in connection with the Project beyond those contemplated by the PSA Rate Schedule, the Attachment Customer Agreement, or within this Plan. If KU is aware that it will incur such different and additional costs, KU will notify MetroNet in advance of incurring such additional costs to the extent reasonably possible, but KU's failure to provide such notice shall not relieve MetroNet of the responsibility to pay such costs. MetroNet agrees to reimburse KU for all such costs reasonably incurred, within thirty (30) days after presentation of an invoice for such costs, together with any reasonable supporting documentation requested by MetroNet.
12. Unauthorized Work in Supply Space. In the event MetroNet performs Supply Space make-ready or any other work in the Supply Space except as expressly set forth in this Plan, MetroNet shall pay to KU as liquidated damages the amount of \$2,500 per each such pole on which such unauthorized work was performed.
13. Performance Assurance. The Parties anticipate that the Project will require the installation of 40,000 Attachments to KU poles, or foreign-owned poles to electric supply lines, over the course of a two-year period, and the Parties recognize that

KENTUCKY PUBLIC SERVICE COMMISSION	
Gwen R. Pinson Executive Director	
<i>Gwen R. Pinson</i>	
2/17/2018	
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)	
KPSC 2018-00157   CMN 00143	



the size of the Project, along with the provisions set forth in this Plan to accommodate the Project, increases KU's financial risk beyond the risk addressed in Section 24 (Performance Assurance) of the PSA Rate Schedule. Prior to submitting a High Volume Application, MetroNet shall furnish to KU a surety bond in the amount of one million dollars (\$1,000,000) (or increase its existing surety bond to \$1,000,000), which otherwise meets the requirements of Section 24 of the PSA Rate Schedule. The surety bond required by this Plan shall remain in place until the completion of the Project, at which point the bond shall be reduced in accordance with Section 24 of the PSA Rate Schedule.

14. Insurance. During the term of this Plan, MetroNet shall comply with the insurance requirements set forth in Section 23 of the PSA Rate Schedule, except as follows:
  - a. Umbrella/Excess Liability Insurance. MetroNet shall maintain minimum limits of \$5,000,000 per occurrence; \$5,000,000 aggregate to apply to employer's liability, commercial general liability, and automobile liability.
  - b. Election Not to Comply. MetroNet may not avail itself of the election not to comply with Section 23.a. through f. of the PSA Rate Schedule, as set forth in Section 23.h. of the PSA Rate Schedule, at any time during the term of this Plan.
15. Revocation or Suspension of Plan: Safety. In the event KU discovers unauthorized work in the Supply Space, Unauthorized Attachments or other violations of KU's safety standards, or if MetroNet's Attachments repeatedly fail the post-construction inspection, or if MetroNet repeatedly submits deficient applications, KU may in the exercise of its reasonable discretion revoke or suspend this Plan, or restart the Ramp-Up period set forth in Section 4.a. above.
16. Term and Termination. The initial term of this Plan shall be for two (2) years from the effective date, unless earlier terminated by either Party due to default by the other (and failure to cure such default within thirty (30) days written notice). This Plan shall automatically renew for successive one (1) month terms unless either Party gives notice of termination thirty (30) days prior to expiration of the initial term or any successive term.
17. Supplemental Operating Procedures. The Parties recognize that, during the course of the Project, it may become necessary to implement mutually beneficial supplemental operating procedures. Nothing herein, or in the Customer Attachment Agreement or the PSA Rate Schedule, shall prevent the Parties from adopting supplemental operating procedures as deemed mutually beneficial for purposes of completing the Project.
18. No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of KU and MetroNet and, where permitted, their respective successors and assigns. Nothing in this Plan or in any approved High Volume Application shall be construed as creating any benefits, rights, remedies or claims to any other person, firm, corporation or other entity.
19. Exhibits. KU may revise the Exhibit to this Plan, in its reason-  
without need for a mutually executed amendment to this Plan, &  
be incorporated into this Plan. In the event of a conflict between  
this Plan shall control unless otherwise mutually agreed in writing.

<b>KENTUCKY PUBLIC SERVICE COMMISSION</b>	
<b>Gwen R. Pinson</b> Executive Director	
	
EFFECTIVE <b>2/17/2018</b>	
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)	
KPSC 2018-00157   CMN 00144	

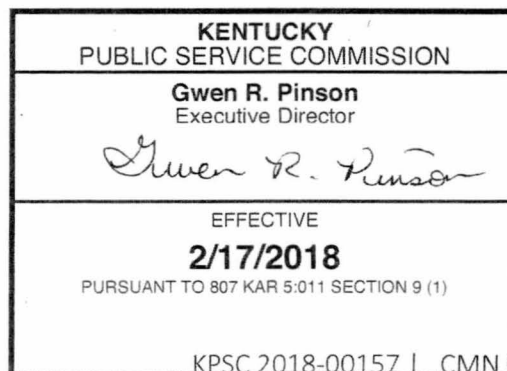
IN WITNESS WHEREOF, the Parties have caused this Plan to be duly executed by their authorized officers.

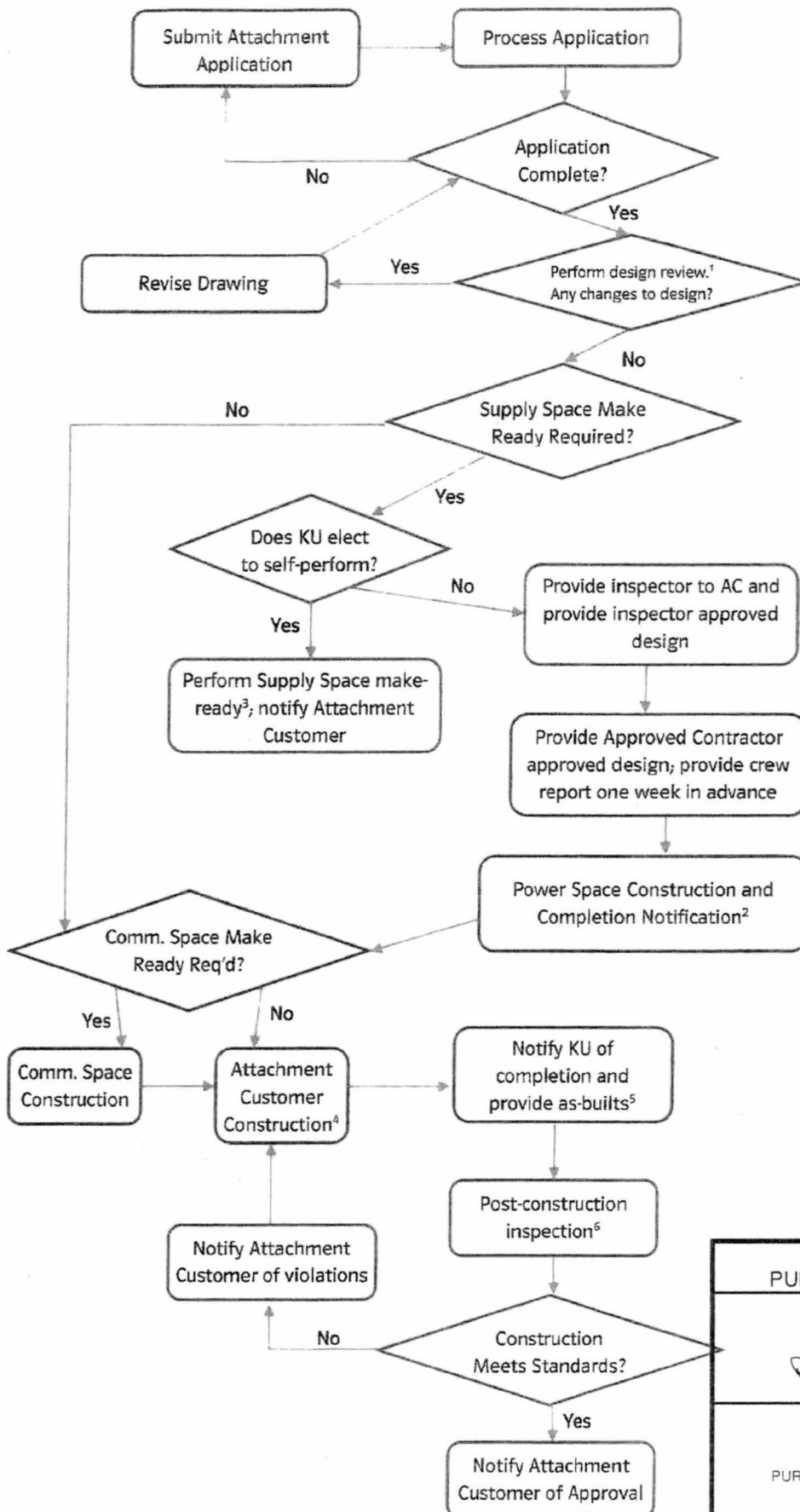
KENTUCKY UTILITIES COMPANY

By: *Denise Simon*  
 Name: Denise Simon  
 Title: Dir. Dist. Reliability, Analytics, & Admin.  
 Date: 1/16/2018

METRO FIBERNET, LLC.

By: *[Signature]*  
 Name: John Greenbank  
 Title: Executive Vice President  
 Date: January 8, 2018





### Legend

Attachment Customer

KU Contract Designer

### Notes

1. Up to 2,500 poles per month; KU deadline: 30 days after receipt
2. Attachment Customer construction deadline: 60 days after approval
3. KU construction deadline: 60 days
4. Attachment Customer initial construction deadline: 60 days, corrective construction deadline: 30 days
5. As-built deadline: 30 days after completion
6. Post-construction inspection deadline: 60 days

### KENTUCKY PUBLIC SERVICE COMMISSION

**Gwen R. Pinson**  
Executive Director

*Gwen R. Pinson*

EFFECTIVE

**2/17/2018**

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

KPSC 2018-00157 | CMN 00146



## **AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of March, 2018, by and between Blue Grass Energy Cooperative Corporation, whose mailing address is P.O. Box 990, 1201 Lexington Road, Nicholasville, Kentucky, 40340-0990, hereinafter called "Cooperative," party of the first part, and CMN-RUS, Inc., whose address is 3701 Communications Way, Evansville, IN 47715, hereinafter called party of the second part.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged by each party hereto, the Cooperative hereby agrees to grant to Second Party space on Cooperative poles for installation and maintenance of Second Party's cables and other attachments for qualified CATV operations in accordance with the provisions of the Cooperative's cable television tariff filed with the Public Service Commission of Kentucky (the "Tariff"). This Agreement is made under the following terms and conditions:

### **ARTICLE I** **GENERAL**

It is mutually agreed that the terms and conditions of the Tariff, as from time to time approved by and on file with the Public Service Commission of Kentucky ("PSC"), are incorporated into and made a part of this agreement as fully as if written herein. It is further agreed that any changes or amendments to the Tariff, as permitted or approved by the PSC, shall also be a part of this Agreement upon the effective date of such change or amendment.

### **ARTICLE II** **NOTICES**

Any notice or request required by this Agreement shall be deemed properly given if mailed, postage prepaid, to Blue Grass Energy Cooperative Corporation, P. O. Box 990, 1201 Lexington Road, Nicholasville, Kentucky, 40340-0990 Attention: Greg Harrington; or to Second Party at CMN-RUS, Inc., 3701 Communications Way, Evansville, IN 47715, ATTENTION: President, with a copy to CMN-RUS, Inc., 8837 Bond Street,

Overland Park; KS 66214, ATTENTION: Legal Department. The designation of the person to be notified, and/or his address may be changed by the Cooperative or Second Party at any time, or from time to time, by similar notice.

**ARTICLE III**  
**TERM OF AGREEMENT**

This Agreement shall become effective upon execution by both parties and shall continue in effect for successive terms of one (1) year, subject to the provisions contained in the Tariff.

**ARTICLE IV**  
**BINDING EFFECT**

This Agreement shall extend to and bind the successors and assigns of the parties hereto.

**ARTICLE V**  
**GOVERNING LAW**

The Parties agree that all disputes that may arise by and between the parties hereto shall be governed by the laws of the Commonwealth of Kentucky.

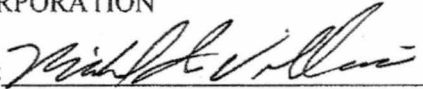
**ARTICLE VI**  
**ENTIRE AGREEMENT; COUNTERPARTS; ELECTRONIC SIGNATURES**

This Agreement and items incorporated herein by reference constitute the entire Agreement and all previous representation relative thereto, either written or oral, are hereby annulled and superseded. No modification shall be binding unless it shall be in writing and signed by both parties. This Agreement may be signed in any number of counterparts and all such counterparts shall be read together and construed as one and the same document. Faxed, electronically delivered and scanned executed documents will be considered originals for purposes of confirming an enforceable agreement.

*[SIGNATURE PAGE IMMEDIATELY FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

BLUE GRASS ENERGY COOPERATIVE  
CORPORATION

BY: 

Name: Michael I. Williams

Title: President/CEO

**FIRST PARTY**

CMN-RUS, Inc.

By: 

Name: John Greenbank

Title: Executive Vice President

**SECOND PARTY**



### **Request**

10. State whether CMN has entered into any agreements with any contractors, engineers, or other third parties to perform work attaching CMN's equipment to poles in Lexington and Fayette County or related thereto and, if so, describe the nature of the work that each such party agreed to perform.

---

### **Response**

Metronet Technologies, LLC (MNT), an affiliate of CMN, contracts with third parties to perform work related to the attachment of CMN's equipment to poles in Lexington and Fayette County. Specifically, MNT contracts with third parties to perform network design services, to perform electrical make ready work, and to physically attach CMN's fiber optic cable to the poles. MNT also contracts with third parties to perform communication space make ready work for Metro Fibernet, LLC when it is attaching to Kentucky Utilities Company's poles.

Network design services include the process of identifying rights of way, utility easements, analyzing make ready costs, identifying pole locations, acquiring pole data and documenting such information. These contractors provide grid maps that depict information including the location of each pole, running lines between poles and distances between poles.

Make ready work includes the process of ensuring the utility poles to which CMN wants to attach its fiber optic cables are suitable to receive the cable. This process includes surveying the condition of each pole, determining what improvements, if any, are necessary, determining if existing attachments must be rearranged or modified, and then making those improvements, arrangements and modifications to the

pole. MNT contracts with third parties qualified to conduct make ready work with and around electrical equipment and communications equipment.

Physically attaching the fiber to the poles includes affixing a messenger wire in the communication space on the pole, running the messenger wire between the poles, ensuring proper clearances from other facilities and the ground, installing the necessary grounding and guy wires, installing fiber distribution boxes, and lashing the fiber optic cable to the messenger wire.

**Request**

11. State whether CMN currently intends to enter into additional agreements with contractors, engineers, or other third parties to perform work attaching CMN's equipment to poles in Lexington and Fayette County or related thereto and, if so, briefly describe the nature of the work that CMN expects each such contractor, engineer, or third party will agree to perform and when CMN expects to enter each such agreement.

---

**Response**

CMN will need additional crews deployed to physically attach cables to poles. If the rate at which CMN expects to be able to attach its equipment to poles in Lexington and Fayette County significantly increases, MNT anticipates that the firms with which it currently has contracted will need to deploy additional crews. CMN anticipates that the firms currently contracted by MNT to attach CMN's equipment to poles in Lexington and Fayette County will be able to absorb much of the increase in anticipated attachment activity. However, to the extent additional resources are required, MNT will enter into contracts with new firms to provide the necessary services and CMN would expect MNT to identify and deploy such additional resources within sixty (60) days.

---

**Request**

12. Describe generally the nature of the work CMN expects its employees to perform attaching CMN's equipment to poles in Lexington and Fayette County or related thereto.

---

**Response**

CMN Staff<sup>1</sup> performs administrative, oversight/inspection, contract management and quality control related to the design services, make ready work, or physical fiber attachments relating to poles in Lexington and Fayette County. For example, CMN Staff submits and processes applications to utilities requesting permission to attach. They also issue work orders to contractors and process payments to contractors. CMN Staff provides oversight of the outside plant contractors that perform make ready work and attach CMN's facilities. They also coordinate and inspect the work before, during and after field construction. In addition, CMN Staff insures that the necessary labor and materials are available for the attachment process.

---

<sup>1</sup> CMN has no direct employees. Rather, it uses individuals employed by its ultimate parent corporation that are assigned to its projects.

**Request**

13. Describe the rate at which CMN's equipment is currently being attached to poles in Lexington and Fayette County, regardless of whether the poles are owned or controlled by Windstream Kentucky East, LLC (Windstream East) or some other party, and describe the rate at which CMN expects to be able to attach its equipment to poles in Lexington and Fayette County when work on the network is fully underway.

---

**Response**

Currently, Metronet estimates that on average it attaches to 880 poles per month.

Construction of CMN's network is fully underway, but is not progressing at the rate desired by CMN due to Windstream's failure to process more than 300 poles in a 30-day period. If construction progressed at the rate desired by CMN, Metronet estimates that it will average physically attaching to 2,222 poles per month. The actual rate may be more or less in a given period based upon a variety of factors, including weather.



**Request**

14. Assuming there are no delays with pole attachment applications or make-ready work, state when CMN expects work on the network in Lexington and Fayette County to be fully underway, such that pole attachments are completed at the rate described in CMN's response to the second part of Item 13 above. Identify and describe what preparation or work must be completed before work attaching CMN's equipment to poles is able to proceed at that rate.

---

**Response**

Construction of CMN's network is currently fully underway; however, it is not progressing at the rate desired by CMN due to Windstream's failure to process more than 300 poles in a 30 day period. CMN's original construction timeline anticipated that Windstream would release 1000 to 1500 utility poles a month for the Lexington project. In the event that Windstream were to meet this time frame, CMN would need up to 60 days to accommodate the increase in Windstream's output.

The tasks involved in preparation, or work attaching CMN's equipment to poles, are identified and described in the responses to Staff Requests Nos. 10, 12 and 13.

## **Request**

15. Describe how CMN expects work on the network to be completed, e.g. in multiple phases or a single phase. If work is going to be completed in multiple phases, state the number of phases and whether work on each phase has been bid by contractors and, if not, whether and when work is expected to be bid for each phase.

---

## **Response**

First, CMN will construct the Baseline Coverage Area (as defined in Section 1(c) of the Franchise Agreement Ordinance), and thereafter, CMN will expand beyond the Baseline Coverage Area as subscription thresholds are met, as described in detail in Section 15 of the Ordinance. (*See* CMN 00007, 00022-24, attached to the response to Staff Request No. 1.) The Baseline Coverage Area has been divided into four quadrants. Different construction activities are being completed simultaneously in each quadrant depending on CMN's ability to access utility poles.

Although service will become available in some neighborhoods sooner than other neighborhoods within the Baseline Coverage Area, construction is occurring across the Baseline Coverage Area. CMN starts with feeder routes or rings, which are routes or rings of fiber necessary to provide connectivity to Local Convergence Points (LCPs) which are built out to service neighborhoods. As noted in the response to Staff Request No. 3, some neighborhoods are already receiving service.

## Request

16. Provide all correspondence with attachments, whether sent via regular mail, email, or otherwise, between CMN and Windstream East regarding or referencing the pole attachments at issue in this matter, except that it is not necessary to provide the correspondence between counsel after the complaint in this matter was filed.

---

## Response

Attached hereto are printouts of PDF files prepared from correspondence (with attachments) between CMN and Windstream regarding or referencing the pole attachments at issue in this case that has been gathered by CMN to date.

- The “Bates stamps” on the attached documents are CMN 00187-386.
- Attachments generally follow the covering letter or email. The .zip, .shx, .prj, and .shp files shown as attachments at CMN 00282, 00284, and 000295 appear to be “esri shapefiles” or other GIS mapping tool inputs were not converted to PDF files and printouts are not attached hereto.
- An effort has been made to present the correspondence in chronological order and to avoid duplication.

In general, correspondence that has been attached to responses to other Requests by Commission Staff or Windstream is not also attached hereto.

**Date:** 11/22/2017 10:07:00 AM  
**Sent:** 11/22/2017 10:07:39 AM  
**Subject:** Pole Attachment  
**From:** Anita Larson  
**To:** King, Daniel <Daniel.King@windstream.com>;

---

Dan: Do you know whom I would reach out to in order to get Windstream's pole attachment agreement for Kentucky?

Hope you have a great holiday!

Thanks!  
Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**Date:** 11/22/2017 10:24:27 AM  
**Sent:** 11/22/2017 10:23:58 AM  
**Subject:** RE: Pole Attachment  
**From:** King, Daniel <Daniel.King@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>; Mclaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>;  
**CC:** Lloyd, James <James.Lloyd@windstream.com>;

---

Anita:

Good to hear from you. The person that you want to speak with is Michelle Mclaughlin. I have copied her on this response. She negotiates and manages our pole agreements and can provide you with our template for Kentucky.

I assume that you are asking so that MetroNet can begin the process of negotiating a pole attachment agreement with us in connection with its expansion into Lexington. Congratulations on the announcement.

Hope you have a great Thanksgiving!

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [mailto:Anita.Larson@metronetinc.com]  
**Sent:** Wednesday, November 22, 2017 9:08 AM  
**To:** King, Daniel <Daniel.King@windstream.com>  
**Subject:** Pole Attachment

Dan: Do you know whom I would reach out to in order to get Windstream's pole attachment agreement for Kentucky?

Hope you have a great holiday!

Thanks!  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

This email message and any attachments are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.

**Date:** 11/22/2017 11:10:48 AM  
**Sent:** 11/22/2017 11:10:15 AM  
**Subject:** RE: Pole Attachment  
**From:** Mclaughlin, Michelle M <Michelle.McLaughlin@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>; King, Daniel <Daniel.King@windstream.com>;  
**CC:** Lloyd, James <James.Lloyd@windstream.com>;  
**Attachments:** WIN Kentucky East ILEC STANDARD PAA 11 22 17 (for use poles only).doc WIN Kentucky West ILEC STANDARD PAA 11 22 17 (for use poles only).doc Pole App Form Windstream.xlsx

---

Good morning, Anita-  
Lexington is in the Windstream Kentucky East territory. I also prepared a Windstream Kentucky West agreement in case you wanted all of Kentucky covered. Also attached is our application in excel format for easier use. Please contact me after your review. I look forward to working with you as well.

Michelle  
Analyst II  
319-790-6910

**From:** Anita Larson [mailto:Anita.Larson@metronetinc.com]  
**Sent:** Wednesday, November 22, 2017 9:27 AM  
**To:** King, Daniel <Daniel.King@windstream.com>; Mclaughlin, Michelle M <Michelle.McLaughlin@windstream.com>  
**Cc:** Lloyd, James <James.Lloyd@windstream.com>  
**Subject:** RE: Pole Attachment

Dan: Thanks for the quick response!

Michelle: Would you please email me Windstream's pole attachment agreement for Kentucky? I appreciate it. I look forward to working with you.

Thanks again!  
Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [mailto:Daniel.King@windstream.com]  
**Sent:** Wednesday, November 22, 2017 9:24 AM  
**To:** Anita Larson <Anita.Larson@metronetinc.com>; Mclaughlin, Michelle M <Michelle.McLaughlin@windstream.com>  
**Cc:** Lloyd, James <James.Lloyd@windstream.com>  
**Subject:** RE: Pole Attachment

Anita:

Good to hear from you. The person that you want to speak with is Michelle McLaughlin. I have copied her on this response. She negotiates and manages our pole agreements and can provide you with our template for Kentucky.

I assume that you are asking so that MetroNet can begin the process of negotiating a pole attachment agreement with us in connection with its expansion into Lexington. Congratulations on the announcement.

Hope you have a great Thanksgiving!

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Wednesday, November 22, 2017 9:08 AM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Subject:** Pole Attachment

Dan: Do you know whom I would reach out to in order to get Windstream's pole attachment agreement for Kentucky?

Hope you have a great holiday!

Thanks!  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
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**POLE ATTACHMENT LICENSE AGREEMENT**

**BY AND BETWEEN**

**WINDSTREAM KENTUCKY EAST, LLC**

**AND**

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#### **ATTACHED AND INCORPORATED EXHIBITS**

EXHIBIT A – DEFINITIONS

EXHIBIT B – FORM APPLICATION FOR POLE LICENSE

EXHIBIT C – NOTIFICATION OF SURRENDER OF LICENSE

EXHIBIT D – SCHEDULE OF RATES, FEES AND CHARGES

EXHIBIT E – NOTICE CONTACTS AND ADDRESSES

## 1. PARTIES.

This Pole Attachment License Agreement ("Agreement") is entered into as of the date last signed by all the parties ("Effective Date") by and between Windstream Kentucky East, LLC, a Windstream company organized and existing under the State of Delaware ("Licensor"), and \_\_\_\_\_, a company organized and existing under the State of \_\_\_\_\_ ("Licensee"). Licensor and Licensee may sometimes be referred to in this Agreement individually as a "party" and collectively as the "parties".

## 2. SCOPE.

A. The purpose of this Agreement is to set forth the rates, terms, conditions, and procedures under which the Licensor will provide Licensee access to Licensor's Poles (as defined herein) in the State of Kentucky for the purpose of Licensee attaching wireline facilities.

B. The parties acknowledge that Licensor is entering into this Agreement because Licensee has represented it is a regulated "telecommunications carrier" or "cable television system" provider as such terms are defined in the Communications Act of 1934, as amended (hereinafter the "Communications Act") and desires to provide telecommunications service or cable service ("Services"), as defined in the Communications Act; and that Licensee is authorized to provide these Services under its franchise or other lawful authority within its service area where Licensor owns Poles. In the event Licensee no longer has the status as a "telecommunications carrier" or "cable television system" provider or the authority to offer these Services in the state where the Poles are located, Licensor shall have the right to immediately terminate this Agreement and require Licensee to remove all of its facilities from Licensor's Poles. **As a condition precedent to entering into this Agreement, Licensee shall submit to Licensor a copy of its certification evidencing its status as either a regulated telecommunication carrier or cable television system provider, and until such documentation is provided to Licensor, Licensor shall not be obligated to enter into this Agreement.**

C. Subject to the provisions of this Agreement, Licensor will issue to Licensee for any lawful communications purpose, revocable, nonexclusive Licenses authorizing the placement of Licensee's Attachment to Licensor's Poles.

D. No use, however extended, of Licensor's Poles nor payment of any fees or charges required under this Agreement or License issued under this Agreement shall create or vest in Licensee any ownership or property rights in said Poles, but Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel Licensor to construct, retain, extend, place, or maintain any facilities not needed for its own service requirements, unless otherwise required by law. Nothing contained in this Agreement or in any License issued hereunder shall in any way affect, restrict or impair the right of Licensor to convey, transfer, mortgage, or assign to any other person or entity any interest in real or personal property, including any Poles in which Licensee has attached or placed Licensee's Attachments pursuant to Licenses issued under this or other license agreements.

E. Licensee recognizes that Licensor has entered into, or may in the future enter into, agreements and arrangements with others which are not a party to this Agreement regarding the Poles covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction or prohibition against Licensor with respect to such other agreements or arrangements. The rights of Licensee shall at all times be subject to any present or future joint use or joint ownership arrangement between Licensor and any other party.

**F. This Agreement does NOT create any right for Licensee to access or place facilities in Licensors central offices, conduit or to place wireless communication equipment on Poles. A separate agreement is required for any access to Licensors facilities other than those outlined in this Agreement.**

### **3. DEFINITIONS.**

Certain capitalized terms used in this Agreement are listed in and have the meaning as set forth in Exhibit A. Exhibit A is incorporated and made a part of this Agreement by reference.

### **4. TERM AND TERMINATION OF AGREEMENT**

**A.** This Agreement shall become effective upon the Effective Date and if not terminated in accordance with the provisions of this Agreement, shall continue in effect for a term of one (1) year ("Initial Term") and shall continue on a year –to – year basis. Notwithstanding the foregoing, any time after the Initial Term and anytime thereafter the rates, fees and charges set forth may be increased or decreased by written notice from Licensors to Licensee.

**B.** Either Party may terminate this Agreement for any reason after the Initial Term with at least thirty (30) day written notice to the other party. Licensors may terminate this Agreement in the event of default as set forth under Article 20 of this Agreement.

**C.** Upon termination of the Agreement in accordance with any of its terms, all outstanding Licenses in connection therewith shall terminate and shall be surrendered and Licensee shall immediately, and at its sole expense remove all Attachments located on Poles within sixty (60) days of date of termination.

### **5. TERMINATION OF LICENSES**

**A.** In addition to other termination rights set forth in this Agreement, upon notice from Licensors to Licensee that Licensors has been advised by a governmental authority or private property owners that the use of any Poles is not authorized and is objected to by such governmental authority or private property owner, as the case may be or that any Poles is to be removed, sold or otherwise disposed of, Licensee shall, immediately remove its cables, equipment, and facilities at once from the affected Poles or shall make arrangements for the removal of its cable, equipment, and facilities from the affected portion of Licensors Poles at Licensee's sole expense. If not so removed within sixty (60) days or such timeframe as stated on the Notice, Licensors shall have the right to remove Licensee's Attachments from Licensors Poles at the cost and expense of Licensee and without any liability thereto.

**B.** Licensee may at any time remove its Attachments from any Poles of Licensors, but shall immediately give Licensors written notice of such removal and surrender of License in the form of a Notification of Surrender attached hereto as Exhibit C and incorporated by reference and made a part of this Agreement. If Licensee surrenders its License but fails to remove its Attachments from Licensors Poles, Licensors shall have the right but not the obligation to remove Licensee's Attachments at Licensee's expense without any liability on the part of Licensors for damage or injury to Licensee's Attachments or interruption to Services. Licensee's obligations with regard to maintenance and fees continue until Attachments are removed from the Poles. In the event that Licensee's Attachments shall be removed from any Poles as provided by this Agreement, no Attachment shall again be made to such Poles unless

Licensee shall have first complied with all of the provisions of this Agreement as though no Attachment had previously been made.

## **6. RATES, FEES AND CHARGES.**

**A.** All rates, charges and fees set forth in this Agreement and those shown in Exhibit D (Schedule of Rates, Fees, and Charges) shall be subject to and calculated in accordance with applicable law, and Licensor may in its sole discretion revise the rates, charges and fees as set forth in Exhibit D upon 30 day notice to Licensee. Exhibit D is incorporated and made a part of this Agreement by reference. The fees, rates and charges set forth in Exhibit D or elsewhere in this Agreement are effective during the term of this Agreement and subject to change as set forth herein.

**B. Pole Attachment Fee.** For the purpose of computing the annual Pole Attachment Fee due under this Agreement the Pole Attachment Fee shall be based each year upon the number of Poles where Licensor has issued a License as of the date of annual billing multiplied by the Attachment Rate set forth on Exhibit D, as may be modified by Licensor from time to time. If Licensee is a regulated cable system provider which begins to offer telecommunication Services, Licensee must notify Licensor within thirty (30) days of the change in use if it shall begin to use any attachment for telecommunication Services and Licensor may adjust the Attachment Rate and Pole Attachment Fee as appropriate consistent with the applicable FCC formula for telecommunication providers.

**C.** All charges for inspections, engineering, replacement or rearrangements of Licensee's Attachments from Licensor's Poles and, without limitation, any other work performed for Licensee shall be based upon the full cost and expense, including reasonable overhead, incurred by Licensor or its representative for performing such work for Licensee to include without limitation costs to transfer or moving of Licensor facilities and removal of old Poles. The cost to Licensee shall be determined in accordance with the regular and customary methods used by Licensor in determining such costs.

**D.** All other Attachment related inquiry, verification, application, administrative and miscellaneous rates, fees and charges shall be calculated and paid in accordance with Exhibit D and the terms of this Agreement.

**E.** Upon termination or surrender of a License granted hereunder, no refund of any Pole Attachment Fees shall be made and Licensee shall remain liable for all fees and charges set forth in this Agreement until Licensee has removed its Attachments.

## **7. PAYMENT, SECURITY BOND AND LIEN.**

**A.** All bills for such other charges for work performed by Licensor and the fees set forth in the Agreement shall be payable upon presentment to Licensee, and shall be deemed delinquent if not paid within thirty (30) days after the date of the invoice.

**B. Bond.** Licensee shall furnish a bond or other security, and keep in place during the term of this Agreement, satisfactory to Licensor, the amount of \$5,000 or an amount equal to two (2) years of Pole Attachment Fees, whichever is greater, to guarantee the performance of Licensee obligations including payment of any such sums (including Unauthorized Attachment charges and liquidated damages) which may become due to Licensor arising out of this Agreement including, but not limited to rent, fees due hereunder or charges for work performed for the benefit of Licensee under this Agreement, including the

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removal of Licensee's facilities upon termination of this Agreement by any of its provisions or upon termination of any License issued hereunder. Such bond shall include that Licensor received 30 days prior notice of cancellation. Cancellation of a bond shall be an event of default by Licensee. Upon signing this Agreement and prior to issuance of a License, Licensee shall furnish the bond to be sent to person identified in Exhibit E. Licensor may in its sole discretion change the bond amount or cancellation notice requirement from time to time upon at least thirty (30) day notice to Licensee. Licensor shall not be obligated to issue any License hereunder until Licensee has provided the bond as set forth herein.

C. **Lien.** Should Licensor under the terms and conditions of this Agreement remove Licensee's Attachments from Licensor's Poles, Licensor will deliver to Licensee the cable, equipment or facilities so removed upon payment by Licensee of the cost of removal, storage and delivery, and all other amounts due Licensor hereunder. Licensor is hereby given a lien on Licensee's cable, equipment or facilities attached to Licensor's Poles or removed therefrom, with power of public or private sale, to cover any amounts due Licensor under the provisions of this Agreement. Such liens shall not operate to prevent Licensor from pursuing, at its option, any other remedy in law, equity or otherwise, including any other remedy provided for in this Agreement.

## 8. ATTACHMENT REQUEST AND LICENSE PROCESS

A. Before Licensee shall have a right to place Attachments to any Poles of Licensor, Licensee shall make application for and receive a revocable, nonexclusive License which shall be in the form of a Licensor countersigned Application for Pole License (Exhibit B). Each Exhibit B Application for Pole License shall contain no more than twenty-five (25) Poles and Licensee may submit up to twelve (12) Exhibit B, Application for Pole License within a rolling thirty (30) day period. Licensor will process Applications for Pole Licenses in the order in which they are received; provided, however, that when Licensee has multiple Applications for Pole Licenses on file with Licensor, Licensee may designate its desired priority of completion with respect to all such Application for Pole Licenses. **Licensee shall not under any circumstances attach any equipment to any guy wires or anchors owned by Licensor.**

B. **Application For Pole License and Engineering Survey.** Licensee shall submit an Application for Pole License in the form of Exhibit B and shall include a drawing of the proposed route, the pole detail and contact information (name, telephone, facsimile, and email information). Upon receipt of a complete Application for Pole License, Licensor will conduct an engineering survey to determine whether and where Licensee's Attachment is feasible, and what Make Ready Work is required by Licensor or other existing attachers to accommodate Licensee's Attachment. Upon completion of the engineering survey, Licensor shall inform Licensee of its estimated make-ready charges for Licensor Make Ready Work ("Make Ready Estimate"). If during this process, Licensor determines the request is denied based on insufficient capacity or for reasons of safety, reliability and generally applicable engineering purpose Licensor shall inform Licensee that the Application for Pole License is denied together with the reason. All expenses incurred by Licensor in reviewing Licensee's Application for Pole License shall be borne by Licensee even if such request is denied by Licensor.

C. **Advance Payment of Make Ready Work Estimate and Expedited Charges.** If Licensee upon review of the Make Ready Estimate desires to proceed with the process to obtain a License from Licensor, Licensee shall submit payment in the amount of the Make Ready Estimate together with the Application Fee and engineering survey costs to Licensor within fourteen (14) days of receipt of the Make Ready Estimate and invoice for such amounts. Licensee shall be solely responsible for negotiating with existing attachers for Make-Ready Work relating to such other existing attacher facilities located on,



within or in Licensor's Poles and shall be responsible for paying all charges incurred in transferring or rearranging existing attacher facilities to accommodate the placement of Licensee's Attachment on, within or in Licensor's Poles. In the event, Licensee declines to proceed with the project Licensee shall reimburse Licensor any costs and expenses incurred by Licensor to date including but not limited to Application Fee, engineering and administrative expenses and costs.

**D. Completion of Make Ready Work and Issuance of License.** Licensor shall undertake to complete any Make Ready Work of its owned facilities upon receipt of Licensee's payment of the Make Ready Estimate. Upon completion of all Make Ready Work and receipt of all fees and charges due from Licensee to Licensor, Licensor shall issue Licensee an approved License which shall be in the form of a Licensor countersigned Application for Pole License. At that time Licensee will be considered to have been granted a License with respect to the Poles approved in the License and may attach to Licensor's Poles in accordance with the terms and conditions of this Agreement.

**E.** Licensee shall maintain a copy of all Application for Pole Licenses and approved Licenses. Licensor may provide upon request copies of the same to the extent available and Licensee shall reimburse Licensor for its costs in preparing and sending requested copies.

## **9. AUTHORITY FOR PLACEMENT OF ATTACHMENT**

**A.** Before any placement of Attachments by Licensee, regardless of whether a License may have been issued, Licensee represents and warrants that it has the authority to maintain Attachments within public rights-of-way, or on private rights-of-way or on private property, and shall upon request provide a copy of documentation evidencing such right to Licensor. Licensee shall be solely responsible for obtaining all licenses, easements, authorizations, permits and consents from federal, state and local authorities or private land owners that may be required to place and maintain Attachments on Licensor's Poles.

**B.** Licensor and Licensee agree that neither party has the right to restrict or interfere with the other party's lawful access to and use of public right-of-way, including public right-of-way, which pass over property owned by either party. Except as otherwise specifically provided in this Agreement, Licensor and Licensee shall each be responsible for obtaining their own right-of-way and permission to use real or personal property owned or controlled by any governmental body or private entity or person.

**C.** Licensor may, without incurring any liability, remove Attachments of Licensee from Licensor's Poles, at Licensee's sole expense where in Licensor's sole judgment such removal is required in connection with the performance of Licensor's service obligation or the safety of Licensor's employees. Whenever such removal has been made, Licensee will be notified.

## **10. CONSTRUCTION AND MAINTENANCE**

**A.** Licensee's Attachments shall be placed and maintained in accordance with the following:

1. any and all Licensor requirements and specifications of Licensor, and
2. the terms and conditions of this Agreement, and
3. the National Electric Safety Code (most recent edition), and
4. the National Electric Code (most recent edition), and



5. in compliance with any other rules or orders now in effect or that may hereafter be issued by any state utility commission or other authority (state, federal, local) having jurisdiction over including but not limited to Poles, rights-of-way, and Hazardous Materials.

Each of Section 10(A)(1-5) is incorporated by reference and made a part of this Agreement, and in the event of a conflict or difference between any of these specifications and requirements, the more stringent will apply. Licensee agrees to rearrange its Attachments, within a commercially reasonable timeframe, in accordance with changes in the standards referenced herein in this Section 10(A) of this Agreement, or if required by law.

**B.** Licensee shall, at its own expense, make and maintain its Attachments and use Licensor Poles in a safe condition and in thorough repair, and in a manner acceptable to Licensor, and so as not to conflict with the use of said Poles by Licensor or by other authorized users of said Poles, or interfere with other facilities thereon or which may from time to time be placed thereon. Licensee shall, at its sole expense, upon written notice from Licensor, relocate or replace its Attachments placed on said Poles or transfer them to substituted Poles that may be authorized by Licensor, or perform any other work in connection with said Attachments that may be required. Licensor shall give such written notice as is reasonable in the circumstances, provided, however, that in cases of emergency, as determined by Licensor in its sole discretion, Licensor may arrange to relocate, remove or replace Licensee Attachments placed on said Poles, transfer such Attachments to substituted Poles or perform any other work in connection with said Attachments that may be required in the maintenance, replacement, removal or relocation of said Poles or Licensor or existing attacher facilities thereon or which may be placed thereon, or for the service needs of Licensor, and Licensee shall reimburse Licensor for the expense thereby incurred. For the purpose of this Section, Licensee Attachments shall be understood to include Attachments of Licensee in space reserved for Licensor, or space which Licensor has the right to use, on poles of other companies with which Licensor now has or may hereafter have agreements for joint use and occupancy; and the use of such space by Licensee shall be subject to the terms and conditions of the agreements between Licensor and said other companies.

**C.** Licensee shall be responsible at all times for the condition of Licensee's Attachments and its compliance with the requirements, specifications, rules, regulations, ordinances and laws specified in this Agreement. Licensor shall have no duty to Licensee to inspect, monitor or maintain the condition of Licensee's Attachments (including, but not limited to, splices and other facilities connections) located on, within or in Licensor's Poles. Licensor may make periodic or spot inspections at any time of any part of Licensee's Attachments as Licensor determines reasonable or necessary in its sole judgment, pursuant to Section 16 of this Agreement.

**D.** Licensee shall not authorize any person or entity acting on Licensee's behalf ("Licensee Contractor") to perform any work on, within or in Licensor's Poles without first verifying, to the extent practicable, on each date when such work is to be performed and, that the condition of the Poles is suitable for the work to be performed. If Licensee or Licensee Contractor determines that the condition of the Poles is not suitable for the work to be performed, Licensee shall notify Licensor of the condition of the Poles in question and shall not proceed with construction activities until Licensee is satisfied that the work can be safely performed.

**E.** Licensee shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and placement of Licensee's Attachments and for directing the activities of all Licensee Contractors while

they are physically present on, within or in the vicinity of Licensor's Poles. Licensee shall not permit any mechanic's lien, material man's lien, or any other lien, claim or security interest to attach to or encumber any of Licensor's real or personal property at any time.

F. Licensee's main line Attachments shall be tagged at maximum intervals of 300 feet so as to identify Licensee as the owner of the Attachment. Licensee shall place fiber wrap/ID at the specific Licensor Poles attaching point and at any aerial span splice location and/or slack loop. The tags shall be of sufficient size and lettering so as to be easily read from ground level.

## **11. OVERLASHING**

A. Licensee may, upon notice to Licensor, overlash its own existing authorized Attachment and this does not constitute a separate Attachment, as it relates to the billing of Pole Attachment Fees, unless multiple/separate Attachment points are physically made at the Poles itself outside of the scope of a single Attachment. Such notice shall be in the form of an Exhibit B Application for Pole License, and any additional Attachments being installed on Poles, regardless of it being an overlash of existing Attachment or as a new Attachment, will require an engineering analysis to determine if the additional loading negatively impacts the Poles capacity. Any additional load which causes the Pole to exceed its rated capacity or no longer provides for ample ground clearance of the Attachments or other facilities will necessitate the need for the Licensee to pay any and all Make Ready Work necessary. Each overlash strand shall not exceed a 2" maximum diameter.

B. In no event shall Licensee allow a third party to overlash to Licensee's Attachments without prior notice to and consent from Licensor. Any third party must execute a License Agreement with Licensor and obtain a license thereunder.

## **12. MODIFICATIONS, ADDITIONS, REPLACEMENTS OR REARRANGEMENTS**

A. Licensee shall not modify, overlash, add to, or replace Attachments on any Poles without first notifying Licensor in writing of the intended modification, addition or replacement at least thirty (30) days prior to the date the activity is scheduled to begin. The required notification shall include:

1. the date the activity is scheduled to begin including the Pole location and Pole number,
2. a description of the planned modification, addition, or replacement,
3. a representation that the modification, addition, or replacement will not require any space other than the space previously designated for Licensee's Attachments, and
4. a representation that the modification, addition, or replacement will not impair the structural integrity of the Poles involved.

B. Upon Licensor's receipt of a complete Exhibit B Application for Pole License, Licensor will perform, at Licensee's sole expense, a field check and if Licensor determine that the modification, addition, or replacement specified by Licensee in its notice will require more space than that allocated to Licensee or will require the rearrangements of, reinforcement of, replacement of, or an addition of support equipment to the Poles involved in order to accommodate Licensee's modification, addition, or replacement, Licensor will so notify Licensee and the parties will follow the Make Ready Work process

as set forth in Section 8 of this Agreement in order to obtain authorization for the modification, addition, or replacement of its Attachments.

C. Should Licensee request Licensor to expand capacity or purchase additional plant and should Licensor so agree, Licensee agrees to pay all cost and expenses thereby incurred by Licensor. If another party that has been granted a license joins in the request and will benefit from the expansion or purchase, Licensee agrees to pay a percentage of all costs proportionate to Licensee's share of the benefit received from the expansion or purchase, but Licensee shall be responsible for all costs and expenses not paid by the other party.

D. When multiple applications, including those of Licensee, are received by Licensor with respect to any Poles which must be replaced or rearranged to provide additional space prior to commencement of the work on such Poles, Licensor's facilities may need to be transferred in which case Licensee shall pay for all costs for such transfers.

E. In the event Licensor plans to modify or alter any Poles upon which Licensee has placed Attachments, Licensor, except in emergency situations, shall provide Licensee written notice of the proposed modification or alteration at least sixty (60) days prior to the time the proposed modification or alteration is scheduled to take place. Should Licensee decide to modify or alter Licensee's Attachments on Poles, Licensee shall so notify Licensor in writing at least thirty (30) days prior to the day the work is to begin. In such event, Licensee shall bear a proportionate share of the total costs incurred by Licensor to make Licensor Poles accessible.

F. In the event Licensor is required to move the location of, or replace, any Licensor Poles for reasons beyond its control, Licensee concurrently shall relocate Licensee's Attachments. Licensee shall be solely responsible for the costs of the relocation of Licensee's Attachments. When it is mutually agreed that it is in the best interest of Licensor and Licensee, Licensor may, after proper notification has been provided, transfer Licensee's Attachments at the same time that Licensor transfers its facilities and shall invoice Licensee for the actual costs incurred in performing the transfer of Licensee's Attachments.

### **13. EMERGENCY RESTORATION**

A. In the event of an emergency, restoration procedures may be affected by the presence of Licensee's Attachments. While Licensor shall not be responsible for the repair of damaged Attachments, Licensor shall nonetheless control access to its Poles if the restoration is to be achieved in an orderly fashion.

B. Where Licensor and Licensee are involved in emergency restorations, access to Licensor's Poles will be controlled by Licensor according to the following guidelines.

#### **1. Service Disruptions/Outages**

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where simultaneous access is not possible, Licensor will grant access on first come, first served basis.

2. Service Affecting Emergencies

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where Licensor is unable to grant simultaneous access to all other entities with attachments, access will be granted according to the level of damage to the attachments of each entity and the likelihood that a given level of damage will result in service disruption. Where the likelihood that a service disruption will result is not clearly discernible, access will be on a first come, first served basis.

C. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by Licensor regarding access to its Attachments, or any action or failure to act by Licensor, under this section shall not be the basis for any claim by Licensee against Licensor for any damage to Licensee's Attachments or disruption of Licensee's Services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee.

14. **FAILURE TO PLACE ATTACHMENTS**

Once Licensee has been issued a License, Licensee shall have ninety (90) calendar days from the date of the License was issued to begin the placement of its Attachments on the Licensor Poles covered by the License. If Licensee has not begun placing its Attachments within the ninety (90) day period, Licensee shall so advise Licensor with a written explanation and notice for the delay. If Licensee fails to advise Licensor of its delay by notice thereof or if Licensee fails to act in good faith by not making a bona fide effort to begin placing its Attachments within the ninety (90) calendar days prescribed by this section, the License shall be automatically rescinded by Licensor and deemed null and void, and Licensee shall have no further right to place the Attachments pursuant to such voided License.

15. **ABANDONMENT**

Nothing in this Agreement shall prevent or be construed to prevent Licensor from abandoning, selling, assigning, or otherwise disposing of any Poles. Licensor shall notify Licensee of any sale, assignment, or other disposition of any Poles or other Licensor property used for Licensee's Attachments.

16. **INSPECTIONS AND INVENTORIES**

A. **Post construction and/or periodic inspection of Licensee Attachments.** Licensor shall have the right, but not the obligation, to make a post construction inspection and periodic inspections at any time of any part of Licensee's Attachments on Poles and any other associated facilities for the limited purpose of determining whether Licensee's Attachments are in compliance with the terms of this Agreement and any Licenses issued hereunder. Such inspections shall be conducted at Licensor's expense with the exception of (1) a post construction inspection, (2) follow-up inspection to confirm remedial action after an observed Licensee violation of the requirements of this Agreement; and (3) inspection of Licensee Facilities in compliance with a specific mandate of appropriate governmental authority, for which inspections the cost shall be borne solely by Licensee.

**B. Inventories.** Upon written notice to Licensee, the total number and location of Licensee's Attachments on Licensor's Poles may be determined, at Licensor's discretion, through a survey which may be made not more than once per calendar year by Licensor. If so requested, Licensee and /or any other entity owning or jointly using the Poles with Licensor may participate in the survey. The costs incurred by Licensor to conduct the survey shall be reimbursed to Licensor by Licensee upon demand by Licensor regardless of whether or not Licensee participates in the survey. If the Attachments of more than one licensee are surveyed, each such licensee shall contribute a proportionate share of the costs reimbursed to Licensor.

**C. No Duty to Licensee.** Neither the act of inspection or survey by Licensor of Licensee's Attachments nor any failure to inspect such Attachments shall operate to impose on Licensor any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations or liability under this Agreement, any License issued hereunder, or applicable law, or to any third party contractor, Licensee Contractor, or otherwise.

## **17. UNAUTHORIZED ATTACHMENTS**

**A.** If any Licensee Attachment shall be found on Poles for which no License has been granted by Licensor pursuant to the terms of this Agreement ("Unauthorized Attachment"), Licensor, without prejudice to its other rights or remedies under this Agreement or otherwise, may:

1. impose charges as set forth herein, and
2. require Licensee to remove such Unauthorized Attachment or Licensor may remove such Unauthorized Attachment without liability and the expense of removal shall be borne by Licensee.

**B.** For the purpose of determining the charges, Licensee shall pay an amount per Unauthorized Attachment equal to the Pole Attachment Fee that would have applied if Licensee had properly obtained a License based upon the then current Attachment Rate for the number of years the Unauthorized Attachment have existed (or, if that cannot be determined, the number of years since the most recent inventory or five (5) years, whichever is less), plus interest at a rate the greater of 1.5% per month or the maximum allowed by law. In addition, if the Unauthorized Attachment is discovered during a survey where Licensee declined to participate an additional fee of \$100 per Unauthorized Attachment shall be charged to Licensee. Licensee agrees and acknowledges in the event of an Unauthorized Attachment actual damages would be difficult to determine and the charges described herein are liquidated damages, not penalties, and represent a fair and reasonable estimate of the damages which may be incurred by Licensor for Unauthorized Attachments on Licensor's Poles including wear and tear, lost revenue, increased maintenance and repair costs for having to work on a Pole where the owner of a facility is unknown, and the risk of liability for safety violations that may be the result of an Unauthorized Attachment.

**C.** Any such charge as set forth in Section 17(B) imposed by Licensor shall be in addition to its rights to any other sums due and payable, including without limitation Make Ready Work costs, the actual costs of any audit or survey which established the existence of the Unauthorized Attachment and to any claims to said fees.

**D.** No act by Licensor with regard to any unauthorized use shall be deemed as a ratification or the licensing of the unauthorized use, and if any License should subsequently be issued, after application and payment of all applicable fees therefore, said License shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized use from its inception.

**E.** An Unauthorized Attachment shall include, but not limited to:

1. an Attachment to Poles which is not identified in any License issued in accordance with this Agreement;
2. an Attachment that occupies more space than that allocated to Licensee by Licensor in a License;
3. an Attachment that is not placed in accordance with the provisions of this Agreement or the appropriate License issued pursuant to this Agreement, unless Licensee can demonstrate to Licensor's reasonable satisfaction that said misplacement is not due to any act or omission of Licensee or Licensee's agents;
4. an addition or modification by Licensee to its pre-existing Attachment(s) that impairs the structural integrity of the involved Licensor Poles.
5. an Attachment that consists of facilities owned or controlled by, and for the use of a party other than Licensee that is overlashed to Licensee Attachments without approval by Licensor as required under this Agreement.

**F.** Once Licensor has notified Licensee of an Unauthorized Attachment, Licensee shall submit an Exhibit B Application for Pole License to request an authorization for the Attachment. An Exhibit B Application for Pole License submitted per this provision will be treated like any other Exhibit B Application for Pole License subject to this Agreement. Licensee will be responsible for all fees associated with an Exhibit B Application for Pole License (as identified in this Agreement). If an Exhibit B Application for Pole License is not received by Licensor within ten (10) days of Licensor's notice of an Unauthorized Attachment, Licensee has sixty (60) days from the date of the Unauthorized Attachment notification to vacate the Pole. If Licensee fails to remove Licensee's facilities within such sixty (60) day period, Licensor shall have the right to remove Licensee's facilities at Licensee's expense and without any liability on the part of Licensor for damage or injury to Licensee's facilities or disruption of Licensee's Services.

## **18. COMPLIANCE WITH LAW, ASSUMPTION OF RISK, AND DISCLAIMER OF WARRANTIES**

**A.** Notwithstanding anything to the contrary in this Agreement, Licensee shall ensure that any and all activities it undertakes pursuant to this Agreement shall comply with all applicable laws, including, without limitation, all applicable provisions of:

1. Workers' compensation laws



2. Unemployment compensation laws
3. The Federal Social Security Law
4. The Fair Labor Standards Act, and
5. All laws, regulations, rules, guidelines, policies, orders, permits and approvals or any governmental authority relating to environmental matters including but not limited to Hazardous Materials and/or Occupational Safety and Health Act ("OSHA").

**B. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR DOES NOT MAKE ANY REPRESENTATION OR WARRANTIES AS TO THE CONDITION OR SAFETY OF LICENSOR'S POLES ANY ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, OR THE PREMISES SURROUNDING THE SAME, LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE. INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, AND THE PREMISES SURROUNDING THE SAME AND LICENSEE IS SOLELY RESPONSIBLE FOR ALL ALLEGED DAMAGES CLAIMED BY THIRD PARTIES ACCESSING OR WORKING ON OR NEAR LICENSOR'S POLES.**

**C. EXCEPT AS OTHERWISE PROVIDED HEREIN, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, WITH REGARD TO THIS AGREEMENT AND ANY LICENSE ISSUED HEREUNDER INCLUDING, WITHOUT LIMITATION, ACCESS TO LICENSOR'S POLES OR OTHER FACILITIES.**

#### **19. LICENSEE CONTRACTOR QUALIFICATIONS**

- A.** The parties acknowledge that from time to time Licensee may use a Licensee Contractor to perform work for Licensee on, within or in Licensor's Poles.
- B.** Licensee represents and warrants that any of its employees or Licensee Contractors shall not climb or work on any of Licensor's Poles, or work within Licensor's Right-Of-Way unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Poles and to perform the work safely.
- C.** Licensee assumes all risk of Licensee Contractors and agrees to indemnify, defend and hold harmless Licensor from all claims, losses, damages and liabilities, costs and expenses (including, but not limited to, reasonable attorney's fees) associated thereto in accordance with the indemnification provision of this License Agreement.
- D.** When Licensee Contractors are working on, within or in the vicinity of any part of Licensor's Poles or Right-Of-Way, all such Licensee Contractors shall follow procedures which Licensee deems appropriate for the protection of persons and property. Licensee shall be responsible at all times for determining and implementing the specific steps required to protect persons and property at the site. Licensee will provide all traffic control and warning devices required to protect pedestrian and vehicular
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traffic, workers and property from danger. Licensee has sole responsibility for the safety of all its employees and Licensee Contractors, for the safety of bystanders, and for insuring that all operations conform to terms and conditions set forth in this Agreement. Licensors reserves the right to suspend Licensee's activities on, within or in the vicinity of Licensors Poles or Right-Of-Way if, in Licensors sole judgment, any hazardous condition arises due to the activity (including both acts and omissions) of any Licensee Contractor or Licensee employee, which suspension shall cease when the condition has been rectified.

E. Licensee represents and warrants that all Licensee Contractors shall maintain the same insurance coverage and limits as are required of Licensee under this Agreement, and if not Licensee's insurance will provide such coverage.

F. Licensee acknowledges that all Licensee Contractors are not Licensors employees or agents and Licensee assumes full responsibility for their actions or omissions to act. Licensee shall be solely responsible for the payment of compensation of Licensee's employees, contractors or agents assigned to perform work hereunder and such employees, contractors and agents shall be informed that they are not entitled to the provision of any Licensors benefits. Licensors shall not be responsible for payment of workman's compensation, disability benefits, and unemployment insurance or for withholding or paying employment related taxes for any employee of Licensee, but such responsibility shall be solely that of Licensee. In the event that any federal, state or local government agency, any court or any other applicable entity determines that the personnel provided by Licensee or any permitted Licensee Contractor are employees of Licensors for any purpose, Licensee agrees to indemnify, defend and save harmless Licensors from all liabilities, costs, and expenses (including, but not limited to, reasonable attorney fees) associated with such determination in accordance with the indemnification provision of this License Agreement.

G. Any work by Licensee Contractors on, within or in Licensors Poles or Right-Of-Way shall be done only when specific authorization for such work has been obtained in writing in advance from Licensors pursuant to the terms and conditions of this Agreement. The parties agree that all work shall be performed according to existing industry standards and practices and the requirements and specifications set forth in this Agreement and any License issued hereunder.

## **20. DEFAULT**

A. In addition to other events of defaults defined anywhere else in this Agreement, any one of the following shall be deemed the occurrence of a default under this Agreement:

1. failure by Licensee to pay when due any fee or other sum required to be paid under the terms of this Agreement.
2. failure by either party to perform or observe any other term, condition, covenant, obligation, or provision of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from the other party (provided that if such default is not curable within a thirty (30) day period, the period may be extended if the party substantially commences to cure such default and proceeds diligently thereafter to effect such cure).



3. the filing of any tax or lien against Poles because of any act or omission by Licensee which is not bonded or discharged within thirty (30) days of the date of notice to Licensee that such lien has been filed;
4. Licensee's voluntary or involuntary bankruptcy;
5. Licensee's use or maintenance of its Attachments in violation of any law or regulation, or in aid of any unlawful act or undertaking;
6. if any authorization which may be required of Licensee by any governmental or private authority for the placement, operation, or maintenance of Licensee's Attachments is denied or revoked.

**B.** In the event of a default and subject to any other applicable provision of this Agreement, the non-defaulting party, without any further notice to the defaulting party (except where expressly provided for below or required by applicable law), may do any one or more of the following:

1. perform on behalf and at the expense of the defaulting party, any obligation of the defaulting party under this Agreement which the defaulting party has failed to perform and of which the non-defaulting party shall have given the defaulting party notice, the cost of which performance shall be paid by the defaulting party to the non-defaulting party upon demand;
2. terminate this Agreement by giving sixty (60) days written notice of such termination to Licensee and remove Licensee's Attachments and store Licensee's facilities in a public warehouse or elsewhere at the expense of and for the account of Licensee without Licensor being deemed guilty of trespass or conversion, and without Licensor becoming liable for any loss or damages to Licensee occasioned thereby; or
3. exercise any other legal or equitable right or remedy that the non-defaulting party may have.

**C.** The defaulting party shall repay to the non-defaulting party upon demand any costs and expenses incurred by the non-defaulting party (including, without limitation, reasonable attorneys' fees) in successfully enforcing this Agreement.

**D.** Upon termination of this Agreement by the non-defaulting party, the defaulting party shall remain liable to the non-defaulting party for any and all fees, other payments and damages which may be due or sustained in accord with this Agreement prior to such termination, all reasonable costs, fees and expenses, including, without limitation, reasonable attorney' fees incurred by the non-defaulting party in pursuit of its remedies hereunder.

**E.** All rights and remedies of the non-defaulting party set forth in this Agreement shall be cumulative and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

## **21. INDEMNIFICATION AND LIMITATION OF LIABILITY**

**A.** Licensee shall compensate Licensor for the full actual loss, damage or destruction of Licensor's property that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation, or maintenance of Licensee's Attachments).

**B.** Licensee agrees to defend, indemnify, protect and hold harmless Licensor and its officers, directors, employees, shareholders, successors, assigns, agents, affiliates, representatives, partners, and contractors from and against any and all claims, actions, administrative proceedings (including, without limitation, informal proceedings), judgments, damages, penalties, fines, cost, liabilities, interests, or loss, including, without limitation, reasonable attorneys' fees and expenses, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature suffered by or asserted against Licensor in any way arising out of or connected with this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Attachments, unless caused solely by the negligence or willful misconduct of Licensor or Licensor's affiliates, agents, officers, employees and assigns). Licensee expressly assumes all liability for actions by its affiliates, agents, officers, employees, or Licensee Contractors and expressly waives any immunity from the enforcement of this indemnification provision that might otherwise be provided by workers' compensation law or by other state or federal laws.

**C.** Without limiting any of the foregoing, Licensee assumes all risk of, and agrees to relieve Licensor of any and all liability for, loss or damage (and the consequences of loss or damage) to any facilities placed on Licensor's property and any other financial loss sustained by Licensee, except to the extent caused by the sole negligence or willful misconduct on the part of Licensor or Licensor's agents, officers, employees, and assigns.

**D.** Without limiting the foregoing, Licensee expressly agrees to indemnify, defend, and hold harmless Licensor and Licensor's agents, officers, employees and assigns from any and all claims asserted by end users/customers of Licensee in any way arising out of or in connection with this Agreement or Licensee's Attachments, except to the extent caused solely by the negligence or willful misconduct of Licensor or Licensor's agents, officers, employees, and assigns, or its contractors.

**E.** Notwithstanding anything to the contrary in this Agreement, Licensee further shall indemnify and hold harmless Licensor, its agents, officers, employees, and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including, without limitation, reasonable attorneys' fees) whether foreseen or unforeseen, which the Licensor suffers or incurs because of:

1. any discharge of Hazardous Materials resulting from acts or omissions of Licensee, Licensee Contractors or Licensee's predecessor in interest;
2. acts or omissions of Licensee, its agents, employees, Licensees, or representatives in connection with any cleanup required by law, or
3. failure of Licensee or Licensee Contractors to comply with Environmental, Safety and Health Laws.

**F.** Licensee shall indemnify, protect, and hold harmless Licensor from and against any and all claims for libel and slander, copyright and/or patent infringement arising directly or indirectly by reason of installation of Licensee's Attachments pursuant to this Agreement.

**G.** In the event of any claim, demand or litigation specified the indemnity provision, the party to be indemnified (the "Indemnified Party") shall give prompt notice to the other party (the "Indemnifying Party") of such claim, demand or litigation. The Indemnifying Party shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that the Indemnifying Party may not make any non-monetary settlement or compromise without the Indemnified Party's consent, which consent shall not be unreasonably withheld. The Indemnified Party shall cooperate with the Indemnifying Party in the defense and/or settlement of any claim, demand or litigation. Nothing herein shall be deemed to prevent the Indemnified Party from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnified Party's own counsel at the Indemnified Party's own expense.

**H.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY SUCH PARTY OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF SUCH PARTY FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED OR WHETHER IT (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

## **22. INSURANCE**

**A.** Licensee shall obtain and maintain, in full force and effect at all times, during operations covered by this Agreement, such minimum insurance as will cover the obligations and liabilities of Licensee, its agents, and its employees which may arise from the operations under this Agreement. Insurance shall have limits of not less than Commercial General Liability policy of minimum limits of:

General Aggregate	\$ 2,000,000 per policy period
Products/Completed Operations Aggregate	\$ 2,000,000 per policy period
Personal Injury/Advertising	\$ 2,000,000 per occurrence
Each Occurrence	\$ 2,000,000 per occurrence
Fire Legal Liability	\$ 50,000 any one fire

**B.** The policy will be endorsed to show the above aggregate limits applying to "each" job site or, as an alternative, the General Aggregate will be increased to \$4,000,000 per policy period. Policy will also specifically state the coverage applies to all operations conducted by the Licensee, its employees, or agents on behalf of Licensee or subsidiary.

**C.** Where the performance of the work involves structural property, underground property, or blasting, Licensee's Commercial General Liability insurance policy shall provide coverage to the insured for legal liability arising from operations under this Agreement for property damage:

1. arising out of blasting,
2. arising out of collapse of, or structural injury to, any building or structure or
3. To underground facilities and utilities.

**D.** Other general liability forms are acceptable in lieu of the Commercial General Liability Form however they are not to be used without written approval from Licensor.

1. Business Automobile Liability policy with minimum limits of:

Bodily Injury	\$2,000,000 per accident
Property Damage	\$ 2,000,000 per accident
OR	
Combined Single Limit	\$ 2,000,000 per accident

The policy will be issued using symbol "1 - any auto" coverage.

2. Workers Compensation:

Part 1 - Medical Benefits                      Statutory

Part 2 - Employer's Liability as indicated:

Bodily Injury by Accident	\$ 1,000,000 each accident
Bodily Injury by Disease	\$ 1,000,000 each employee
Bodily Injury by Disease	\$ 1,000,000 policy limit

**E.** The policy will show the state in which operation on behalf of the Licensee and/or subsidiary is being conducted. For operations conducted within monopolistic (state fund) states, Licensee will furnish a certificate of compliance from the appropriate state fund administrator.

**F.** In each and every policy except workers' compensation, Licensor and its subsidiaries shall be named an "additional insured" with respect to activities performed on behalf of the Licensee and its subsidiaries.

**G.** Coverage provided by the policies listed in this paragraph will be issued by an insurance company, licensed in the state in which operations on behalf of the Licensee are to be conducted. It is acceptable to use both primary and excess/umbrella policies to obtain necessary limits. The worker's compensation policy must contain a waiver of subrogation clause.

**H.** Licensee will furnish to Licensor, a certificate evidencing insurance coverage under sub-paragraphs 22(A) and (D). Such certificate or Licensee shall provide for a thirty (30) day prior notice to the Licensor of any cancellation or material changes in coverage and shall be signed by a legal representative of the issuing insurance company. The certificate of insurance shall be sent to Licensor's contact identified in Exhibit E.

**I.** The provisions of sub-paragraphs 22 (A) and (D) shall also apply to all Licensee Contractors and Licensee shall be responsible for their compliance herewith.

## **23. NOTICES**

Any and all notices to a party required or permitted under this Agreement shall be in writing and shall be: (a) delivered personally; (b) delivered by express overnight delivery service; (c) mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or (d) delivered by electronic mail; provided that a paper copy is also sent via methods (a), (b), or (c) of this Section. Notices will be deemed given as of the earliest of: the date of actual receipt; the next business day when sent via express overnight delivery service; five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service, or on the date set forth on the confirmation produced by the sent confirmation when sent prior to 5:00 p.m. in the recipient's time zone, but the next business day when delivered at 5:00 p.m. or later in the recipient's time zone. Notices will be addressed to the parties as set forth in Exhibit E as may be updated in writing by the parties from time to time in accordance with method set forth under this Section 23.

## **24. CONFIDENTIALITY**

Neither party shall at any time disclose, provide, demonstrate or otherwise make available to any third party any of the terms or conditions of this Agreement or any materials provided by either party specifically marked as confidential, except upon written consent of the other party, or as may be required by applicable law or governmental authorities. Notwithstanding the foregoing, nothing in this Section shall prevent disclosure to a party's authorized legal counsel who shall be subject to this confidentiality section, nor shall it preclude the use of this Agreement by the parties to obtain financing, to make or report matters related to this Agreement in any securities statements, or to respond to any requests by governmental or judicial authorities; provided, however, that any such disclosure shall be limited to the extent necessary, and shall be made only after attempting to obtain confidentiality assurances. Notwithstanding the foregoing, prior to making any disclosure in response to a request of a governmental authority or legal process, the party called upon to make such disclosure shall provide notice to the other party of such proposed disclosure sufficient to provide the other with an opportunity to timely object to such disclosure. Notwithstanding the foregoing, Licensor may, without notice to Licensee: (i) negotiate or enter into any agreement with any other person(s) or entity(ies) that is identical or similar to this Agreement; and (ii) provide the text of all or part of this Agreement to any other party, so long as Licensor shall redact therefrom all references to Licensee and shall not associate such text with Licensee or identify Licensee as having agreed to such text or terms.

## **25. DISPUTE RESOLUTION**

### **A. Except in the case of:**

1. a suit, action, or proceeding by one party to compel the other party to comply with its obligation to indemnify the other party pursuant to this Agreement, or
2. a suit, action or proceeding to compel either party to comply with the dispute resolution procedures set forth in this section, the parties agree to use the following procedure to resolve any dispute, controversy, or claim arising out of or relating to this Agreement or its breach.

### **B. At the written request of a party, each party shall designate a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute, controversy, or claim arising**

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under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The substance of the negotiations shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative nonbinding dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence between the representatives for the purposes of these negotiations shall be treated as confidential, undertaken for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any subsequent proceeding without the concurrence of all parties. Documents identified in or provided during such negotiations, which are not prepared for purposes of the negotiations, shall not be so exempt and may, if otherwise admissible, be admitted as evidence in any subsequent proceeding.

**C.** If a resolution of the dispute, controversy or claim is not reached within ninety (90) days of the initial written request referred to in this Section 25, the dispute, controversy, or claim may be filed with the State utility commission or the Federal Communication Commission, if applicable, for review and determination, provided the party invoking the commission's intervention process has in good faith negotiated, or attempted to negotiate, with the other party pursuant to this Section 25.

**D.** Except as otherwise provided in this Agreement under the Indemnification or Default provision or elsewhere, each party shall bear its own costs, including attorneys' fee, incurred in connection with any of the foregoing procedures. A party seeking discovery shall reimburse the responding party the cost of reproducing documents (to include search time and reproduction time costs).

## **26. TAXES**

Each party shall pay all taxes and assessments lawfully levied on its own property and services subject to this Agreement.

## **27. WAIVER**

Failure by either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

## **28. NO THIRD PARTY BENEFICIARIES**

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the parties and may be enforced solely by the parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the parties, except as provided herein.

## **29. FORCE MAJEURE**

Neither party shall be liable for any delay or failure in performance of any part of this License Agreement or License issued hereunder from any cause beyond its reasonable control and without its fault, omission or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, labor strikes, lockouts or work stoppages or severe weather ("Force Majeure Event"). In the event of a Force Majeure Event, upon giving prompt notice to the other party, the due date for performance by the affected party of its original obligation(s) shall be extended by a term equal to the



time lost by reason of the Force Majeure Event. In the event that the affected party is able to partially perform its obligations, it shall perform its obligations at a performance level no less than that which it uses for its own operations.

### **30. ASSIGNMENT**

Licensee shall not assign; transfer or sublet the privileges hereby granted, or sell, lease or otherwise permit the use of its facilities on or any part thereof (all of the foregoing being "Transfers"), without prior consent in writing of Licensor. No such consent granted by Licensor shall be effective until Licensee's assignee, sublessee or other transferee has agreed, on an enforceable separate document signed and delivered to Licensor, to assume all obligations and liabilities of Licensee under this Agreement. Licensor may condition such consent upon the assignee's sublessee's or transferee's agreement to reasonable additional or modified terms or conditions. If there is a change of control of Licensee, then Licensor shall have the right, in its reasonable discretion, immediately to terminate this Agreement in its entirety without further liability. Licensor may assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

### **31. APPLICABLE LAW**

This Agreement, and the rights and obligations contained in it, shall be governed and construed under the laws of the state in which the Attachments hereunder are to be located. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines now in effect and that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such prescribed law, rule, regulation or guideline, the Parties agree to modify, in writing, the affected term(s) and conditions(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline. Should any term of this Agreement be determined by a court or agency with competent jurisdiction to be unenforceable, all other terms of this Agreement shall remain in full force and effect.

### **32. WAIVER OF JURY TRIAL**

Licensor and Licensee each expressly waive its right to a jury trial.

### **33. ENTIRE AGREEMENT, MODIFICATIONS, SURVIVAL AND CONFLICTS AND TARIFFS**

**A.** This Agreement cancels and supersedes all previous agreements whether written or oral, except for any sums due thereunder, between Licensor and Licensee with respect to the Licensee's Attachments to Licensor's Poles; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. All currently effective Licenses and authorizations for Attachments granted pursuant to such previous agreements shall continue in effect subject to the terms and conditions of this Agreement.

**B.** This Agreement may be amended or supplemented at any time only upon written agreement by the parties hereto. Notwithstanding the foregoing, all Exhibits, fees, Licensor procedures and specifications may be modified by Licensor upon thirty (30) day notice to Licensee.

**C.** Notwithstanding the termination of this Agreement for any reason, Section 18 Compliance with Laws, Assumption of Risk and Disclaimer of Warranties, Section 21 Indemnification and Limitation of WIN ILEC vrs 9.23.15 (*Poles only*)

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Liability, Section 22 Insurance, Section 24 Confidentiality and any other provision intended to survive, shall survive termination to the maximum extent permitted under applicable law. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations period.

**D.** It is the intent of the parties that the terms and conditions of this Agreement and any applicable Licensor's state tariffs be construed as being consistent where possible. However, in the event of a conflict or difference between the terms and conditions of this Agreement and Licensor's state tariff, the terms of the applicable state tariff shall control.

#### **34. AUTHORITY AND COUNTERPARTS AND ELECTRONIC SIGNATURES**

**A.** Each party represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the state in which the obligations under this License Agreement are to be performed. Each party warrants that it has full power and authority to execute and deliver this License Agreement and to perform its obligations hereunder.

**B.** This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

#### **LICENSOR**

*Windstream Kentucky East, LLC*

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

#### **LICENSEE**

*(INSERT CATV/CLEC ENTITY)*

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_



## **EXHIBIT A**

### **DEFINITIONS**

**"Application for Pole License"** - A written request submitted in the form of Exhibit B from Licensee to Licensor requesting authorization to attach Licensee owned facilities to Poles in accordance with this Agreement.

**"Attachment(s)"** – any facilities, cables or equipment attached to Poles or any other property owned or controlled by Licensor.

**"Effective Date"** - is the date this Agreement is last signed by the parties.

**"Force Majeure Event"** – shall have the meaning set forth in Section 29 of the Agreement.

**"Hazardous Materials"** -

Any substance, material or waste now or hereafter defined or characterized as hazardous, toxic or dangerous as defined by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, as amended, and other federal, state, and local health, safety, and environmental laws, ordinances, statutes, and rules, including but not limited to the Occupational Safety and Health Act ("OSHA").

Any substance, material or waste now or hereafter classified as a contaminant or pollutant under any law, rules, ordinance, or authority.

Any other substance, material or waste, the manufacture, processing, distribution, use, treatment, storage, placement, disposal, removal or transportation of which is now or hereafter subject to regulation under any law, ordinance, statute, rule or regulation of any governmental body or authority.

**"License"** – is the specific nonexclusive and revocable permission from Licensor, in the form of a Licensor countersigned and returned Application for License, to Licensee authorizing Licensee to attach its facilities as applied for to Licensor Poles in accordance with this Agreement.

**"Licensee Contractors"** - shall have the meaning set forth in Section 10(D) of the Agreement.

**"Make Ready Estimate"** – is Licensor's estimated cost to perform Make Ready Work on Licensor's facilities on Poles to accommodate Licensee's Attachment as requested in an Application for Pole License.

**"Make Ready Work"** - all Licensor, joint owner or other existing attacher work to prepare Licensor's Poles and related facilities for the requested Attachment of Licensee's facilities but not the actual placement of Attachments or administrative activities related to inquiries, verifications, requests or applications.

**"Overlashing or overlashed"** – lashing of an additional Licensee owned cable to Licensee's own existing cable and/or strand attached to a Pole as set forth in Section 11 of this Agreement.

“Pole(s)” - a pole owned solely or jointly by Licensor or Poles owned by others to the extent that and for so long as Licensor has the right to permit others to be attached in the communications space.

“Pole Attachment Fee” - the fee paid annually per Attachment on a Pole. For billing purposes, a single Attachment includes the point of Attachment and all facilities located in the usable space on the Poles in the space assigned to Licensee (typically six inches above and six inches below the point of Attachment). If Licensee occupies more than one foot of usable space on Poles, separate Pole Attachment Fees shall apply to each one foot of space occupied.

“Right-of-Way” - right-of-way owned or controlled by Licensor.

“Unauthorized Attachment” – shall have the meaning set forth in Section 17(A) and 17(E) of the Agreement.

**EXHIBIT B**

**FORM APPLICATION FOR POLE LICENSE**

# Bwindstream

**Name of Firm/Licensee Applying:**

Street Address,			
City, ST, ZIP of			
Firm Applying			

**By this application & signature, Licensee to proceed with the project.** **A**

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## NON PAYMENT

***NOTE: Final costs will***

**Windstream Pole Attachment Data Sheet**  
EXHIBIT B – PART II

WINDSTREAM POLE NUMBER		POWER POLE NUMBER	
STREET LOCATION		NAME OF ATTACHER	
CITY/BORO/TOWNSHIP		DATE	FIELD PERSONNEL NAME
ATTACHMENT TYPE <input type="checkbox"/> Cable <input type="checkbox"/> Power Supply <input type="checkbox"/> Service Drop <input type="checkbox"/> Overhead Guy			
POLE SIZE	TRANSFORMER/DEVICE ON POLE <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT      TOP OF CONDUIT RISER HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input type="checkbox"/> No; If yes $\Rightarrow$ <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	

<b>MAKE READY WORK</b>	REQUIRED <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, PROVIDE ADDITIONAL DETAIL
------------------------	-------------------------------------------------------------------------	-----------------------------------

<b>POLE DRAWING</b>	POLE NO. $\Rightarrow$	BEFORE	AFTER	<div style="text-align: center;"> <b>Pole Side</b>  </div>
	*TYPE OF POWER ATTACHMENT $\Rightarrow$	<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary		
	Company Name  1. _____  2. _____  3. _____  4. _____			

<b>SPAN</b>	MID-SPAN HEIGHT Ft.	SPAN CROSSES OVER (Check all that apply) <input type="checkbox"/> Body of Water <input type="checkbox"/> Street <input type="checkbox"/> Driveway <input type="checkbox"/> Field <input type="checkbox"/> Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input type="checkbox"/> Yard <input type="checkbox"/> Parking Lot				
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<b>NOTE</b>	
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**EXHIBIT C**

**REMOVAL NOTICE AND LICENSE SURRENDER FORM**

**NOTIFICATION OF SURRENDER**

**Notification No.** \_\_\_\_\_

**Date:** \_\_\_\_\_

**City & State:** \_\_\_\_\_

In accordance with the terms and conditions of the license agreement between us, dated \_\_\_\_\_, notice is hereby given that the License covering Attachments to the outside plant structures, as shown on the attached sketch, is surrendered.

**Licensee:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**By (Print/Type):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date Surrender Notice Received:** \_\_\_\_\_

**Licensor:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**By (Print/Type):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT D**

**SCHEDULE OF RATES, FEES AND CHARGES**

Annual Attachment Rate (per Attachment)**	\$ <u>\$12.12 2-User, \$5.64 3-User</u>
Agreement Fee	\$ <u>400.00</u>
Application for Pole License Fee	\$ <u>75.00 per application</u>
Unauthorized Attachment fee	\$ <u>Per Section 17 of the Agreement</u>

**\*\* If Attachments are in a non-tariffed state, the rental rate is subject to annual adjustment based on FCC Calculation.**

**EXHIBIT E**

**NOTICES CONTACT INFORMATION**

**IF TO LICENSOR**

**Email: windstream.poles@windstream.com**

**Windstream Kentucky East, LLC**

**PO Box 25410**

**Little Rock, AR 72221**

**IF TO LICENSEE:**

**ENGINEERING CONTACT FOR LICENSEE**

Company Name	
Name of Responsible Party	
Address	
Phone	
Fax	
Email	



**INVOICING / BILLING CONTACT FOR LICENSEE**

Name	
Address	
Phone	
Fax	
Email	



**POLE ATTACHMENT LICENSE AGREEMENT**

**BY AND BETWEEN**

**WINDSTREAM KENTUCKY WEST, LLC**

**AND**

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#### **ATTACHED AND INCORPORATED EXHIBITS**

EXHIBIT A – DEFINITIONS

EXHIBIT B – FORM APPLICATION FOR POLE LICENSE

EXHIBIT C – NOTIFICATION OF SURRENDER OF LICENSE

EXHIBIT D – SCHEDULE OF RATES, FEES AND CHARGES

EXHIBIT E – NOTICE CONTACTS AND ADDRESSES

## 1. PARTIES.

This Pole Attachment License Agreement ("Agreement") is entered into as of the date last signed by all the parties ("Effective Date") by and between Windstream Kentucky West, LLC, a Windstream company organized and existing under the State of Delaware ("Licensor"), and \_\_\_\_\_, a company organized and existing under the State of \_\_\_\_\_ ("Licensee"). Licensor and Licensee may sometimes be referred to in this Agreement individually as a "party" and collectively as the "parties".

## 2. SCOPE.

A. The purpose of this Agreement is to set forth the rates, terms, conditions, and procedures under which the Licensor will provide Licensee access to Licensor's Poles (as defined herein) in the State of Kentucky for the purpose of Licensee attaching wireline facilities.

B. The parties acknowledge that Licensor is entering into this Agreement because Licensee has represented it is a regulated "telecommunications carrier" or "cable television system" provider as such terms are defined in the Communications Act of 1934, as amended (hereinafter the "Communications Act") and desires to provide telecommunications service or cable service ("Services"), as defined in the Communications Act; and that Licensee is authorized to provide these Services under its franchise or other lawful authority within its service area where Licensor owns Poles. In the event Licensee no longer has the status as a "telecommunications carrier" or "cable television system" provider or the authority to offer these Services in the state where the Poles are located, Licensor shall have the right to immediately terminate this Agreement and require Licensee to remove all of its facilities from Licensor's Poles. **As a condition precedent to entering into this Agreement, Licensee shall submit to Licensor a copy of its certification evidencing its status as either a regulated telecommunication carrier or cable television system provider, and until such documentation is provided to Licensor, Licensor shall not be obligated to enter into this Agreement.**

C. Subject to the provisions of this Agreement, Licensor will issue to Licensee for any lawful communications purpose, revocable, nonexclusive Licenses authorizing the placement of Licensee's Attachment to Licensor's Poles.

D. No use, however extended, of Licensor's Poles nor payment of any fees or charges required under this Agreement or License issued under this Agreement shall create or vest in Licensee any ownership or property rights in said Poles, but Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel Licensor to construct, retain, extend, place, or maintain any facilities not needed for its own service requirements, unless otherwise required by law. Nothing contained in this Agreement or in any License issued hereunder shall in any way affect, restrict or impair the right of Licensor to convey, transfer, mortgage, or assign to any other person or entity any interest in real or personal property, including any Poles in which Licensee has attached or placed Licensee's Attachments pursuant to Licenses issued under this or other license agreements.

E. Licensee recognizes that Licensor has entered into, or may in the future enter into, agreements and arrangements with others which are not a party to this Agreement regarding the Poles covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction or prohibition against Licensor with respect to such other agreements or arrangements. The rights of Licensee shall at all times be subject to any present or future joint use or joint ownership arrangement between Licensor and any other party.

**F. This Agreement does NOT create any right for Licensee to access or place facilities in Licensors central offices, conduit or to place wireless communication equipment on Poles. A separate agreement is required for any access to Licensors facilities other than those outlined in this Agreement.**

### **3. DEFINITIONS.**

Certain capitalized terms used in this Agreement are listed in and have the meaning as set forth in Exhibit A. Exhibit A is incorporated and made a part of this Agreement by reference.

### **4. TERM AND TERMINATION OF AGREEMENT**

**A.** This Agreement shall become effective upon the Effective Date and if not terminated in accordance with the provisions of this Agreement, shall continue in effect for a term of one (1) year ("Initial Term") and shall continue on a year –to – year basis. Notwithstanding the foregoing, any time after the Initial Term and anytime thereafter the rates, fees and charges set forth may be increased or decreased by written notice from Licensors to Licensee.

**B.** Either Party may terminate this Agreement for any reason after the Initial Term with at least thirty (30) day written notice to the other party. Licensors may terminate this Agreement in the event of default as set forth under Article 20 of this Agreement.

**C.** Upon termination of the Agreement in accordance with any of its terms, all outstanding Licenses in connection therewith shall terminate and shall be surrendered and Licensee shall immediately, and at its sole expense remove all Attachments located on Poles within sixty (60) days of date of termination.

### **5. TERMINATION OF LICENSES**

**A.** In addition to other termination rights set forth in this Agreement, upon notice from Licensors to Licensee that Licensors has been advised by a governmental authority or private property owners that the use of any Poles is not authorized and is objected to by such governmental authority or private property owner, as the case may be or that any Poles is to be removed, sold or otherwise disposed of, Licensee shall, immediately remove its cables, equipment, and facilities at once from the affected Poles or shall make arrangements for the removal of its cable, equipment, and facilities from the affected portion of Licensors Poles at Licensee's sole expense. If not so removed within sixty (60) days or such timeframe as stated on the Notice, Licensors shall have the right to remove Licensee's Attachments from Licensors Poles at the cost and expense of Licensee and without any liability thereto.

**B.** Licensee may at any time remove its Attachments from any Poles of Licensors, but shall immediately give Licensors written notice of such removal and surrender of License in the form of a Notification of Surrender attached hereto as Exhibit C and incorporated by reference and made a part of this Agreement. If Licensee surrenders its License but fails to remove its Attachments from Licensors Poles, Licensors shall have the right but not the obligation to remove Licensee's Attachments at Licensee's expense without any liability on the part of Licensors for damage or injury to Licensee's Attachments or interruption to Services. Licensee's obligations with regard to maintenance and fees continue until Attachments are removed from the Poles. In the event that Licensee's Attachments shall be removed from any Poles as provided by this Agreement, no Attachment shall again be made to such Poles unless

Licensee shall have first complied with all of the provisions of this Agreement as though no Attachment had previously been made.

## **6. RATES, FEES AND CHARGES.**

**A.** All rates, charges and fees set forth in this Agreement and those shown in Exhibit D (Schedule of Rates, Fees, and Charges) shall be subject to and calculated in accordance with applicable law, and Licensor may in its sole discretion revise the rates, charges and fees as set forth in Exhibit D upon 30 day notice to Licensee. Exhibit D is incorporated and made a part of this Agreement by reference. The fees, rates and charges set forth in Exhibit D or elsewhere in this Agreement are effective during the term of this Agreement and subject to change as set forth herein.

**B. Pole Attachment Fee.** For the purpose of computing the annual Pole Attachment Fee due under this Agreement the Pole Attachment Fee shall be based each year upon the number of Poles where Licensor has issued a License as of the date of annual billing multiplied by the Attachment Rate set forth on Exhibit D, as may be modified by Licensor from time to time. If Licensee is a regulated cable system provider which begins to offer telecommunication Services, Licensee must notify Licensor within thirty (30) days of the change in use if it shall begin to use any attachment for telecommunication Services and Licensor may adjust the Attachment Rate and Pole Attachment Fee as appropriate consistent with the applicable FCC formula for telecommunication providers.

**C.** All charges for inspections, engineering, replacement or rearrangements of Licensee's Attachments from Licensor's Poles and, without limitation, any other work performed for Licensee shall be based upon the full cost and expense, including reasonable overhead, incurred by Licensor or its representative for performing such work for Licensee to include without limitation costs to transfer or moving of Licensor facilities and removal of old Poles. The cost to Licensee shall be determined in accordance with the regular and customary methods used by Licensor in determining such costs.

**D.** All other Attachment related inquiry, verification, application, administrative and miscellaneous rates, fees and charges shall be calculated and paid in accordance with Exhibit D and the terms of this Agreement.

**E.** Upon termination or surrender of a License granted hereunder, no refund of any Pole Attachment Fees shall be made and Licensee shall remain liable for all fees and charges set forth in this Agreement until Licensee has removed its Attachments.

## **7. PAYMENT, SECURITY BOND AND LIEN.**

**A.** All bills for such other charges for work performed by Licensor and the fees set forth in the Agreement shall be payable upon presentment to Licensee, and shall be deemed delinquent if not paid within thirty (30) days after the date of the invoice.

**B. Bond.** Licensee shall furnish a bond or other security, and keep in place during the term of this Agreement, satisfactory to Licensor, the amount of \$5,000 or an amount equal to two (2) years of Pole Attachment Fees, whichever is greater, to guarantee the performance of Licensee obligations including payment of any such sums (including Unauthorized Attachment charges and liquidated damages) which may become due to Licensor arising out of this Agreement including, but not limited to rent, fees due hereunder or charges for work performed for the benefit of Licensee under this Agreement, including the

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removal of Licensee's facilities upon termination of this Agreement by any of its provisions or upon termination of any License issued hereunder. Such bond shall include that Licensor received 30 days prior notice of cancellation. Cancellation of a bond shall be an event of default by Licensee. Upon signing this Agreement and prior to issuance of a License, Licensee shall furnish the bond to be sent to person identified in Exhibit E. Licensor may in its sole discretion change the bond amount or cancellation notice requirement from time to time upon at least thirty (30) day notice to Licensee. Licensor shall not be obligated to issue any License hereunder until Licensee has provided the bond as set forth herein.

C. **Lien.** Should Licensor under the terms and conditions of this Agreement remove Licensee's Attachments from Licensor's Poles, Licensor will deliver to Licensee the cable, equipment or facilities so removed upon payment by Licensee of the cost of removal, storage and delivery, and all other amounts due Licensor hereunder. Licensor is hereby given a lien on Licensee's cable, equipment or facilities attached to Licensor's Poles or removed therefrom, with power of public or private sale, to cover any amounts due Licensor under the provisions of this Agreement. Such liens shall not operate to prevent Licensor from pursuing, at its option, any other remedy in law, equity or otherwise, including any other remedy provided for in this Agreement.

## **8. ATTACHMENT REQUEST AND LICENSE PROCESS**

A. Before Licensee shall have a right to place Attachments to any Poles of Licensor, Licensee shall make application for and receive a revocable, nonexclusive License which shall be in the form of a Licensor countersigned Application for Pole License (Exhibit B). Each Exhibit B Application for Pole License shall contain no more than twenty-five (25) Poles and Licensee may submit up to twelve (12) Exhibit B, Application for Pole License within a rolling thirty (30) day period. Licensor will process Applications for Pole Licenses in the order in which they are received; provided, however, that when Licensee has multiple Applications for Pole Licenses on file with Licensor, Licensee may designate its desired priority of completion with respect to all such Application for Pole Licenses. **Licensee shall not under any circumstances attach any equipment to any guy wires or anchors owned by Licensor.**

B. **Application For Pole License and Engineering Survey.** Licensee shall submit an Application for Pole License in the form of Exhibit B and shall include a drawing of the proposed route, the pole detail and contact information (name, telephone, facsimile, and email information). Upon receipt of a complete Application for Pole License, Licensor will conduct an engineering survey to determine whether and where Licensee's Attachment is feasible, and what Make Ready Work is required by Licensor or other existing attachers to accommodate Licensee's Attachment. Upon completion of the engineering survey, Licensor shall inform Licensee of its estimated make-ready charges for Licensor Make Ready Work ("Make Ready Estimate"). If during this process, Licensor determines the request is denied based on insufficient capacity or for reasons of safety, reliability and generally applicable engineering purpose Licensor shall inform Licensee that the Application for Pole License is denied together with the reason. All expenses incurred by Licensor in reviewing Licensee's Application for Pole License shall be borne by Licensee even if such request is denied by Licensor.

C. **Advance Payment of Make Ready Work Estimate and Expedited Charges.** If Licensee upon review of the Make Ready Estimate desires to proceed with the process to obtain a License from Licensor, Licensee shall submit payment in the amount of the Make Ready Estimate together with the Application Fee and engineering survey costs to Licensor within fourteen (14) days of receipt of the Make Ready Estimate and invoice for such amounts. Licensee shall be solely responsible for negotiating with existing attachers for Make-Ready Work relating to such other existing attacher facilities located on,



within or in Licensor's Poles and shall be responsible for paying all charges incurred in transferring or rearranging existing attacher facilities to accommodate the placement of Licensee's Attachment on, within or in Licensor's Poles. In the event, Licensee declines to proceed with the project Licensee shall reimburse Licensor any costs and expenses incurred by Licensor to date including but not limited to Application Fee, engineering and administrative expenses and costs.

**D. Completion of Make Ready Work and Issuance of License.** Licensor shall undertake to complete any Make Ready Work of its owned facilities upon receipt of Licensee's payment of the Make Ready Estimate. Upon completion of all Make Ready Work and receipt of all fees and charges due from Licensee to Licensor, Licensor shall issue Licensee an approved License which shall be in the form of a Licensor countersigned Application for Pole License. At that time Licensee will be considered to have been granted a License with respect to the Poles approved in the License and may attach to Licensor's Poles in accordance with the terms and conditions of this Agreement.

**E.** Licensee shall maintain a copy of all Application for Pole Licenses and approved Licenses. Licensor may provide upon request copies of the same to the extent available and Licensee shall reimburse Licensor for its costs in preparing and sending requested copies.

## **9. AUTHORITY FOR PLACEMENT OF ATTACHMENT**

**A.** Before any placement of Attachments by Licensee, regardless of whether a License may have been issued, Licensee represents and warrants that it has the authority to maintain Attachments within public rights-of-way, or on private rights-of-way or on private property, and shall upon request provide a copy of documentation evidencing such right to Licensor. Licensee shall be solely responsible for obtaining all licenses, easements, authorizations, permits and consents from federal, state and local authorities or private land owners that may be required to place and maintain Attachments on Licensor's Poles.

**B.** Licensor and Licensee agree that neither party has the right to restrict or interfere with the other party's lawful access to and use of public right-of-way, including public right-of-way, which pass over property owned by either party. Except as otherwise specifically provided in this Agreement, Licensor and Licensee shall each be responsible for obtaining their own right-of-way and permission to use real or personal property owned or controlled by any governmental body or private entity or person.

**C.** Licensor may, without incurring any liability, remove Attachments of Licensee from Licensor's Poles, at Licensee's sole expense where in Licensor's sole judgment such removal is required in connection with the performance of Licensor's service obligation or the safety of Licensor's employees. Whenever such removal has been made, Licensee will be notified.

## **10. CONSTRUCTION AND MAINTENANCE**

**A.** Licensee's Attachments shall be placed and maintained in accordance with the following:

1. any and all Licensor requirements and specifications of Licensor, and
2. the terms and conditions of this Agreement, and
3. the National Electric Safety Code (most recent edition), and
4. the National Electric Code (most recent edition), and

5. in compliance with any other rules or orders now in effect or that may hereafter be issued by any state utility commission or other authority (state, federal, local) having jurisdiction over including but not limited to Poles, rights-of-way, and Hazardous Materials.

Each of Section 10(A)(1-5) is incorporated by reference and made a part of this Agreement, and in the event of a conflict or difference between any of these specifications and requirements, the more stringent will apply. Licensee agrees to rearrange its Attachments, within a commercially reasonable timeframe, in accordance with changes in the standards referenced herein in this Section 10(A) of this Agreement, or if required by law.

**B.** Licensee shall, at its own expense, make and maintain its Attachments and use Licensor Poles in a safe condition and in thorough repair, and in a manner acceptable to Licensor, and so as not to conflict with the use of said Poles by Licensor or by other authorized users of said Poles, or interfere with other facilities thereon or which may from time to time be placed thereon. Licensee shall, at its sole expense, upon written notice from Licensor, relocate or replace its Attachments placed on said Poles or transfer them to substituted Poles that may be authorized by Licensor, or perform any other work in connection with said Attachments that may be required. Licensor shall give such written notice as is reasonable in the circumstances, provided, however, that in cases of emergency, as determined by Licensor in its sole discretion, Licensor may arrange to relocate, remove or replace Licensee Attachments placed on said Poles, transfer such Attachments to substituted Poles or perform any other work in connection with said Attachments that may be required in the maintenance, replacement, removal or relocation of said Poles or Licensor or existing attacher facilities thereon or which may be placed thereon, or for the service needs of Licensor, and Licensee shall reimburse Licensor for the expense thereby incurred. For the purpose of this Section, Licensee Attachments shall be understood to include Attachments of Licensee in space reserved for Licensor, or space which Licensor has the right to use, on poles of other companies with which Licensor now has or may hereafter have agreements for joint use and occupancy; and the use of such space by Licensee shall be subject to the terms and conditions of the agreements between Licensor and said other companies.

**C.** Licensee shall be responsible at all times for the condition of Licensee's Attachments and its compliance with the requirements, specifications, rules, regulations, ordinances and laws specified in this Agreement. Licensor shall have no duty to Licensee to inspect, monitor or maintain the condition of Licensee's Attachments (including, but not limited to, splices and other facilities connections) located on, within or in Licensor's Poles. Licensor may make periodic or spot inspections at any time of any part of Licensee's Attachments as Licensor determines reasonable or necessary in its sole judgment, pursuant to Section 16 of this Agreement.

**D.** Licensee shall not authorize any person or entity acting on Licensee's behalf ("Licensee Contractor") to perform any work on, within or in Licensor's Poles without first verifying, to the extent practicable, on each date when such work is to be performed and, that the condition of the Poles is suitable for the work to be performed. If Licensee or Licensee Contractor determines that the condition of the Poles is not suitable for the work to be performed, Licensee shall notify Licensor of the condition of the Poles in question and shall not proceed with construction activities until Licensee is satisfied that the work can be safely performed.

**E.** Licensee shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and placement of Licensee's Attachments and for directing the activities of all Licensee Contractors while

they are physically present on, within or in the vicinity of Licensor's Poles. Licensee shall not permit any mechanic's lien, material man's lien, or any other lien, claim or security interest to attach to or encumber any of Licensor's real or personal property at any time.

F. Licensee's main line Attachments shall be tagged at maximum intervals of 300 feet so as to identify Licensee as the owner of the Attachment. Licensee shall place fiber wrap/ID at the specific Licensor Poles attaching point and at any aerial span splice location and/or slack loop. The tags shall be of sufficient size and lettering so as to be easily read from ground level.

## **11. OVERLASHING**

A. Licensee may, upon notice to Licensor, overlash its own existing authorized Attachment and this does not constitute a separate Attachment, as it relates to the billing of Pole Attachment Fees, unless multiple/separate Attachment points are physically made at the Poles itself outside of the scope of a single Attachment. Such notice shall be in the form of an Exhibit B Application for Pole License, and any additional Attachments being installed on Poles, regardless of it being an overlash of existing Attachment or as a new Attachment, will require an engineering analysis to determine if the additional loading negatively impacts the Poles capacity. Any additional load which causes the Pole to exceed its rated capacity or no longer provides for ample ground clearance of the Attachments or other facilities will necessitate the need for the Licensee to pay any and all Make Ready Work necessary. Each overlash strand shall not exceed a 2" maximum diameter.

B. In no event shall Licensee allow a third party to overlash to Licensee's Attachments without prior notice to and consent from Licensor. Any third party must execute a License Agreement with Licensor and obtain a license thereunder.

## **12. MODIFICATIONS, ADDITIONS, REPLACEMENTS OR REARRANGEMENTS**

A. Licensee shall not modify, overlash, add to, or replace Attachments on any Poles without first notifying Licensor in writing of the intended modification, addition or replacement at least thirty (30) days prior to the date the activity is scheduled to begin. The required notification shall include:

1. the date the activity is scheduled to begin including the Pole location and Pole number,
2. a description of the planned modification, addition, or replacement,
3. a representation that the modification, addition, or replacement will not require any space other than the space previously designated for Licensee's Attachments, and
4. a representation that the modification, addition, or replacement will not impair the structural integrity of the Poles involved.

B. Upon Licensor's receipt of a complete Exhibit B Application for Pole License, Licensor will perform, at Licensee's sole expense, a field check and if Licensor determine that the modification, addition, or replacement specified by Licensee in its notice will require more space than that allocated to Licensee or will require the rearrangements of, reinforcement of, replacement of, or an addition of support equipment to the Poles involved in order to accommodate Licensee's modification, addition, or replacement, Licensor will so notify Licensee and the parties will follow the Make Ready Work process

as set forth in Section 8 of this Agreement in order to obtain authorization for the modification, addition, or replacement of its Attachments.

C. Should Licensee request Licensor to expand capacity or purchase additional plant and should Licensor so agree, Licensee agrees to pay all cost and expenses thereby incurred by Licensor. If another party that has been granted a license joins in the request and will benefit from the expansion or purchase, Licensee agrees to pay a percentage of all costs proportionate to Licensee's share of the benefit received from the expansion or purchase, but Licensee shall be responsible for all costs and expenses not paid by the other party.

D. When multiple applications, including those of Licensee, are received by Licensor with respect to any Poles which must be replaced or rearranged to provide additional space prior to commencement of the work on such Poles, Licensor's facilities may need to be transferred in which case Licensee shall pay for all costs for such transfers.

E. In the event Licensor plans to modify or alter any Poles upon which Licensee has placed Attachments, Licensor, except in emergency situations, shall provide Licensee written notice of the proposed modification or alteration at least sixty (60) days prior to the time the proposed modification or alteration is scheduled to take place. Should Licensee decide to modify or alter Licensee's Attachments on Poles, Licensee shall so notify Licensor in writing at least thirty (30) days prior to the day the work is to begin. In such event, Licensee shall bear a proportionate share of the total costs incurred by Licensor to make Licensor Poles accessible.

F. In the event Licensor is required to move the location of, or replace, any Licensor Poles for reasons beyond its control, Licensee concurrently shall relocate Licensee's Attachments. Licensee shall be solely responsible for the costs of the relocation of Licensee's Attachments. When it is mutually agreed that it is in the best interest of Licensor and Licensee, Licensor may, after proper notification has been provided, transfer Licensee's Attachments at the same time that Licensor transfers its facilities and shall invoice Licensee for the actual costs incurred in performing the transfer of Licensee's Attachments.

### **13. EMERGENCY RESTORATION**

A. In the event of an emergency, restoration procedures may be affected by the presence of Licensee's Attachments. While Licensor shall not be responsible for the repair of damaged Attachments, Licensor shall nonetheless control access to its Poles if the restoration is to be achieved in an orderly fashion.

B. Where Licensor and Licensee are involved in emergency restorations, access to Licensor's Poles will be controlled by Licensor according to the following guidelines.

#### **1. Service Disruptions/Outages**

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where simultaneous access is not possible, Licensor will grant access on first come, first served basis.

2. Service Affecting Emergencies

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where Licensor is unable to grant simultaneous access to all other entities with attachments, access will be granted according to the level of damage to the attachments of each entity and the likelihood that a given level of damage will result in service disruption. Where the likelihood that a service disruption will result is not clearly discernible, access will be on a first come, first served basis.

C. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by Licensor regarding access to its Attachments, or any action or failure to act by Licensor, under this section shall not be the basis for any claim by Licensee against Licensor for any damage to Licensee's Attachments or disruption of Licensee's Services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee.

14. **FAILURE TO PLACE ATTACHMENTS**

Once Licensee has been issued a License, Licensee shall have ninety (90) calendar days from the date of the License was issued to begin the placement of its Attachments on the Licensor Poles covered by the License. If Licensee has not begun placing its Attachments within the ninety (90) day period, Licensee shall so advise Licensor with a written explanation and notice for the delay. If Licensee fails to advise Licensor of its delay by notice thereof or if Licensee fails to act in good faith by not making a bona fide effort to begin placing its Attachments within the ninety (90) calendar days prescribed by this section, the License shall be automatically rescinded by Licensor and deemed null and void, and Licensee shall have no further right to place the Attachments pursuant to such voided License.

15. **ABANDONMENT**

Nothing in this Agreement shall prevent or be construed to prevent Licensor from abandoning, selling, assigning, or otherwise disposing of any Poles. Licensor shall notify Licensee of any sale, assignment, or other disposition of any Poles or other Licensor property used for Licensee's Attachments.

16. **INSPECTIONS AND INVENTORIES**

A. **Post construction and/or periodic inspection of Licensee Attachments.** Licensor shall have the right, but not the obligation, to make a post construction inspection and periodic inspections at any time of any part of Licensee's Attachments on Poles and any other associated facilities for the limited purpose of determining whether Licensee's Attachments are in compliance with the terms of this Agreement and any Licenses issued hereunder. Such inspections shall be conducted at Licensor's expense with the exception of (1) a post construction inspection, (2) follow-up inspection to confirm remedial action after an observed Licensee violation of the requirements of this Agreement; and (3) inspection of Licensee Facilities in compliance with a specific mandate of appropriate governmental authority, for which inspections the cost shall be borne solely by Licensee.



**B. Inventories.** Upon written notice to Licensee, the total number and location of Licensee's Attachments on Licensor's Poles may be determined, at Licensor's discretion, through a survey which may be made not more than once per calendar year by Licensor. If so requested, Licensee and /or any other entity owning or jointly using the Poles with Licensor may participate in the survey. The costs incurred by Licensor to conduct the survey shall be reimbursed to Licensor by Licensee upon demand by Licensor regardless of whether or not Licensee participates in the survey. If the Attachments of more than one licensee are surveyed, each such licensee shall contribute a proportionate share of the costs reimbursed to Licensor.

**C. No Duty to Licensee.** Neither the act of inspection or survey by Licensor of Licensee's Attachments nor any failure to inspect such Attachments shall operate to impose on Licensor any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations or liability under this Agreement, any License issued hereunder, or applicable law, or to any third party contractor, Licensee Contractor, or otherwise.

## **17. UNAUTHORIZED ATTACHMENTS**

**A.** If any Licensee Attachment shall be found on Poles for which no License has been granted by Licensor pursuant to the terms of this Agreement ("Unauthorized Attachment"), Licensor, without prejudice to its other rights or remedies under this Agreement or otherwise, may:

1. impose charges as set forth herein, and
2. require Licensee to remove such Unauthorized Attachment or Licensor may remove such Unauthorized Attachment without liability and the expense of removal shall be borne by Licensee.

**B.** For the purpose of determining the charges, Licensee shall pay an amount per Unauthorized Attachment equal to the Pole Attachment Fee that would have applied if Licensee had properly obtained a License based upon the then current Attachment Rate for the number of years the Unauthorized Attachment have existed (or, if that cannot be determined, the number of years since the most recent inventory or five (5) years, whichever is less), plus interest at a rate the greater of 1.5% per month or the maximum allowed by law. In addition, if the Unauthorized Attachment is discovered during a survey where Licensee declined to participate an additional fee of \$100 per Unauthorized Attachment shall be charged to Licensee. Licensee agrees and acknowledges in the event of an Unauthorized Attachment actual damages would be difficult to determine and the charges described herein are liquidated damages, not penalties, and represent a fair and reasonable estimate of the damages which may be incurred by Licensor for Unauthorized Attachments on Licensor's Poles including wear and tear, lost revenue, increased maintenance and repair costs for having to work on a Pole where the owner of a facility is unknown, and the risk of liability for safety violations that may be the result of an Unauthorized Attachment.

**C.** Any such charge as set forth in Section 17(B) imposed by Licensor shall be in addition to its rights to any other sums due and payable, including without limitation Make Ready Work costs, the actual costs of any audit or survey which established the existence of the Unauthorized Attachment and to any claims to said fees.

**D.** No act by Licensor with regard to any unauthorized use shall be deemed as a ratification or the licensing of the unauthorized use, and if any License should subsequently be issued, after application and payment of all applicable fees therefore, said License shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized use from its inception.

**E.** An Unauthorized Attachment shall include, but not limited to:

1. an Attachment to Poles which is not identified in any License issued in accordance with this Agreement;
2. an Attachment that occupies more space than that allocated to Licensee by Licensor in a License;
3. an Attachment that is not placed in accordance with the provisions of this Agreement or the appropriate License issued pursuant to this Agreement, unless Licensee can demonstrate to Licensor's reasonable satisfaction that said misplacement is not due to any act or omission of Licensee or Licensee's agents;
4. an addition or modification by Licensee to its pre-existing Attachment(s) that impairs the structural integrity of the involved Licensor Poles.
5. an Attachment that consists of facilities owned or controlled by, and for the use of a party other than Licensee that is overlashed to Licensee Attachments without approval by Licensor as required under this Agreement.

**F.** Once Licensor has notified Licensee of an Unauthorized Attachment. Licensee shall submit an Exhibit B Application for Pole License to request an authorization for the Attachment. An Exhibit B Application for Pole License submitted per this provision will be treated like any other Exhibit B Application for Pole License subject to this Agreement. Licensee will be responsible for all fees associated with an Exhibit B Application for Pole License (as identified in this Agreement). If an Exhibit B Application for Pole License is not received by Licensor within ten (10) days of Licensor's notice of an Unauthorized Attachment, Licensee has sixty (60) days from the date of the Unauthorized Attachment notification to vacate the Pole. If Licensee fails to remove Licensee's facilities within such sixty (60) day period, Licensor shall have the right to remove Licensee's facilities at Licensee's expense and without any liability on the part of Licensor for damage or injury to Licensee's facilities or disruption of Licensee's Services.

## **18. COMPLIANCE WITH LAW, ASSUMPTION OF RISK, AND DISCLAIMER OF WARRANTIES**

**A.** Notwithstanding anything to the contrary in this Agreement, Licensee shall ensure that any and all activities it undertakes pursuant to this Agreement shall comply with all applicable laws, including, without limitation, all applicable provisions of:

1. Workers' compensation laws

2. Unemployment compensation laws
3. The Federal Social Security Law
4. The Fair Labor Standards Act, and
5. All laws, regulations, rules, guidelines, policies, orders, permits and approvals or any governmental authority relating to environmental matters including but not limited to Hazardous Materials and/or Occupational Safety and Health Act ("OSHA").

**B. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR DOES NOT MAKE ANY REPRESENTATION OR WARRANTIES AS TO THE CONDITION OR SAFETY OF LICENSOR'S POLES ANY ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, OR THE PREMISES SURROUNDING THE SAME, LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE. INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, AND THE PREMISES SURROUNDING THE SAME AND LICENSEE IS SOLELY RESPONSIBLE FOR ALL ALLEGED DAMAGES CLAIMED BY THIRD PARTIES ACCESSING OR WORKING ON OR NEAR LICENSOR'S POLES.**

**C. EXCEPT AS OTHERWISE PROVIDED HEREIN, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, WITH REGARD TO THIS AGREEMENT AND ANY LICENSE ISSUED HEREUNDER INCLUDING, WITHOUT LIMITATION, ACCESS TO LICENSOR'S POLES OR OTHER FACILITIES.**

#### **19. LICENSEE CONTRACTOR QUALIFICATIONS**

**A.** The parties acknowledge that from time to time Licensee may use a Licensee Contractor to perform work for Licensee on, within or in Licensor's Poles.

**B.** Licensee represents and warrants that any of its employees or Licensee Contractors shall not climb or work on any of Licensor's Poles, or work within Licensor's Right-Of-Way unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Poles and to perform the work safely.

**C.** Licensee assumes all risk of Licensee Contractors and agrees to indemnify, defend and hold harmless Licensor from all claims, losses, damages and liabilities, costs and expenses (including, but not limited to, reasonable attorney's fees) associated thereto in accordance with the indemnification provision of this License Agreement.

**D.** When Licensee Contractors are working on, within or in the vicinity of any part of Licensor's Poles or Right-Of-Way, all such Licensee Contractors shall follow procedures which Licensee deems appropriate for the protection of persons and property. Licensee shall be responsible at all times for determining and implementing the specific steps required to protect persons and property at the site. Licensee will provide all traffic control and warning devices required to protect pedestrian and vehicular

WIN ILEC vrs 9.23.15 (*Poles only*)



traffic, workers and property from danger. Licensee has sole responsibility for the safety of all its employees and Licensee Contractors, for the safety of bystanders, and for insuring that all operations conform to terms and conditions set forth in this Agreement. Licensor reserves the right to suspend Licensee's activities on, within or in the vicinity of Licensor's Poles or Right-Of-Way if, in Licensor's sole judgment, any hazardous condition arises due to the activity (including both acts and omissions) of any Licensee Contractor or Licensee employee, which suspension shall cease when the condition has been rectified.

**E.** Licensee represents and warrants that all Licensee Contractors shall maintain the same insurance coverage and limits as are required of Licensee under this Agreement, and if not Licensee's insurance will provide such coverage.

**F.** Licensee acknowledges that all Licensee Contractors are not Licensor's employees or agents and Licensee assumes full responsibility for their actions or omissions to act. Licensee shall be solely responsible for the payment of compensation of Licensee's employees, contractors or agents assigned to perform work hereunder and such employees, contractors and agents shall be informed that they are not entitled to the provision of any Licensor benefits. Licensor shall not be responsible for payment of workman's compensation, disability benefits, and unemployment insurance or for withholding or paying employment related taxes for any employee of Licensee, but such responsibility shall be solely that of Licensee. In the event that any federal, state or local government agency, any court or any other applicable entity determines that the personnel provided by Licensee or any permitted Licensee Contractor are employees of Licensor for any purpose, Licensee agrees to indemnify, defend and save harmless Licensor from all liabilities, costs, and expenses (including, but not limited to, reasonable attorney fees) associated with such determination in accordance with the indemnification provision of this License Agreement.

**G.** Any work by Licensee Contractors on, within or in Licensor's Poles or Right-Of-Way shall be done only when specific authorization for such work has been obtained in writing in advance from Licensor pursuant to the terms and conditions of this Agreement. The parties agree that all work shall be performed according to existing industry standards and practices and the requirements and specifications set forth in this Agreement and any License issued hereunder.

## **20. DEFAULT**

**A.** In addition to other events of defaults defined anywhere else in this Agreement, any one of the following shall be deemed the occurrence of a default under this Agreement:

1. failure by Licensee to pay when due any fee or other sum required to be paid under the terms of this Agreement.
2. failure by either party to perform or observe any other term, condition, covenant, obligation, or provision of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from the other party (provided that if such default is not curable within a thirty (30) day period, the period may be extended if the party substantially commences to cure such default and proceeds diligently thereafter to effect such cure).

3. the filing of any tax or lien against Poles because of any act or omission by Licensee which is not bonded or discharged within thirty (30) days of the date of notice to Licensee that such lien has been filed;
4. Licensee's voluntary or involuntary bankruptcy;
5. Licensee's use or maintenance of its Attachments in violation of any law or regulation, or in aid of any unlawful act or undertaking;
6. if any authorization which may be required of Licensee by any governmental or private authority for the placement, operation, or maintenance of Licensee's Attachments is denied or revoked.

**B.** In the event of a default and subject to any other applicable provision of this Agreement, the non-defaulting party, without any further notice to the defaulting party (except where expressly provided for below or required by applicable law), may do any one or more of the following:

1. perform on behalf and at the expense of the defaulting party, any obligation of the defaulting party under this Agreement which the defaulting party has failed to perform and of which the non-defaulting party shall have given the defaulting party notice, the cost of which performance shall be paid by the defaulting party to the non-defaulting party upon demand;
2. terminate this Agreement by giving sixty (60) days written notice of such termination to Licensee and remove Licensee's Attachments and store Licensee's facilities in a public warehouse or elsewhere at the expense of and for the account of Licensee without Licensor being deemed guilty of trespass or conversion, and without Licensor becoming liable for any loss or damages to Licensee occasioned thereby; or
3. exercise any other legal or equitable right or remedy that the non-defaulting party may have.

**C.** The defaulting party shall repay to the non-defaulting party upon demand any costs and expenses incurred by the non-defaulting party (including, without limitation, reasonable attorneys' fees) in successfully enforcing this Agreement.

**D.** Upon termination of this Agreement by the non-defaulting party, the defaulting party shall remain liable to the non-defaulting party for any and all fees, other payments and damages which may be due or sustained in accord with this Agreement prior to such termination, all reasonable costs, fees and expenses, including, without limitation, reasonable attorney' fees incurred by the non-defaulting party in pursuit of its remedies hereunder.

**E.** All rights and remedies of the non-defaulting party set forth in this Agreement shall be cumulative and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

## **21. INDEMNIFICATION AND LIMITATION OF LIABILITY**

**A.** Licensee shall compensate Licensor for the full actual loss, damage or destruction of Licensor's property that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation, or maintenance of Licensee's Attachments).

**B.** Licensee agrees to defend, indemnify, protect and hold harmless Licensor and its officers, directors, employees, shareholders, successors, assigns, agents, affiliates, representatives, partners, and contractors from and against any and all claims, actions, administrative proceedings (including, without limitation, informal proceedings), judgments, damages, penalties, fines, cost, liabilities, interests, or loss, including, without limitation, reasonable attorneys' fees and expenses, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature suffered by or asserted against Licensor in any way arising out of or connected with this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Attachments, unless caused solely by the negligence or willful misconduct of Licensor or Licensor's affiliates, agents, officers, employees and assigns). Licensee expressly assumes all liability for actions by its affiliates, agents, officers, employees, or Licensee Contractors and expressly waives any immunity from the enforcement of this indemnification provision that might otherwise be provided by workers' compensation law or by other state or federal laws.

**C.** Without limiting any of the foregoing, Licensee assumes all risk of, and agrees to relieve Licensor of any and all liability for, loss or damage (and the consequences of loss or damage) to any facilities placed on Licensor's property and any other financial loss sustained by Licensee, except to the extent caused by the sole negligence or willful misconduct on the part of Licensor or Licensor's agents, officers, employees, and assigns.

**D.** Without limiting the foregoing, Licensee expressly agrees to indemnify, defend, and hold harmless Licensor and Licensor's agents, officers, employees and assigns from any and all claims asserted by end users/customers of Licensee in any way arising out of or in connection with this Agreement or Licensee's Attachments, except to the extent caused solely by the negligence or willful misconduct of Licensor or Licensor's agents, officers, employees, and assigns, or its contractors.

**E.** Notwithstanding anything to the contrary in this Agreement, Licensee further shall indemnify and hold harmless Licensor, its agents, officers, employees, and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including, without limitation, reasonable attorneys' fees) whether foreseen or unforeseen, which the Licensor suffers or incurs because of:

1. any discharge of Hazardous Materials resulting from acts or omissions of Licensee, Licensee Contractors or Licensee's predecessor in interest;
2. acts or omissions of Licensee, its agents, employees, Licensees, or representatives in connection with any cleanup required by law, or
3. failure of Licensee or Licensee Contractors to comply with Environmental, Safety and Health Laws.

**F.** Licensee shall indemnify, protect, and hold harmless Licensor from and against any and all claims for libel and slander, copyright and/or patent infringement arising directly or indirectly by reason of installation of Licensee's Attachments pursuant to this Agreement.

**G.** In the event of any claim, demand or litigation specified the indemnity provision, the party to be indemnified (the "Indemnified Party") shall give prompt notice to the other party (the "Indemnifying Party") of such claim, demand or litigation. The Indemnifying Party shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that the Indemnifying Party may not make any non-monetary settlement or compromise without the Indemnified Party's consent, which consent shall not be unreasonably withheld. The Indemnified Party shall cooperate with the Indemnifying Party in the defense and/or settlement of any claim, demand or litigation. Nothing herein shall be deemed to prevent the Indemnified Party from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnified Party's own counsel at the Indemnified Party's own expense.

**H.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY SUCH PARTY OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF SUCH PARTY FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED OR WHETHER IT (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

## **22. INSURANCE**

**A.** Licensee shall obtain and maintain, in full force and effect at all times, during operations covered by this Agreement, such minimum insurance as will cover the obligations and liabilities of Licensee, its agents, and its employees which may arise from the operations under this Agreement. Insurance shall have limits of not less than Commercial General Liability policy of minimum limits of:

General Aggregate	\$ 2,000,000 per policy period
Products/Completed Operations Aggregate	\$ 2,000,000 per policy period
Personal Injury/Advertising	\$ 2,000,000 per occurrence
Each Occurrence	\$ 2,000,000 per occurrence
Fire Legal Liability	\$ 50,000 any one fire

**B.** The policy will be endorsed to show the above aggregate limits applying to "each" job site or, as an alternative, the General Aggregate will be increased to \$4,000,000 per policy period. Policy will also specifically state the coverage applies to all operations conducted by the Licensee, its employees, or agents on behalf of Licensee or subsidiary.

**C.** Where the performance of the work involves structural property, underground property, or blasting, Licensee's Commercial General Liability insurance policy shall provide coverage to the insured for legal liability arising from operations under this Agreement for property damage:

1. arising out of blasting,
2. arising out of collapse of, or structural injury to, any building or structure or
3. To underground facilities and utilities.

**D.** Other general liability forms are acceptable in lieu of the Commercial General Liability Form however they are not to be used without written approval from Licensor.

1. Business Automobile Liability policy with minimum limits of:

Bodily Injury	\$2,000,000 per accident
Property Damage	\$ 2,000,000 per accident
OR	
Combined Single Limit	\$ 2,000,000 per accident

The policy will be issued using symbol "1 - any auto" coverage.

2. Workers Compensation:

Part 1 - Medical Benefits                      Statutory

Part 2 - Employer's Liability as indicated:

Bodily Injury by Accident	\$ 1,000,000 each accident
Bodily Injury by Disease	\$ 1,000,000 each employee
Bodily Injury by Disease	\$ 1,000,000 policy limit

**E.** The policy will show the state in which operation on behalf of the Licensee and/or subsidiary is being conducted. For operations conducted within monopolistic (state fund) states, Licensee will furnish a certificate of compliance from the appropriate state fund administrator.

**F.** In each and every policy except workers' compensation, Licensor and its subsidiaries shall be named an "additional insured" with respect to activities performed on behalf of the Licensee and its subsidiaries.

**G.** Coverage provided by the policies listed in this paragraph will be issued by an insurance company, licensed in the state in which operations on behalf of the Licensee are to be conducted. It is acceptable to use both primary and excess/umbrella policies to obtain necessary limits. The worker's compensation policy must contain a waiver of subrogation clause.

**H.** Licensee will furnish to Licensor, a certificate evidencing insurance coverage under sub-paragraphs 22(A) and (D). Such certificate or Licensee shall provide for a thirty (30) day prior notice to the Licensor of any cancellation or material changes in coverage and shall be signed by a legal representative of the issuing insurance company. The certificate of insurance shall be sent to Licensor's contact identified in Exhibit E.

**I.** The provisions of sub-paragraphs 22 (A) and (D) shall also apply to all Licensee Contractors and Licensee shall be responsible for their compliance herewith.

## 23. NOTICES

Any and all notices to a party required or permitted under this Agreement shall be in writing and shall be: (a) delivered personally; (b) delivered by express overnight delivery service; (c) mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or (d) delivered by electronic mail; provided that a paper copy is also sent via methods (a), (b), or (c) of this Section. Notices will be deemed given as of the earliest of: the date of actual receipt; the next business day when sent via express overnight delivery service; five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service, or on the date set forth on the confirmation produced by the sent confirmation when sent prior to 5:00 p.m. in the recipient's time zone, but the next business day when delivered at 5:00 p.m. or later in the recipient's time zone. Notices will be addressed to the parties as set forth in Exhibit E as may be updated in writing by the parties from time to time in accordance with method set forth under this Section 23.

## 24. CONFIDENTIALITY

Neither party shall at any time disclose, provide, demonstrate or otherwise make available to any third party any of the terms or conditions of this Agreement or any materials provided by either party specifically marked as confidential, except upon written consent of the other party, or as may be required by applicable law or governmental authorities. Notwithstanding the foregoing, nothing in this Section shall prevent disclosure to a party's authorized legal counsel who shall be subject to this confidentiality section, nor shall it preclude the use of this Agreement by the parties to obtain financing, to make or report matters related to this Agreement in any securities statements, or to respond to any requests by governmental or judicial authorities; provided, however, that any such disclosure shall be limited to the extent necessary, and shall be made only after attempting to obtain confidentiality assurances. Notwithstanding the foregoing, prior to making any disclosure in response to a request of a governmental authority or legal process, the party called upon to make such disclosure shall provide notice to the other party of such proposed disclosure sufficient to provide the other with an opportunity to timely object to such disclosure. Notwithstanding the foregoing, Licensor may, without notice to Licensee: (i) negotiate or enter into any agreement with any other person(s) or entity(ies) that is identical or similar to this Agreement; and (ii) provide the text of all or part of this Agreement to any other party, so long as Licensor shall redact therefrom all references to Licensee and shall not associate such text with Licensee or identify Licensee as having agreed to such text or terms.

## 25. DISPUTE RESOLUTION

### A. Except in the case of:

1. a suit, action, or proceeding by one party to compel the other party to comply with its obligation to indemnify the other party pursuant to this Agreement, or
2. a suit, action or proceeding to compel either party to comply with the dispute resolution procedures set forth in this section, the parties agree to use the following procedure to resolve any dispute, controversy, or claim arising out of or relating to this Agreement or its breach.

B. At the written request of a party, each party shall designate a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute, controversy, or claim arising



under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The substance of the negotiations shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative nonbinding dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence between the representatives for the purposes of these negotiations shall be treated as confidential, undertaken for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any subsequent proceeding without the concurrence of all parties. Documents identified in or provided during such negotiations, which are not prepared for purposes of the negotiations, shall not be so exempt and may, if otherwise admissible, be admitted as evidence in any subsequent proceeding.

**C.** If a resolution of the dispute, controversy or claim is not reached within ninety (90) days of the initial written request referred to in this Section 25, the dispute, controversy, or claim may be filed with the State utility commission or the Federal Communication Commission, if applicable, for review and determination, provided the party invoking the commission's intervention process has in good faith negotiated, or attempted to negotiate, with the other party pursuant to this Section 25.

**D.** Except as otherwise provided in this Agreement under the Indemnification or Default provision or elsewhere, each party shall bear its own costs, including attorneys' fee, incurred in connection with any of the foregoing procedures. A party seeking discovery shall reimburse the responding party the cost of reproducing documents (to include search time and reproduction time costs).

## **26. TAXES**

Each party shall pay all taxes and assessments lawfully levied on its own property and services subject to this Agreement.

## **27. WAIVER**

Failure by either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

## **28. NO THIRD PARTY BENEFICIARIES**

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the parties and may be enforced solely by the parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the parties, except as provided herein.

## **29. FORCE MAJEURE**

Neither party shall be liable for any delay or failure in performance of any part of this License Agreement or License issued hereunder from any cause beyond its reasonable control and without its fault, omission or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, labor strikes, lockouts or work stoppages or severe weather ("Force Majeure Event"). In the event of a Force Majeure Event, upon giving prompt notice to the other party, the due date for performance by the affected party of its original obligation(s) shall be extended by a term equal to the

time lost by reason of the Force Majeure Event. In the event that the affected party is able to partially perform its obligations, it shall perform its obligations at a performance level no less than that which it uses for its own operations.

### **30. ASSIGNMENT**

Licensee shall not assign; transfer or sublet the privileges hereby granted, or sell, lease or otherwise permit the use of its facilities on or any part thereof (all of the foregoing being "Transfers"), without prior consent in writing of Licensor. No such consent granted by Licensor shall be effective until Licensee's assignee, sublessee or other transferee has agreed, on an enforceable separate document signed and delivered to Licensor, to assume all obligations and liabilities of Licensee under this Agreement. Licensor may condition such consent upon the assignee's sublessee's or transferee's agreement to reasonable additional or modified terms or conditions. If there is a change of control of Licensee, then Licensor shall have the right, in its reasonable discretion, immediately to terminate this Agreement in its entirety without further liability. Licensor may assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

### **31. APPLICABLE LAW**

This Agreement, and the rights and obligations contained in it, shall be governed and construed under the laws of the state in which the Attachments hereunder are to be located. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines now in effect and that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such prescribed law, rule, regulation or guideline, the Parties agree to modify, in writing, the affected term(s) and conditions(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline. Should any term of this Agreement be determined by a court or agency with competent jurisdiction to be unenforceable, all other terms of this Agreement shall remain in full force and effect.

### **32. WAIVER OF JURY TRIAL**

Licensor and Licensee each expressly waive its right to a jury trial.

### **33. ENTIRE AGREEMENT, MODIFICATIONS, SURVIVAL AND CONFLICTS AND TARIFFS**

**A.** This Agreement cancels and supersedes all previous agreements whether written or oral, except for any sums due thereunder, between Licensor and Licensee with respect to the Licensee's Attachments to Licensor's Poles; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. All currently effective Licenses and authorizations for Attachments granted pursuant to such previous agreements shall continue in effect subject to the terms and conditions of this Agreement.

**B.** This Agreement may be amended or supplemented at any time only upon written agreement by the parties hereto. Notwithstanding the foregoing, all Exhibits, fees, Licensor procedures and specifications may be modified by Licensor upon thirty (30) day notice to Licensee.

**C.** Notwithstanding the termination of this Agreement for any reason, Section 18 Compliance with Laws, Assumption of Risk and Disclaimer of Warranties, Section 21 Indemnification and Limitation of

WIN ILEC vrs 9.23.15 (*Poles only*)

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Liability, Section 22 Insurance, Section 24 Confidentiality and any other provision intended to survive, shall survive termination to the maximum extent permitted under applicable law. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations period.

**D.** It is the intent of the parties that the terms and conditions of this Agreement and any applicable Licensors' state tariffs be construed as being consistent where possible. However, in the event of a conflict or difference between the terms and conditions of this Agreement and Licensors' state tariff, the terms of the applicable state tariff shall control.

#### **34. AUTHORITY AND COUNTERPARTS AND ELECTRONIC SIGNATURES**

**A.** Each party represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the state in which the obligations under this License Agreement are to be performed. Each party warrants that it has full power and authority to execute and deliver this License Agreement and to perform its obligations hereunder.

**B.** This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

#### **LICENSOR**

*Windstream Kentucky West, LLC*

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

#### **LICENSEE**

*(INSERT CATV/CLEC ENTITY)*

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**EXHIBIT A**  
**DEFINITIONS**

**"Application for Pole License"** - A written request submitted in the form of Exhibit B from Licensee to Licensor requesting authorization to attach Licensee owned facilities to Poles in accordance with this Agreement.

**"Attachment(s)"** - any facilities, cables or equipment attached to Poles or any other property owned or controlled by Licensor.

**"Effective Date"** - is the date this Agreement is last signed by the parties.

**"Force Majeure Event"** - shall have the meaning set forth in Section 29 of the Agreement.

**"Hazardous Materials"** -

Any substance, material or waste now or hereafter defined or characterized as hazardous, toxic or dangerous as defined by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, as amended, and other federal, state, and local health, safety, and environmental laws, ordinances, statutes, and rules, including but not limited to the Occupational Safety and Health Act ("OSHA").

Any substance, material or waste now or hereafter classified as a contaminant or pollutant under any law, rules, ordinance, or authority.

Any other substance, material or waste, the manufacture, processing, distribution, use, treatment, storage, placement, disposal, removal or transportation of which is now or hereafter subject to regulation under any law, ordinance, statute, rule or regulation of any governmental body or authority.

**"License"** - is the specific nonexclusive and revocable permission from Licensor, in the form of a Licensor countersigned and returned Application for License, to Licensee authorizing Licensee to attach its facilities as applied for to Licensor Poles in accordance with this Agreement.

**"Licensee Contractors"** - shall have the meaning set forth in Section 10(D) of the Agreement.

**"Make Ready Estimate"** - is Licensor's estimated cost to perform Make Ready Work on Licensor's facilities on Poles to accommodate Licensee's Attachment as requested in an Application for Pole License.

**"Make Ready Work"** - all Licensor, joint owner or other existing attacher work to prepare Licensor's Poles and related facilities for the requested Attachment of Licensee's facilities but not the actual placement of Attachments or administrative activities related to inquiries, verifications, requests or applications.

**"Overlashing or overlashed"** - lashing of an additional Licensee owned cable to Licensee's own existing cable and/or strand attached to a Pole as set forth in Section 11 of this Agreement.

“Pole(s)”- a pole owned solely or jointly by Licensor or Poles owned by others to the extent that and for so long as Licensor has the right to permit others to be attached in the communications space.

“Pole Attachment Fee” - the fee paid annually per Attachment on a Pole. For billing purposes, a single Attachment includes the point of Attachment and all facilities located in the usable space on the Poles in the space assigned to Licensee (typically six inches above and six inches below the point of Attachment). If Licensee occupies more than one foot of usable space on Poles, separate Pole Attachment Fees shall apply to each one foot of space occupied.

“Right-of-Way” - right-of-way owned or controlled by Licensor.

“Unauthorized Attachment” – shall have the meaning set forth in Section 17(A) and 17(E) of the Agreement.

**EXHIBIT B**

**FORM APPLICATION FOR POLE LICENSE**

**B** windstream

[illegible]

**By this application & signature, Licensee to proceed with the project.** **A**

WIN ILEC vrs 9.23.15 (Poles only)

Page 28 of 33

## NON PAYMENT

**NOTE: Final costs will**

# Windstream Pole Attachment Data Sheet

EXHIBIT B - PART II

WINDSTREAM POLE NUMBER		POWER POLE NUMBER	
STREET LOCATION		NAME OF ATTACHER	
CITY/BORO/TOWNSHIP		DATE	FIELD PERSONNEL NAME
ATTACHMENT TYPE <input type="checkbox"/> Cable <input type="checkbox"/> Power Supply <input type="checkbox"/> Service Drop <input type="checkbox"/> Overhead Guy			
POLE SIZE	TRANSFORMER/DEVICE ON POLE <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT    TOP OF CONDUIT RISER HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input type="checkbox"/> No; If yes <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
<b>MAKE READY WORK</b> REQUIRED <input type="checkbox"/> Yes <input type="checkbox"/> No    IF YES, PROVIDE ADDITIONAL DETAIL			
<b>POLE DRAWING</b>	<b>POLE NO.</b> ➡		<b>BEFORE</b> <b>AFTER</b>
	<b>*TYPE OF POWER ATTACHMENT</b> ➡		<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary
	<div style="display: flex; justify-content: space-between;"> <div> <b>Company Name</b>   1. _____   2. _____   3. _____   4. _____ </div> <div> <b>Pole Side</b>  <div style="margin-bottom: 10px;"> <b>Lowest Power Attachment</b>  * <input type="checkbox"/> Front   <input type="checkbox"/> Back </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Front   <input type="checkbox"/> Back </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Front   <input type="checkbox"/> Back </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Front   <input type="checkbox"/> Back </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Front   <input type="checkbox"/> Back </div> </div> <div style="margin-left: 20px;"> <div style="margin-bottom: 10px;"> Attach. Ht. _____ </div> <div style="margin-bottom: 10px;"> Proposed Attach. Ht. _____ </div> <div style="margin-bottom: 10px;"> Attach. Ht. _____ </div> <div style="margin-bottom: 10px;"> Attach. Ht. _____ </div> <div style="margin-bottom: 10px;"> Attach. Ht. _____ </div> </div> <div style="margin-left: 100px;"> Mid Span Distance  ↑  ↓ </div> <div style="margin-top: 20px;"> Ground Line </div> </div>		
	<b>SPAN</b>		
<b>NOTE</b>			

**EXHIBIT C**

**REMOVAL NOTICE AND LICENSE SURRENDER FORM**

**NOTIFICATION OF SURRENDER**

**Notification No.** \_\_\_\_\_

**Date:** \_\_\_\_\_

**City & State:** \_\_\_\_\_

In accordance with the terms and conditions of the license agreement between us, dated \_\_\_\_\_, notice is hereby given that the License covering Attachments to the outside plant structures, as shown on the attached sketch, is surrendered.

**Licensee:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**By (Print/Type):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date Surrender Notice Received:** \_\_\_\_\_

**Licensor:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**By (Print/Type):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT D**

**SCHEDULE OF RATES, FEES AND CHARGES**

Annual Attachment Rate (per Attachment)**	\$ <u>\$6.80 2-User, \$5.50 3-User</u>
Agreement Fee	\$ <u>400.00</u>
Application for Pole License Fee	\$ <u>75.00 per application</u>
Unauthorized Attachment fee	\$ <u>Per Section 17 of the Agreement</u>

**\*\* If Attachments are in a non-tariffed state, the rental rate is subject to annual adjustment based on FCC Calculation.**



**EXHIBIT E**

**NOTICES CONTACT INFORMATION**

**IF TO LICENSOR**

**Email: windstream.poles@windstream.com**

**Windstream Kentucky West, LLC**

**PO Box 25410**

**Little Rock, AR 72221**

**IF TO LICENSEE:**

**ENGINEERING CONTACT FOR LICENSEE**

Company Name	
Name of Responsible Party	
Address	
Phone	
Fax	
Email	

**INVOICING / BILLING CONTACT FOR LICENSEE**

Name	
Address	
Phone	
Fax	
Email	

NOTE TO LICENSEE IF LICENSEE CHOOSES NOT TO PROCEED WITH THE APPLICATION - LICENSEE WILL BE  
BILLED FOR LICENSOR/WINDSTREAM'S ENGINEERING AND ADMINISTRATIVE TIME.

EXHIBIT B  
Windstream CORPORATION  
APPLICATION FOR POLE LICENSE

PROPOSAL #: \_\_\_\_\_

Submit in Duplicate

Name of Firm/Licensee Applying: \_\_\_\_\_

Contact Name,  
Phone # \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

Street Address, City,  
ST, ZIP of Firm  
Applying \_\_\_\_\_

Licensee Authorized Signature & Date: \_\_\_\_\_

By this application & signature, Licensee agrees to pay all engineering fees associated with this application even if Licensee chooses NOT to proceed with the project. All <b>ESTIMATED</b> fees, including engineering & makeready <b>MUST BE PAID IN FULL UP FRONT.</b> NON PAYMENT OF FEES WILL RESULT IN THIS APPLICATION AND ALL FUTURE APPLICATIONS BEING PLACED ON HOLD <i>NOTE: Final costs will be determined by actual time &amp; material required to do the make-ready work. Any difference in charges will be billed accordingly.</i>												
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	
Licensee to complete	Licensee to complete	Licensee to complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Windstream to Complete	Windstream To Complete	Windstream To Complete	
Windstream Lead & Structure No. (Pole No.)	Power Pole No.	Location: Street, City, Township, Zip Code	Height, Class, Ownership of Pole	Hgt of highest Tel Cable	Hgt of highest Tel Drop	Hgt of lowest Power Cable	Hgt of other attachmts on pole	# & type of Attachmts	Height Licensee to attach at	Licensor Work Description	Bill for Rent Y or N	
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
19												
20												
21												
22												
23												
24												
25												
ESTIMATED TOTAL COSTS												
PLEASE ATTACH DRAWINGS TO THIS APPLICATION - IT WILL NOT BE PROCESSED WITHOUT THEM												

Submit to: Windstream Corporation, Attn: Windstream Joint Use via email at: Windstream.Jointuse@windstream.com

Acknowledged and Agreed to by Licensor: \_\_\_\_\_

Name

Title

Date

**Windstream Pole Attachment Data Sheet**  
EXHIBIT B - PART II

WINDSTREAM POLE NUMBER		POWER POLE NUMBER	
STREET LOCATION		NAME OF ATTACHER	
CITY/BORO/TOWNSHIP		DATE	FIELD PERSONNEL NAME
ATTACHMENT TYPE <input type="checkbox"/> Cable <input type="checkbox"/> Power Supply <input type="checkbox"/> Service Drop <input type="checkbox"/> Overhead Guy			
POLE SIZE	TRANSFORMER/DEVICE ON POLE <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT    TOP OF CONDUIT RISER HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input type="checkbox"/> No; If yes ➡ <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	

<b>MAKE READY WORK</b>	REQUIRED <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, PROVIDE ADDITIONAL DETAIL
------------------------	-------------------------------------------------------------------------	-----------------------------------

<b>POLE DRAWING</b>	POLE NO. ➡	BEFORE	AFTER
	*TYPE OF POWER ATTACHMENT ➡	<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary	
	<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;"> <p>Company Name</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> </div> <div style="flex: 2; text-align: center;"> <p><b>Pole Side</b></p> </div> </div>		
	<p>* <input type="checkbox"/> Front   <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front   <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front   <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front   <input type="checkbox"/> Back</p>		

<b>SPAN</b>	MID-SPAN HEIGHT Ft.	SPAN CROSSES OVER (Check all that apply)					
		<input type="checkbox"/> Body of Water <input type="checkbox"/> Swimming Pool	<input type="checkbox"/> Street <input type="checkbox"/> Building	<input type="checkbox"/> Driveway <input type="checkbox"/> Railroad	<input type="checkbox"/> Field <input type="checkbox"/> Yard	<input type="checkbox"/> Interstate <input type="checkbox"/> Parking Lot	

<b>NOTE</b>	
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**Date:** 11/22/2017 11:33:00 AM  
**Sent:** 11/22/2017 11:33:41 AM  
**Subject:** RE: Pole Attachment  
**From:** Anita Larson  
**To:** McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>; King, Daniel <Daniel.King@windstream.com>;  
**CC:** Lloyd, James <James.Lloyd@windstream.com>;

---

Thank you Michelle. I appreciate your quick turnaround. Have a great holiday!

Thanks again,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
**Office:** 812.213.1095  
**Mobile:** 785.331.7296  
**Email:** anita.larson@qservicesco.com

**From:** McLaughlin, Michelle M [mailto:Michelle.McLaughlin@windstream.com]  
**Sent:** Wednesday, November 22, 2017 10:10 AM  
**To:** Anita Larson <Anita.Larson@metronetinc.com>; King, Daniel <Daniel.King@windstream.com>  
**Cc:** Lloyd, James <James.Lloyd@windstream.com>  
**Subject:** RE: Pole Attachment

Good morning, Anita-  
Lexington is in the Windstream Kentucky East territory. I also prepared a Windstream Kentucky West agreement in case you wanted all of Kentucky covered. Also attached is our application in excel format for easier use. Please contact me after your review. I look forward to working with you as well.  
Michelle  
Analyst II  
319-790-6910

**From:** Anita Larson [mailto:Anita.Larson@metronetinc.com]  
**Sent:** Wednesday, November 22, 2017 9:27 AM  
**To:** King, Daniel <Daniel.King@windstream.com>; McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>  
**Cc:** Lloyd, James <James.Lloyd@windstream.com>  
**Subject:** RE: Pole Attachment

Dan: Thanks for the quick response!

Michelle: Would you please email me Windstream's pole attachment agreement for Kentucky? I appreciate it. I look forward to working with you.

Thanks again!  
Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [<mailto:Daniel.King@windstream.com>]  
**Sent:** Wednesday, November 22, 2017 9:24 AM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>; McLaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Subject:** RE: Pole Attachment

Anita:

Good to hear from you. The person that you want to speak with is Michelle McLaughlin. I have copied her on this response. She negotiates and manages our pole agreements and can provide you with our template for Kentucky.

I assume that you are asking so that MetroNet can begin the process of negotiating a pole attachment agreement with us in connection with its expansion into Lexington. Congratulations on the announcement.

Hope you have a great Thanksgiving!

Dan

Daniel J. King  
Senior Counsel – Commercial Contracts Team | Windstream  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Wednesday, November 22, 2017 9:08 AM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Subject:** Pole Attachment

Dan: Do you know whom I would reach out to in order to get Windstream's pole attachment agreement for Kentucky?

Hope you have a great holiday!

Thanks!  
Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

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**Date:** 11/22/2017 10:32:13 AM  
**Sent:** 11/22/2017 10:32:01 AM  
**Subject:** Automatic reply: Pole Attachment  
**From:** Lloyd, James <James.Lloyd@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>;

---

I will be out of the office Wednesday November 22, 2017, until November 27, 2017, with limited access to email.

For immediate assistance regarding Easements, please contact Lindsey Clayton at Lindsey.A.Clayton@windstream.com or Jackie Richardson at Jackie.J.Richardson@windstream.com

For immediate assistance regarding Franchises, please contact Autry Meeker at Autry.Meeker@windstream.com.

For immediate assistance regarding Pole Attachment, please contact Michelle McLaughlin at Michelle.McLaughlin@windstream.com

For immediate assistance regarding the BPO Charter Project contact Mark Mathis at Mark.Mathis@windstream.com

For all other issues please contact Jamie Rucker at Jamie.Rucker@windstream.com

Thank you,

**James Lloyd**  
**Manager - Engineering Support**  
**Windstream Communications, LLC**  
11101 Anderson Drive  
Little Rock, Arkansas 72212  
(501) 748-7538  
Email: [James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)



**Date:** 12/4/2017 1:58:00 PM  
**Sent:** 12/4/2017 1:58:40 PM  
**Subject:** Windstream Tariff  
**From:** Anita Larson  
**To:** King, Daniel <Daniel.King@windstream.com>;

---

Dan: I hope you had a great weekend!

Were you able to catch up with Cesar about the tariff? Needless to say, we provide CATV too. Certainly under the definition of "Cable Television Company or Operator" in the tariff, we would be a company which provides CATV service.

Thanks,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
**8837 Bond Street**  
**Overland Park, KS 66214**  
**Office: 812.213.1095**  
**Mobile: 785.331.7296**  
**Email: anita.larson@qservicesco.com**

**Date:** 12/4/2017 6:04:45 PM  
**Sent:** 12/4/2017 6:04:15 PM  
**Subject:** RE: Windstream Tariff  
**From:** King, Daniel <Daniel.King@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>;

---

Anita:

I should be in a position to have a response to you tomorrow concerning MetroNet's ability to utilize the CATV Pole Attachment tariff.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [mailto:[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)]  
**Sent:** Monday, December 04, 2017 12:59 PM  
**To:** King, Daniel <Daniel.King@windstream.com>  
**Subject:** Windstream Tariff

Dan: I hope you had a great weekend!

Were you able to catch up with Cesar about the tariff? Needless to say, we provide CATV too. Certainly under the definition of "Cable Television Company or Operator" in the tariff, we would be a company which provides CATV service.

Thanks,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

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**Date:** 12/8/2017 6:58:45 PM  
**Sent:** 12/8/2017 6:58:24 PM  
**Subject:** RE: Windstream Tariff  
**From:** King, Daniel <Daniel.King@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>;

---

Anita:

We are ready to speak with MetroNet about either moving forward with a Pole Attachment Agreement or proceeding under the tariff for attaching to poles in Kentucky. If you provide me some times when you and the MetroNet team would be available to talk next week, I will get a meeting set up. Myself, James Lloyd and Michelle McLaughlin will be attending for Windstream.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** King, Daniel  
**Sent:** Monday, December 04, 2017 5:04 PM  
**To:** 'Anita Larson' <Anita.Larson@metronetinc.com>  
**Subject:** RE: Windstream Tariff

Anita:

I should be in a position to have a response to you tomorrow concerning MetroNet's ability to utilize the CATV Pole Attachment tariff.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Monday, December 04, 2017 12:59 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Subject:** Windstream Tariff

Dan: I hope you had a great weekend!

Were you able to catch up with Cesar about the tariff? Needless to say, we provide CATV too. Certainly under the definition of "Cable Television Company or Operator" in the tariff, we would be a company which provides CATV service.

Thanks,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
**8837 Bond Street**  
**Overland Park, KS 66214**  
**Office: 812.213.1095**  
**Mobile: 785.331.7296**  
**Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)**

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**Date:** 12/9/2017 9:37:00 AM  
**Sent:** 12/9/2017 9:37:50 AM  
**Subject:** RE: Windstream Tariff  
**From:** Anita Larson  
**To:** King, Daniel <Daniel.King@windstream.com>;

---

Thanks Dan. I'll get back to you.

Thanks again,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [mailto:[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)]  
**Sent:** Friday, December 08, 2017 5:58 PM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Subject:** RE: Windstream Tariff

Anita:

We are ready to speak with MetroNet about either moving forward with a Pole Attachment Agreement or proceeding under the tariff for attaching to poles in Kentucky. If you provide me some times when you and the MetroNet team would be available to talk next week, I will get a meeting set up. Myself, James Lloyd and Michelle McLaughlin will be attending for Windstream.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** King, Daniel  
**Sent:** Monday, December 04, 2017 5:04 PM  
**To:** 'Anita Larson' <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Subject:** RE: Windstream Tariff

Anita:

I should be in a position to have a response to you tomorrow concerning MetroNet's ability to utilize the CATV Pole Attachment tariff.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Monday, December 04, 2017 12:59 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Subject:** Windstream Tariff

Dan: I hope you had a great weekend!

Were you able to catch up with Cesar about the tariff? Needless to say, we provide CATV too. Certainly under the definition of "Cable Television Company or Operator" in the tariff, we would be a company which provides CATV service.

Thanks,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

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**Date:** 12/11/2017 5:00:00 PM  
**Sent:** 12/11/2017 5:00:15 PM  
**Subject:** RE: Windstream Tariff  
**From:** Anita Larson  
**To:** King, Daniel <Daniel.King@windstream.com>;

---

That will work. I'll circulate a meeting invite and dial in that you can forward to James and Michelle.

Thanks,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [mailto:[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)]  
**Sent:** Monday, December 11, 2017 1:54 PM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Subject:** RE: Windstream Tariff

Anita:

Would 2:00 – 2:30 tomorrow work for you and John? Both James and Michelle are unavailable on Wednesday.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [mailto:[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)]  
**Sent:** Saturday, December 09, 2017 9:03 AM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Subject:** RE: Windstream Tariff

Dan: Tuesday afternoon or Wednesday morning would work best for us. Greenbank and I will participate from our end.

We appreciate it!

Thanks,

Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [<mailto:Daniel.King@windstream.com>]  
**Sent:** Friday, December 08, 2017 5:58 PM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Subject:** RE: Windstream Tariff

Anita:

We are ready to speak with MetroNet about either moving forward with a Pole Attachment Agreement or proceeding under the tariff for attaching to poles in Kentucky. If you provide me some times when you and the MetroNet team would be available to talk next week, I will get a meeting set up. Myself, James Lloyd and Michelle McLaughlin will be attending for Windstream.

Dan

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3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** King, Daniel  
**Sent:** Monday, December 04, 2017 5:04 PM  
**To:** 'Anita Larson' <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Subject:** RE: Windstream Tariff

Anita:

I should be in a position to have a response to you tomorrow concerning MetroNet's ability to utilize the CATV Pole Attachment tariff.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786



**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Monday, December 04, 2017 12:59 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Subject:** Windstream Tariff

Dan: I hope you had a great weekend!

Were you able to catch up with Cesar about the tariff? Needless to say, we provide CATV too. Certainly under the definition of "Cable Television Company or Operator" in the tariff, we would be a company which provides CATV service.

Thanks,  
Anita

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8837 Bond Street  
Overland Park, KS 66214  
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Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

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**Date:** 12/11/2017 5:03:00 PM  
**Sent:** 12/11/2017 5:03:06 PM  
**Subject:** Pole Attachment Agreement / Tariff  
**From:** Anita Larson  
**To:** King, Daniel <Daniel.King@windstream.com>; John Greenbank <John.Greenbank@metronetinc.com>;  
McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>;

---

Dan: Would you please forward to James?

Thanks,  
Anita

n 12/11/2017 5:47 PM

McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>

**Accepted: Pole Attachment Agreement / Tariff**

To Anita Larson

When Tuesday, December 12, 2017 2:00 PM-2:30 PM (UTC-06:00) Central Time (US & Canada).

Location Dial in – 317.599.1522 (Ext. 522 from a company phone); Participant Code: 617949

**i** We couldn't find this meeting in the calendar. It may have been moved or deleted.  
McLaughlin, Michelle M has accepted this meeting.

**This email message and any attachments are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.**

Tue 12/12/2017 9:38 AM

King, Daniel <Daniel.King@windstream.com>

**Accepted: Pole Attachment Agreement / Tariff**

To Anita Larson

When Tuesday, December 12, 2017 2:00 PM-2:30 PM (UTC-06:00) Central Time (US & Canada).

Location Dial in – 317.599.1522 (Ext. 522 from a company phone); Participant Code: 617949

**i** We couldn't find this meeting in the calendar. It may have been moved or deleted.  
King, Daniel has accepted this meeting.

---

**This email message and any attachments are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.**

**Date:** 12/12/2017 5:00:00 PM  
**Sent:** 12/12/2017 5:00:17 PM  
**Subject:** Call and thanks  
**From:** Anita Larson  
**To:** Lloyd, James <James.Lloyd@windstream.com>; McLaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>; King, Daniel <Daniel.King@windstream.com>;

---

Thanks for your time today. I just circulated a dial in an evite for next week. We really appreciate it.

Thanks again,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**Date:** 12/12/2017 4:59:00 PM

**Sent:** 12/12/2017 4:59:17 PM

**Subject:** Pole Attachment Discussion

**From:** Anita Larson

**To:** John Greenbank <John.Greenbank@metronetinc.com>; King, Daniel <Daniel.King@windstream.com>;  
McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>; Lloyd, James  
<James.Lloyd@windstream.com>;

---

Tue 12/12/2017 5:04 PM


McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>

**Accepted: Pole Attachment Discussion**

To Anita Larson

When Tuesday, December 19, 2017 3:00 PM-3:30 PM (UTC-06:00) Central Time (US & Canada).

Location Dial in – 317.599.1522 (Ext. 522 from a company phone); Participant Code: 617949

 We couldn't find this meeting in the calendar. It may have been moved or deleted.  
McLaughlin, Michelle M has accepted this meeting.

**This email message and any attachments are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.**

Tue 12/12/2017 5:07 PM

King, Daniel <Daniel.King@windstream.com>

**Accepted: Pole Attachment Discussion**

To Anita Larson

When Tuesday, December 19, 2017 3:00 PM-3:30 PM (UTC-06:00) Central Time (US & Canada).

Location Dial in – 317.599.1522 (Ext. 522 from a company phone); Participant Code: 617949

**i** We couldn't find this meeting in the calendar. It may have been moved or deleted.  
King, Daniel has accepted this meeting.

**This email message and any attachments are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.**



**Date:** 12/15/2017 4:35:00 PM

**Sent:** 12/15/2017 4:35:47 PM

**Subject:** Pole data

**From:** Anita Larson

**To:** King, Daniel <Daniel.King@windstream.com>; McLaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>; Lloyd, James <James.Lloyd@windstream.com>;

**CC:** John Greenbank <John.Greenbank@metronetinc.com>;

---

Dan/Michelle/James: Thanks again for your time earlier this week. We look forward to our call next Tuesday. In the meantime, do you have a GIS of your poles in Lexington? Kentucky Utilities gave us theirs and it would be very helpful to have Windstream's, too. If you do have it and would send it over, it would be greatly appreciated.

Thanks,  
Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: anita.larson@qservicesco.com

**Date:** 12/28/2017 8:31:32 AM  
**Sent:** 12/28/2017 8:31:00 AM  
**Subject:** Pole data - MetroNet  
**From:** King, Daniel <Daniel.King@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>;  
**CC:** Lloyd, James <James.Lloyd@windstream.com>; Mclaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>;  
**Attachments:** POLES\_WIN\_LEX.zip

---

Anita:

Here is an ESRI shapefile for the Windstream poles in the Lexington area.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Friday, December 15, 2017 3:36 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; Mclaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Cc:** John Greenbank <[John.Greenbank@metronetinc.com](mailto:John.Greenbank@metronetinc.com)>  
**Subject:** Pole data

Dan/Michelle/James: Thanks again for your time earlier this week. We look forward to our call next Tuesday. In the meantime, do you have a GIS of your poles in Lexington? Kentucky Utilities gave us theirs and it would be very helpful to have Windstream's, too. If you do have it and would send it over, it would be greatly appreciated.

Thanks,  
Anita

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8837 Bond Street  
Overland Park, KS 66214  
**Office:** 812.213.1095  
**Mobile:** 785.331.7296  
**Email:** [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

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**Date:** 12/28/2017 12:55:00 PM  
**Sent:** 12/28/2017 12:55:17 PM  
**Subject:** FW: Pole data - MetroNet  
**From:** Anita Larson  
**To:** King, Daniel <Daniel.King@windstream.com>;  
**CC:** Lloyd, James <James.Lloyd@windstream.com>; McLaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>;  
**Attachments:** POLES\_WIN\_LEX.zip

---

Dan: Thanks again for sending the attached. However, I'm being told that we need the entire "esri shapefile" and not just the .dbf file. I'm not sure what that is, but would you mind checking on it and forwarding it, too?

We appreciate it!

Thanks again!  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [<mailto:Daniel.King@windstream.com>]  
**Sent:** Thursday, December 28, 2017 7:31 AM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
**Subject:** Pole data - MetroNet

Anita:

Here is an ESRI shapefile for the Windstream poles in the Lexington area.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Friday, December 15, 2017 3:36 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; McLaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>

**Cc:** John Greenbank <[John.Greenbank@metronetinc.com](mailto:John.Greenbank@metronetinc.com)>

**Subject:** Pole data

Dan/Michelle/James: Thanks again for your time earlier this week. We look forward to our call next Tuesday. In the meantime, do you have a GIS of your poles in Lexington? Kentucky Utilities gave us theirs and it would be very helpful to have Windstream's, too. If you do have it and would send it over, it would be greatly appreciated.

Thanks,  
Anita

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**Date:** 1/3/2018 9:45:25 AM  
**Sent:** 1/3/2018 9:44:55 AM  
**Subject:** FW: Pole data - MetroNet  
**From:** King, Daniel <Daniel.King@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>;  
**Attachments:** POLES\_WIN\_LEX.shx POLES\_WIN\_LEX.prj POLES\_WIN\_LEX.shp

---

Anita:

Sorry for the mix-up. We thought that the missing files were in the .zip file we previously sent. Here are the additional files you requested. Let us know if you need anything else.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Thursday, December 28, 2017 12:42 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Dan: I received some clarification on what else we need. Along with the DBF file you sent, we also need the SHP, SHX, and PRJ files. Hope this makes sense. If not, please let me know. I may need to put you, James or Michelle directly in contact with people on our end that understand this better.

Thanks again!  
Anita

**Anita Larson**  
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Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** Anita Larson  
**Sent:** Thursday, December 28, 2017 11:55 AM  
**To:** 'King, Daniel' <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
**Subject:** FW: Pole data - MetroNet

Dan: Thanks again for sending the attached. However, I'm being told that we need the entire "esri shapefile" and not just the .dbf file. I'm not sure what that is, but would you mind checking on it and forwarding it, too?

We appreciate it!

Thanks again!  
Anita

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**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
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o: 812.759.7973 | m: 812.480.4786

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**Sent:** Friday, December 15, 2017 3:36 PM  
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**Cc:** John Greenbank <[John.Greenbank@metronetinc.com](mailto:John.Greenbank@metronetinc.com)>  
**Subject:** Pole data

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Thanks,

Anita

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**Overland Park, KS 66214**  
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**Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)**

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**Date:** 1/3/2018 12:07:00 PM  
**Sent:** 1/3/2018 12:07:27 PM  
**Subject:** RE: Pole data - MetroNet  
**From:** Anita Larson  
**To:** King, Daniel <Daniel.King@windstream.com>;

---

Thanks!

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
**Office:** 812.213.1095  
**Mobile:** 785.331.7296  
**Email:** anita.larson@qservicesco.com

**From:** King, Daniel [mailto:Daniel.King@windstream.com]  
**Sent:** Wednesday, January 03, 2018 11:03 AM  
**To:** Anita Larson <Anita.Larson@metronetinc.com>  
**Cc:** Lee, Robert <Robert.Lee@windstream.com>; Eastman, Andrew M. <Andrew.Eastman@windstream.com>  
**Subject:** RE: Pole data - MetroNet

Anita:

I have copied Robert Lee and Andy Eastman on my response to you.

Robert, MetroNet is still having some problems accessing the files we have provided to them. Could someone from MetroNet reach out to you to try and work through their issues?

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [mailto:Anita.Larson@metronetinc.com]  
**Sent:** Wednesday, January 03, 2018 10:42 AM  
**To:** King, Daniel <Daniel.King@windstream.com>  
**Subject:** RE: Pole data - MetroNet

Dan: Thanks so much. Our folks are still having some issues with it. Would it be possible for them to reach out directly to WIN's team that handles these or are you the one.

Thanks again,  
Anita



**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [<mailto:Daniel.King@windstream.com>]  
**Sent:** Wednesday, January 03, 2018 8:45 AM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Subject:** FW: Pole data - MetroNet

Anita:

Sorry for the mix-up. We thought that the missing files were in the .zip file we previously sent. Here are the additional files you requested. Let us know if you need anything else.

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[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

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**Sent:** Thursday, December 28, 2017 12:42 PM  
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**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
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**Date:** 1/3/2018 12:03:30 PM  
**Sent:** 1/3/2018 12:03:17 PM  
**Subject:** RE: Pole data - MetroNet  
**From:** King, Daniel <Daniel.King@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>;  
**CC:** Lee, Robert <Robert.Lee@windstream.com>; Eastman, Andrew M  
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**Date:** 1/3/2018 1:14:41 PM  
**Sent:** 1/3/2018 1:13:44 PM  
**Subject:** RE: Pole data - MetroNet  
**From:** Lee, Robert <Robert.Lee@windstream.com>  
**To:** King, Daniel <Daniel.King@windstream.com>; Anita Larson <Anita.Larson@metronetinc.com>;  
**CC:** Eastman, Andrew M <Andrew.Eastman@windstream.com>;  
**Attachments:** POLES\_WIN\_LEX.zip

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**Subject:** RE: Pole data - MetroNet  
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**To:** Lee, Robert <Robert.Lee@windstream.com>; King, Daniel <Daniel.King@windstream.com>;  
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8837 Bond Street  
Overland Park, KS 66214  
**Office:** 812.213.1095  
**Mobile:** 785.331.7296  
**Email:** [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

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**Date:** 1/3/2018 5:10:00 PM  
**Sent:** 1/3/2018 5:10:05 PM  
**Subject:** RE: Pole data - MetroNet  
**From:** Anita Larson  
**To:** Lee, Robert <Robert.Lee@windstream.com>; King, Daniel <Daniel.King@windstream.com>;  
**CC:** Eastman, Andrew M <Andrew.Eastman@windstream.com>;

---

Thanks for the explanation. I'll pass this along.

Thanks again,  
Anita

**Anita Larson**  
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Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** Lee, Robert [<mailto:Robert.Lee@windstream.com>]  
**Sent:** Wednesday, January 03, 2018 4:05 PM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>; King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Cc:** Eastman, Andrew M <[Andrew.Eastman@windstream.com](mailto:Andrew.Eastman@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Those fields can be a little confusing, I know. The Ownership field will tell us whether the pole is owned by a Windstream entity (Windstream proper or the REIT company that was spun off, and whether it is a CLEC or ILEC company), by a foreign company or by a customer. I was asked to provide the Windstream poles, so you will not see the FOREIGN or CUSTOMER designations in the data that I sent. Likewise, FGN\_Owner should be null as this field is used to tell the name of the foreign company that owns the pole.

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Wednesday, January 03, 2018 4:51 PM  
**To:** Lee, Robert <[Robert.Lee@windstream.com](mailto:Robert.Lee@windstream.com)>; King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Cc:** Eastman, Andrew M <[Andrew.Eastman@windstream.com](mailto:Andrew.Eastman@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Robert: Thanks again for the information. My folks are asking what the difference is between the "Ownership" and the "FGN\_Owner" fields. Can you shed light on this?

Thanks again!  
Anita

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**Office:** 812.213.1095  
**Mobile:** 785.331.7296  
**Email:** [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** Lee, Robert [<mailto:Robert.Lee@windstream.com>]  
**Sent:** Wednesday, January 03, 2018 12:14 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Cc:** Eastman, Andrew M <[Andrew.Eastman@windstream.com](mailto:Andrew.Eastman@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Perhaps this file will work better. It is a complete archive of the 4 files that I zipped on another machine.

**From:** King, Daniel  
**Sent:** Wednesday, January 03, 2018 12:03 PM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Cc:** Lee, Robert <[Robert.Lee@windstream.com](mailto:Robert.Lee@windstream.com)>; Eastman, Andrew M <[Andrew.Eastman@windstream.com](mailto:Andrew.Eastman@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Anita:

I have copied Robert Lee and Andy Eastman on my response to you.

Robert, MetroNet is still having some problems accessing the files we have provided to them. Could someone from MetroNet reach out to you to try and work through their issues?

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Wednesday, January 03, 2018 10:42 AM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Dan: Thanks so much. Our folks are still having some issues with it. Would it be possible for them to reach out directly to WIN's team that handles these or are you the one.

Thanks again,  
Anita

**Anita Larson**  
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**Office:** 812.213.1095  
**Mobile:** 785.331.7296  
**Email:** [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [<mailto:Daniel.King@windstream.com>]  
**Sent:** Wednesday, January 03, 2018 8:45 AM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Subject:** FW: Pole data - MetroNet

Anita:

Sorry for the mix-up. We thought that the missing files were in the .zip file we previously sent. Here are the additional files you requested. Let us know if you need anything else.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Thursday, December 28, 2017 12:42 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Dan: I received some clarification on what else we need. Along with the DBF file you sent, we also need the SHP, SHX, and PRJ files. Hope this makes sense. If not, please let me know. I may need to put you, James or Michelle directly in contact with people on our end that understand this better.

Thanks again!  
Anita

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**Email:** [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** Anita Larson  
**Sent:** Thursday, December 28, 2017 11:55 AM  
**To:** 'King, Daniel' <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M

<Michelle.McLaughlin@windstream.com>

**Subject:** FW: Pole data - MetroNet

Dan: Thanks again for sending the attached. However, I'm being told that we need the entire "esri shapefile" and not just the .dbf file. I'm not sure what that is, but would you mind checking on it and forwarding it, too?

We appreciate it!

Thanks again!

Anita

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Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**From:** King, Daniel [<mailto:Daniel.King@windstream.com>]  
**Sent:** Thursday, December 28, 2017 7:31 AM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
**Subject:** Pole data - MetroNet

Anita:

Here is an ESRI shapefile for the Windstream poles in the Lexington area.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | [windstream.com](http://windstream.com)  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Friday, December 15, 2017 3:36 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; McLaughlin, Michelle M <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Cc:** John Greenbank <[John.Greenbank@metronetinc.com](mailto:John.Greenbank@metronetinc.com)>  
**Subject:** Pole data

Dan/Michelle/James: Thanks again for your time earlier this week. We look forward to our call next Tuesday. In the meantime, do you have a GIS of your poles in Lexington? Kentucky Utilities gave us theirs and it would be very helpful to have Windstream's, too. If you do have it and would send it over, it would be greatly appreciated.

Thanks,  
Anita

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**Date:** 1/3/2018 7:09:00 PM  
**Sent:** 1/3/2018 7:09:46 PM  
**Subject:** RE: Pole data - MetroNet  
**From:** Anita Larson  
**To:** Lee, Robert <Robert.Lee@windstream.com>; King, Daniel <Daniel.King@windstream.com>;  
**CC:** Eastman, Andrew M <Andrew.Eastman@windstream.com>;

---

Great. Thanks.

**Anita Larson**  
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**Cc:** Eastman, Andrew M <[Andrew.Eastman@windstream.com](mailto:Andrew.Eastman@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Sure. That would be no problem.

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Wednesday, January 03, 2018 5:55 PM  
**To:** Lee, Robert <[Robert.Lee@windstream.com](mailto:Robert.Lee@windstream.com)>; King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Cc:** Eastman, Andrew M <[Andrew.Eastman@windstream.com](mailto:Andrew.Eastman@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

Robert: My folks still have some questions. Would it be okay to put Dustin Wilson in contact with you directly? Unfortunately, I don't know enough about this to anticipate questions that he may have. If we could just put the two of you in contact, I won't have to keep bugging you. Let me know if that will work and I'll provide your email to him so he can email some times that might work to get on the phone.

Thanks,  
Anita

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Thanks again!  
Anita

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**Cc:** Eastman, Andrew M <[Andrew.Eastman@windstream.com](mailto:Andrew.Eastman@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

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**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>  
**Cc:** Lee, Robert <[Robert.Lee@windstream.com](mailto:Robert.Lee@windstream.com)>; Eastman, Andrew M <[Andrew.Eastman@windstream.com](mailto:Andrew.Eastman@windstream.com)>  
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Robert, MetroNet is still having some problems accessing the files we have provided to them. Could someone from MetroNet reach out to you to try and work through their issues?

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**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Wednesday, January 03, 2018 10:42 AM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>  
**Subject:** RE: Pole data - MetroNet

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**From:** Anita Larson  
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**Cc:** Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>  
**Subject:** FW: Pole data - MetroNet

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Anita

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**From:** King, Daniel [<mailto:Daniel.King@windstream.com>]  
**Sent:** Thursday, December 28, 2017 7:31 AM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>



Cc: Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; McLaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>

**Subject:** Pole data - MetroNet

Anita:

Here is an ESRI shapefile for the Windstream poles in the Lexington area.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
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o: 812.759.7973 | m: 812.480.4786

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**Sent:** Friday, December 15, 2017 3:36 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; McLaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Cc:** John Greenbank <[John.Greenbank@metronetinc.com](mailto:John.Greenbank@metronetinc.com)>  
**Subject:** Pole data

Dan/Michelle/James: Thanks again for your time earlier this week. We look forward to our call next Tuesday. In the meantime, do you have a GIS of your poles in Lexington? Kentucky Utilities gave us theirs and it would be very helpful to have Windstream's, too. If you do have it and would send it over, it would be greatly appreciated.

Thanks,  
Anita

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**Date:** 1/3/2018 7:10:00 PM  
**Sent:** 1/3/2018 7:10:15 PM  
**Subject:** Windstream Contact for Pole Data Questions  
**From:** Anita Larson  
**To:** Dustin Wilson <Dustin.Wilson@metronetinc.com>;  
**CC:** Lee, Robert <Robert.Lee@windstream.com>; King, Daniel <Daniel.King@windstream.com>;

---

Dustin: Robert Lee is the individual that has been providing information to us on Windstream's poles in KY. He indicated that he doesn't mind if you reach out to him directly with your questions. I have copied Robert on this email so you two can arrange a mutually convenient time to get on the phone.

Thanks again, Robert.

Thanks,  
Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: anita.larson@qservicesco.com

Date: 1/4/2018 9:23:55 AM  
Subject: RE: Windstream Contact for Pole Data Questions  
From: Dustin Wilson <Dustin.Wilson@metronetinc.com>  
To: Anita Larson <Anita.Larson@metronetinc.com>;  
CC: Lee, Robert <Robert.Lee@windstream.com>; King, Daniel <Daniel.King@windstream.com>;

Thank you Anita.

Good morning Robert,

I'm working to identify which poles in the shapefile you sent over are Windstream owned files. Originally I assumed I needed to use the ownership column, but based on your email to Anita yesterday I'm now leaning more towards **all** of the poles in the shapefile being Windstream owned. Is that true? If so is there an operational difference between the ILEC/CLEC poles where Metronet is concerned? My number is below if you'd like to get together via phone, if not I'm also good with email.

Thanks so much for the data, and for your willingness to help.

**Dustin Wilson**

MetroNet | Manager of Analytics  
3701 Communications Way | Evansville, IN 47715  
Office: 812.253.1542  
www.MetronetInc.com

**METRONET**

**From:** Anita Larson  
**Sent:** Wednesday, January 3, 2018 6:10 PM  
**To:** Dustin Wilson <Dustin.Wilson@metronetinc.com>  
**Cc:** Lee, Robert <Robert.Lee@windstream.com>; King, Daniel <Daniel.King@windstream.com>  
**Subject:** Windstream Contact for Pole Data Questions

Dustin: Robert Lee is the individual that has been providing information to us on Windstream's poles in KY. He indicated that he doesn't mind if you reach out to him directly with your questions. I have copied Robert on this email so you two can arrange a mutually convenient time to get on the phone.

Thanks again, Robert.

Thanks,  
Anita

**Anita Larson**  
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Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

Date: 1/4/2018 1:28:59 PM  
Sent: 1/4/2018 1:28:46 PM  
Subject: RE: Windstream Contact for Pole Data Questions  
From: Lee, Robert <Robert.Lee@windstream.com>  
To: Dustin Wilson <Dustin.Wilson@metronetinc.com>; Anita Larson <Anita.Larson@metronetinc.com>;  
CC: King, Daniel <Daniel.King@windstream.com>;  
Dustin,

All of the poles in the shapefile are supposed to be Windstream poles, but I've found that some of the data is suspect. There are values in the fgn\_owner field when those should all be null for Windstream-owned poles. The problem is, which field is in error? The ownership or the fgn\_owner? I would treat all of the poles that do not have a value in fgn\_owner as Windstream, and any others as potentially Windstream but perhaps belonging to the company found in fgn\_owner. For your purposes, the CLEC/ILEC distinction doesn't matter, nor does WINDSTREAM/REIT.

If I can answer any further questions, don't hesitate to ask.

Rob

**From:** Dustin Wilson [mailto:Dustin.Wilson@metronetinc.com]  
**Sent:** Thursday, January 04, 2018 9:24 AM  
**To:** Anita Larson <Anita.Larson@metronetinc.com>  
**Cc:** Lee, Robert <Robert.Lee@windstream.com>; King, Daniel <Daniel.King@windstream.com>  
**Subject:** RE: Windstream Contact for Pole Data Questions

Thank you Anita.

Good morning Robert,

I'm working to identify which poles in the shapefile you sent over are Windstream owned files. Originally I assumed I needed to use the ownership column, but based on your email to Anita yesterday I'm now leaning more towards **all** of the poles in the shapefile being Windstream owned. Is that true? If so is there an operational difference between the ILEC/CLEC poles where Metronet is concerned? My number is below if you'd like to get together via phone, if not I'm also good with email.

Thanks so much for the data, and for your willingness to help.

**Dustin Wilson**  
MetroNet | Manager of Analytics  
3701 Communications Way | Evansville, IN 47715  
Office: 812.253.1542  
[www.MetronetInc.com](http://www.MetronetInc.com)

**METRONET**

**From:** Anita Larson  
**Sent:** Wednesday, January 3, 2018 6:10 PM

**To:** Dustin Wilson <[Dustin.Wilson@metronetinc.com](mailto:Dustin.Wilson@metronetinc.com)>

**Cc:** Lee, Robert <[Robert.Lee@windstream.com](mailto:Robert.Lee@windstream.com)>; King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>

**Subject:** Windstream Contact for Pole Data Questions

Dustin: Robert Lee is the individual that has been providing information to us on Windstream's poles in KY. He indicated that he doesn't mind if you reach out to him directly with your questions. I have copied Robert on this email so you two can arrange a mutually convenient time to get on the phone.

Thanks again, Robert.

Thanks,  
Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

This email message and any attachments are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.

**Date:** 1/12/2018 5:58:00 PM

**Sent:** 1/12/2018 5:58:13 PM

**Subject:** Pole Attachment tariff

**From:** Anita Larson

**To:** King, Daniel <Daniel.King@windstream.com>; Mclaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>; Lloyd, James <James.Lloyd@windstream.com>;

---

Dan/Michelle/James: Would you please let me know the process for Metronet to start attaching to Windstream's poles under the tariff? Is there anything we need to sign? Do you have an application form, etc.? I appreciate your help and look forward to hearing from you. In the meantime, have a great weekend and try to stay warm!

Thanks,  
Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**Date:** 1/18/2018 10:58:00 AM  
**Sent:** 1/18/2018 10:58:17 AM  
**Subject:** RE: Pole Attachment tariff  
**From:** Anita Larson  
**To:** King, Daniel <Daniel.King@windstream.com>; McLaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>; Lloyd, James <James.Lloyd@windstream.com>;

---

Good morning! Just want to confirm that you received the email below. Please let us know what forms we should use. We appreciate your help!

Thanks again,  
Anita

**Anita Larson**  
Vice President and Counsel  
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Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)  
Email: [anita.larson@metronetinc.com](mailto:anita.larson@metronetinc.com)

**From:** Anita Larson  
**Sent:** Friday, January 12, 2018 4:58 PM  
**To:** King, Daniel <Daniel.King@windstream.com>; 'McLaughlin, Michelle M'  
<Michelle.McLaughlin@windstream.com>; 'Lloyd, James' <James.Lloyd@windstream.com>  
**Subject:** Pole Attachment tariff

Dan/Michelle/James: Would you please let me know the process for Metronet to start attaching to Windstream's poles under the tariff? Is there anything we need to sign? Do you have an application form, etc.? I appreciate your help and look forward to hearing from you. In the meantime, have a great weekend and try to stay warm!

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Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

**Date:** 1/18/2018 11:48:48 AM  
**Sent:** 1/18/2018 11:48:35 AM  
**Subject:** RE: Pole Attachment tariff  
**From:** Lloyd, James <James.Lloyd@windstream.com>  
Anita Larson <Anita.Larson@metronetinc.com>; King, Daniel <Daniel.King@windstream.com>;  
**To:** McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>; Edwards, Kimberly  
<Kimberly.Edwards@windstream.com>;

---

**Kim,**

Will you send Anita a copy of our standard pole application and pole data sheet?

MetroNet will soon be applying to attach in Kentucky. They do not have a PAA with us in Kentucky but will be applying under the Kentucky Tariff. The normal charges and process will be the same.

Let me know if you have any questions or concerns.

Thank you,

**James Lloyd**  
**Manager – NOS | Windstream**  
11101 Anderson Drive | Little Rock, AR 72212  
[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)  
o: 501.748.7538 | m: 501.339.6594 | f: 330.486.4315

**From:** Anita Larson [mailto:[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)]  
**Sent:** Thursday, January 18, 2018 9:58 AM  
**To:** King, Daniel <Daniel.King@windstream.com>; McLaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>; Lloyd, James <James.Lloyd@windstream.com>  
**Subject:** RE: Pole Attachment tariff

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Anita

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**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)  
Email: [anita.larson@metronetinc.com](mailto:anita.larson@metronetinc.com)



**From:** Anita Larson

**Sent:** Friday, January 12, 2018 4:58 PM

**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; 'McLaughlin, Michelle M' <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; 'Lloyd, James' <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>

**Subject:** Pole Attachment tariff

Dan/Michelle/James: Would you please let me know the process for Metronet to start attaching to Windstream's poles under the tariff? Is there anything we need to sign? Do you have an application form, etc.? I appreciate your help and look forward to hearing from you. In the meantime, have a great weekend and try to stay warm!

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Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
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**Date:** 1/18/2018 12:45:54 PM  
**Sent:** 1/18/2018 12:45:38 PM  
**Subject:** RE: Pole Attachment tariff  
**From:** Edwards, Kimberly <Kimberly.Edwards@windstream.com>  
Lloyd, James <James.Lloyd@windstream.com>; Anita Larson <Anita.Larson@metronetinc.com>;  
**To:** King, Daniel <Daniel.King@windstream.com>; McLaughlin, Michelle M  
<Michelle.McLaughlin@windstream.com>;  
**Attachments:** Pole App Form Windstream.xls

---

Anita,

Please see the attached Windstream Pole Attachment Application and Pole Data Sheet. 25 poles is the maximum per application and a pole data sheet is required for each pole.

Please let me know of any questions or concerns.

Thank you,

Kim

**Kimberly Edwards**  
Manager – Engineering Support | Windstream  
[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com)  
o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**From:** Lloyd, James  
**Sent:** Thursday, January 18, 2018 10:49 AM  
**To:** Anita Larson <Anita.Larson@metronetinc.com>; King, Daniel <Daniel.King@windstream.com>;  
McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>; Edwards, Kimberly  
<Kimberly.Edwards@windstream.com>  
**Subject:** RE: Pole Attachment tariff

**Kim,**

Will you send Anita a copy of our standard pole application and pole data sheet?

MetroNet will soon be applying to attach in Kentucky. They do not have a PAA with us in Kentucky but will be applying under the Kentucky Tariff. The normal charges and process will be the same.

Let me know if you have any questions or concerns.

Thank you,

**James Lloyd**  
Manager – NOS | Windstream  
11101 Anderson Drive | Little Rock, AR 72212  
[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)  
o: 501.748.7538 | m: 501.339.6594 | f: 330.486.4315

**From:** Anita Larson [<mailto:Anita.Larson@metronetinc.com>]  
**Sent:** Thursday, January 18, 2018 9:58 AM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; McLaughlin, Michelle M  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Subject:** RE: Pole Attachment tariff

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Thanks again,  
Anita

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Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)  
Email: [anita.larson@metronetinc.com](mailto:anita.larson@metronetinc.com)

**From:** Anita Larson  
**Sent:** Friday, January 12, 2018 4:58 PM  
**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; 'McLaughlin, Michelle M'  
<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; 'Lloyd, James' <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Subject:** Pole Attachment tariff

Dan/Michelle/James: Would you please let me know the process for Metronet to start attaching to Windstream's poles under the tariff? Is there anything we need to sign? Do you have an application form, etc.? I appreciate your help and look forward to hearing from you. In the meantime, have a great weekend and try to stay warm!

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please contact the sender by reply email and destroy all copies of the original message and any attachments.

**NOTE TO LICENSEE IF LICENSEE CHOOSES NOT TO PROCEED WITH THE APPLICATION - LICENSEE WILL BE  
BILLED FOR LICENSOR/WINDSTREAM'S ENGINEERING AND ADMINISTRATIVE TIME.**

**EXHIBIT B  
Windstream CORPORATION  
APPLICATION FOR POLE LICENSE**

**PROPOSAL #:** \_\_\_\_\_

**Submit in Duplicate**

Name of Firm/Licensee Applying: \_\_\_\_\_ Contact Name, Phone # \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

Street Address, City,  
ST, ZIP of Firm  
Applying

Licensee Authorized Signature & Date: \_\_\_\_\_

By this application & signature, Licensee agrees to pay all engineering fees associated with this application even if Licensee chooses NOT to proceed with the project. All <b>ESTIMATED</b> fees, including engineering & make-ready <b>MUST BE PAID IN FULL UP FRONT.</b> NON PAYMENT OF FEES WILL RESULT IN THIS APPLICATION AND ALL FUTURE APPLICATIONS BEING PLACED ON HOLD <i>NOTE: Final costs will be determined by actual time &amp; material required to do the make-ready work. Any difference in charges will be billed accordingly.</i>											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12
Licensee to complete	Licensee to complete	Licensee to complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Windstream to Complete	Windstream To Complete	Windstream To Complete
Windstream Lead & Structure No. (Pole No.)	Power Pole No.	Location: Street, City, Township, Zip Code	Height, Class, Ownership of Pole	Hgt of highest Tel Cable	Hgt of highest Tel Drop	Hgt of lowest Power Cable	Hgt of other attachmts on pole	# & type of Attachmts	Height Licensee to attach at	Licenser Work Description	Bill for Rent Y or N
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											
20											
21											
22											
23											
24											
25											
<b>ESTIMATED TOTAL COSTS</b>											
<b>PLEASE ATTACH DRAWINGS TO THIS APPLICATION - IT WILL NOT BE PROCESSED WITHOUT THEM</b>											

Submit to: Windstream Corporation, Attn: Windstream Joint Use via email at: Windstream.Jointuse@windstream.com

Acknowledged and Agreed to by Licensor: \_\_\_\_\_  
Name Title Date

**Windstream Pole Attachment Data Sheet**  
EXHIBIT B - PART II

WINDSTREAM POLE NUMBER		POWER POLE NUMBER	
STREET LOCATION		NAME OF ATTACHER	
CITY/BORO/TOWNSHIP		DATE	FIELD PERSONNEL NAME
ATTACHMENT TYPE <input type="checkbox"/> Cable <input type="checkbox"/> Power Supply <input type="checkbox"/> Service Drop <input type="checkbox"/> Overhead Guy			
POLE SIZE	TRANSFORMER/DEVICE ON POLE <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT TOP OF CONDUIT RISER HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input type="checkbox"/> No; If yes ➡ <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
<div style="display: flex; justify-content: space-between;"> <div style="width: 20%;"> <b>MAKE READY WORK</b>  <input type="checkbox"/> Yes  <input type="checkbox"/> No         </div> <div style="width: 80%;">           REQUIRED  <input type="checkbox"/> Yes   <input type="checkbox"/> No            IF YES, PROVIDE ADDITIONAL DETAIL         </div> </div>			
<b>POLE DRAWING</b>	POLE NO. ➡		BEFORE      AFTER
	*TYPE OF POWER ATTACHMENT ➡		<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary
<div style="display: flex; align-items: flex-start;"> <div style="width: 20%;"> <p>Company Name</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> </div> <div style="width: 80%; border-left: 1px solid black; padding-left: 10px;"> <div style="text-align: center; margin-bottom: 10px;"> <b>Pole Side</b> </div> <div style="display: flex; justify-content: space-between;"> <div> <p>Lowest Power Attachment</p> <p>* <input type="checkbox"/> Front   <input type="checkbox"/> Back</p> </div> <div style="text-align: center;"> </div> <div> <p>Attach. Ht. _____</p> <p>Proposed Attach. Ht. _____</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> </div> </div> <div style="margin-top: 10px;"> <p><input type="checkbox"/> Front   <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front   <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front   <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front   <input type="checkbox"/> Back</p> </div> </div> </div>			
<b>SPAN</b>	MID-SPAN HEIGHT Ft.	SPAN CROSSES OVER (Check all that apply) <input type="checkbox"/> Body of Water <input type="checkbox"/> Street <input type="checkbox"/> Driveway <input type="checkbox"/> Field <input type="checkbox"/> Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input type="checkbox"/> Yard <input type="checkbox"/> Parking Lot	
<b>NOTE</b>			

**Date:** 1/18/2018 1:31:00 PM  
**Sent:** 1/18/2018 1:31:36 PM  
**Subject:** RE: Pole Attachment tariff  
**From:** Anita Larson  
Edwards, Kimberly <Kimberly.Edwards@windstream.com>; Lloyd, James  
**To:** <James.Lloyd@windstream.com>; King, Daniel <Daniel.King@windstream.com>; McLaughlin, Michelle  
M <Michelle.McLaughlin@windstream.com>;

---

Thank you, Kimberly. Have a nice day!

Thanks again,  
Anita

**Anita Larson**  
**Vice President and Counsel**  
8837 Bond Street  
Overland Park, KS 66214  
**Office:** 812.213.1095  
**Mobile:** 785.331.7296  
**Email:** [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)  
**Email:** [anita.larson@metronetinc.com](mailto:anita.larson@metronetinc.com)

**From:** Edwards, Kimberly [mailto:Kimberly.Edwards@windstream.com]  
**Sent:** Thursday, January 18, 2018 11:46 AM  
**To:** Lloyd, James <James.Lloyd@windstream.com>; Anita Larson <Anita.Larson@metronetinc.com>; King,  
Daniel <Daniel.King@windstream.com>; McLaughlin, Michelle M <Michelle.McLaughlin@windstream.com>  
**Subject:** RE: Pole Attachment tariff

Anita,

Please see the attached Windstream Pole Attachment Application and Pole Data Sheet. 25 poles is the maximum per application and a pole data sheet is required for each pole.

Please let me know of any questions or concerns.

Thank you,

Kim

**Kimberly Edwards**  
**Manager – Engineering Support | Windstream**  
[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com)  
o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**From:** Lloyd, James  
**Sent:** Thursday, January 18, 2018 10:49 AM  
**To:** Anita Larson <[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)>; King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>;  
McLaughlin, Michelle M <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; Edwards, Kimberly

<Kimberly.Edwards@windstream.com>

**Subject:** RE: Pole Attachment tariff

**Kim,**

Will you send Anita a copy of our standard pole application and pole data sheet?

MetroNet will soon be applying to attach in Kentucky. They do not have a PAA with us in Kentucky but will be applying under the Kentucky Tariff. The normal charges and process will be the same.

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Thank you,

**James Lloyd**

**Manager – NOS | Windstream**

11101 Anderson Drive | Little Rock, AR 72212

[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)

o: 501.748.7538 | m: 501.339.6594 | f: 330.486.4315

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**Sent:** Thursday, January 18, 2018 9:58 AM

**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; McLaughlin, Michelle M

<[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>

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**Vice President and Counsel**

8837 Bond Street

Overland Park, KS 66214

Office: 812.213.1095

Mobile: 785.331.7296

Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

Email: [anita.larson@metronetinc.com](mailto:anita.larson@metronetinc.com)

**From:** Anita Larson

**Sent:** Friday, January 12, 2018 4:58 PM



**To:** King, Daniel <[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com)>; 'McLaughlin, Michelle M' <[Michelle.McLaughlin@windstream.com](mailto:Michelle.McLaughlin@windstream.com)>; 'Lloyd, James' <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Subject:** Pole Attachment tariff

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Anita

Anita Larson  
Vice President and Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Office: 812.213.1095  
Mobile: 785.331.7296  
Email: [anita.larson@qservicesco.com](mailto:anita.larson@qservicesco.com)

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Date: 2/14/2018 1:21:25 PM  
Sent: 2/14/2018 1:20:58 PM  
Subject: RE: LX135-01 Metronet Application  
From: Edwards, Kimberly <Kimberly.Edwards@windstream.com>  
To: Lauren Sandefur <Lauren.Sandefur@metronetinc.com>;  
Lauren,

Yes, each application can have a maximum of 25 poles. This is standard for all Windstream Pole Attachment applications. If the project involves more than 25 poles, multiple applications will have to be submitted. Each with a maximum of 25 poles. We will process all applications up to 300 total poles (or a total of 12 applications) per 30 rolling calendar days. This too is standard for all Windstream Pole Attachment applications.

Thank you,

Kim

**Kimberly Edwards**  
Manager – Engineering Support | Windstream  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)  
o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**Evolve your WANosaurus**

**From:** Lauren Sandefur [mailto:[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)]  
**Sent:** Wednesday, February 14, 2018 12:08 PM  
**To:** Edwards, Kimberly <Kimberly.Edwards@windstream.com>  
**Subject:** RE: LX135-01 Metronet Application

Is there a maximum amount of poles per application?

**Lauren Sandefur**  
Permit Specialist

**From:** Edwards, Kimberly [mailto:[Kimberly.Edwards@windstream.com](mailto:Kimberly.Edwards@windstream.com)]  
**Sent:** Tuesday, February 13, 2018 9:54 AM  
**To:** Lauren Sandefur <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>  
**Cc:** Hays, Sarah K <[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>  
**Subject:** RE: LX135-01 Metronet Application

Good morning Lauren,

Windstream OSP has reviewed the information you provided and they will accept the Pole Inventory Report in replacement of the Pole Attachment Data Sheets, however they will require a signed standard Windstream Pole Attachment Application form – see attached.

There is a \$75.00 application processing fee – with a maximum of 25 poles/application and a \$50.00 post inspection fee/pole.

Please note: Windstream will accept up to 300/poles per 30 rolling calendar days.

Please let me know of any other questions or concerns.

Thank you,

Kim

**Kimberly Edwards**  
Manager – Engineering Support | Windstream  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)  
o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**Evolve your WANosaurus**

**From:** Edwards, Kimberly  
**Sent:** Monday, February 12, 2018 7:07 AM  
**To:** 'Lauren Sandefur' <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>  
**Subject:** RE: LX135-01 Metronet Application

Good morning Lauren,

The Windstream OSP Managers/Supervisors in the field are currently reviewing the application/inventory report you provided to determine if this is acceptable. Since these are not the Windstream standard forms for pole attachments, I will need their approval to accept.

As soon as they have reviewed and provide their feedback, I will let you know.

Thank you,

Kim

**Kimberly Edwards**  
Manager – Engineering Support | Windstream  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)  
o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**Evolve your WANosaurus**

**From:** Lauren Sandefur [<mailto:Lauren.Sandefur@metronetinc.com>]  
**Sent:** Friday, February 09, 2018 11:12 AM  
**To:** Edwards, Kimberly <[Kimberly.Edwards@windstream.com](mailto:Kimberly.Edwards@windstream.com)>  
**Subject:** RE: LX135-01 Metronet Application

Good Morning Kim,  
Per my conversation yesterday with Brandie, she was reviewing our application to see if this would be ok to submit.  
If you have a chance to review it today that would be great, I just need an update for Monday morning.  
Thanks!

Lauren Sandefur  
Permit Specialist

**From:** Lauren Sandefur  
**Sent:** Thursday, February 8, 2018 10:43 AM  
**To:** 'Brandie.Mcgehee@windstream.com' <[Brandie.Mcgehee@windstream.com](mailto:Brandie.Mcgehee@windstream.com)>  
**Subject:** LX135-01 Metronet Application

Good Morning Brandie,  
Attached are the files for LX135-01, please let me know if these will work for you.  
When applying we have to apply under the name 'CMN-RUS, Inc'.  
There is a LX135-02 that will be submitted once we get this one figured out.

Thank you!

Lauren Sandefur  
Metronet | Permit Specialist  
3701 Communications Way | Evansville, IN 47715  
Office: 812.213.1328  
[www.MetronetInc.com](http://www.MetronetInc.com)

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Date: 3/20/2018 3:38:15 PM

Sent: 3/20/2018 3:38:02 PM

Subject: RE: LX135-01W

From: Hodges, Felicia N <Felicia.N.Hodges@windstream.com>

To: Lauren Sandefur <Lauren.Sandefur@metronetinc.com>;

I really don't know what the turn around time is for these application. Ashley the lady that we are sending them to is the supervisor and she is giving these jobs out to the engineers under her. She wanted them all to come to her so that she could keep up with everything that was going on. This is what I will do let me talk to Ashley tomorrow I should be able to call her and see if she has a turnaround plan and we can go from there.

Thank you,

**Felicia( Nicole )Hodges**

Coordinator - Engineering Support | Windstream

11101 Anderson Dr. Ste. 100 | Little Rock, AR 72212

[Felicia.N.Hodges@Windstream.com](mailto:Felicia.N.Hodges@Windstream.com)

o: 501.748.4743 | f: 330.425.0850

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Link to download content on Windstream SD-WAN is here

**From:** Lauren Sandefur [mailto:[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)]

**Sent:** Tuesday, March 20, 2018 2:01 PM

**To:** Hodges, Felicia N <Felicia.N.Hodges@windstream.com>

**Subject:** FW: LX135-01W

I know that she is out of the office but do you guys have a set turn around time for these applications?

Lauren Sandefur

Permit Specialist

**From:** Hodges, Felicia N [mailto:[Felicia.N.Hodges@windstream.com](mailto:Felicia.N.Hodges@windstream.com)]

**Sent:** Tuesday, March 20, 2018 2:00 PM

**To:** Lauren Sandefur <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>

**Subject:** RE: LX135-01W

Ok Great just want to make sure I'm on top of getting out in a timely fashion so the engineer can get to work.

Nicole

**From:** Lauren Sandefur [mailto:[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)]

**Sent:** Tuesday, March 20, 2018 1:57 PM

**To:** Hodges, Felicia N <[Felicia.N.Hodges@windstream.com](mailto:Felicia.N.Hodges@windstream.com)>

**Subject:** FW: LX135-01W

Everything else looks good!

Title	Number of Poles	Application Submit Date
LX135-01W	25	3/14/2018
LX132-01W	25	3/14/2018
LX135-02W	25	3/17/2018
LX135-03W	25	3/17/2018
LX135-04W	25	3/17/2018
LX135-05W	25	3/17/2018
LX135-06W	3	3/17/2018
LX-FR01-03W	3	3/17/2018
LX-FR02-04W	10	3/17/2018
LX-FR02-03W	25	3/17/2018
LX-FR02-01W	25	3/17/2018
LX-FR02-02W	25	3/17/2018
LX-FR04-05BiW	12	3/19/2018
LX167-01W	25	3/19/2018
LX167-02W	25	3/19/2018
LX167-03W	25	3/19/2018
LX167-04W	25	3/19/2018
LX167-05W	22	3/19/2018

Here is my submittal list on my end.  
If you need anything else let me know!

Lauren Sandefur  
Permit Specialist

**From:** Hodges, Felicia N [<mailto:Felicia.N.Hodges@windstream.com>]  
**Sent:** Tuesday, March 20, 2018 1:51 PM  
**To:** Lauren Sandefur <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>  
**Subject:** RE: LX135-01W

Lauren,

I'm going to resubmit this one again the engineer that is handling all of these is out of the office in a conference. However I don't see it in my list of application that I have submitted to her so far. So I'm going to submit again. No was there only 2 application that were submitted back then I have LX132-01W and this one that you just sent. All others I have replied back to you with a JUPR #.

I'm going to list what I have so far you let me know if I'm correct if I'm missing any just send to my personal email and I will get them out . This list is going to be anything that you have submitted up and until Monday 3/19/18. I'm just now working on the Monday submissions that you have sent over so I have those.

LX132-01W

LX135-02W  
LX135-03W  
LX134-04W  
LX134-05W  
LX135-06W  
LX-FR02-01W  
LX-FR02-02W  
LX-FR02-03W  
LX-FR02-04W  
LX135-01W I'm sending this over again

**From:** Lauren Sandefur [mailto:Lauren.Sandefur@metronetinc.com]  
**Sent:** Tuesday, March 20, 2018 1:17 PM  
**To:** Hodges, Felicia N <Felicia.N.Hodges@windstream.com>  
**Subject:** RE: LX135-01W

I resubmitted this with the correct information I will send it to you!  
Thanks

Lauren Sandefur  
Permit Specialist

**From:** Hodges, Felicia N [mailto:Felicia.N.Hodges@windstream.com]  
**Sent:** Tuesday, March 20, 2018 1:15 PM  
**To:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>  
**Subject:** RE: LX135-01W

Is this one of the ones that was rejected at first. Can you send me what was sent please

Nicole

**From:** Lauren Sandefur [mailto:Lauren.Sandefur@metronetinc.com]  
**Sent:** Tuesday, March 20, 2018 1:04 PM  
**To:** Hodges, Felicia N <Felicia.N.Hodges@windstream.com>  
**Subject:** LX135-01W

Good Afternoon Nicole,  
I was just wondering on the status of LX135-01W since it was submitted 3/14/2018.  
Thank you!

Lauren Sandefur  
Metronet | Permit Specialist  
3701 Communications Way | Evansville, IN 47715  
Office: 812.213.1328  
[www.MetronetInc.com](http://www.MetronetInc.com)

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**Date:** 3/21/2018 2:40:06 PM  
**Sent:** 3/21/2018 2:39:27 PM  
**Subject:** MetroNet Lexington Applications  
**From:** Hays, Sarah K <Sarah.K.Hays@windstream.com>  
**To:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>;  
Hodges, Felicia N <Felicia.N.Hodges@windstream.com>; Edwards, Kimberly  
<Kimberly.Edwards@windstream.com>; Sanders, Ashley L <Ashley.L.Sanders@windstream.com>;  
**CC:** Lloyd, James <James.Lloyd@windstream.com>;

---

Lauren,

We have received 375 poles over 18 applications from MetroNet since March 14. We can only accept 300 poles over a 30 day rolling calendar period to allow our field adequate time to survey these poles.

Since we are over the 300 poles we allow, the next application date we will be able to start processing application from MetroNet will be 04/18/18. By this date, 191 poles will have rolled out of the 30 days and we will be able to accept 116. After that date we will be able to stay at 300 poles for the 30 day period.

Let me know if you have any questions or concerns.

Thank you,

**Sarah Hays**  
Analyst II – Engineering Support | Windstream  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)  
o: 501.748.5864 | f: 330.486.3600

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**Date:** 3/22/2018 9:54:02 AM  
**Sent:** 3/22/2018 9:53:34 AM  
**Subject:** RE: MetroNet Lexington Applications  
**From:** Hays, Sarah K <Sarah.K.Hays@windstream.com>  
**To:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>;  
Hodges, Felicia N <Felicia.N.Hodges@windstream.com>; Edwards, Kimberly  
<Kimberly.Edwards@windstream.com>; Sanders, Ashley L <Ashley.L.Sanders@windstream.com>;  
**CC:** Lloyd, James <James.Lloyd@windstream.com>;

---

Lauren,

Windstream cannot be responsible for holding the applications while we're waiting for the 30 days to roll over. Windstream will reject any applications we receive after we have hit 300 poles. Nicole will let you know which applications will be rejected out of the ones you have submitted. You will be able to submit applications for 116 poles on 04/18/18.

Approximately how many poles does MetroNet intend to submit to Windstream?

Thank you,

**Sarah Hays**

**Analyst II – Engineering Support | Windstream**

11101 Anderson Drive, Suite 100 | Little Rock, AR 72212

[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)

o: 501.748.5864 | f: 330.486.3600

**From:** Lauren Sandefur [mailto:Lauren.Sandefur@metronetinc.com]  
**Sent:** Wednesday, March 21, 2018 3:17 PM  
**To:** Hays, Sarah K <Sarah.K.Hays@windstream.com>  
**Cc:** Hodges, Felicia N <Felicia.N.Hodges@windstream.com>; Edwards, Kimberly  
<Kimberly.Edwards@windstream.com>; Sanders, Ashley L <Ashley.L.Sanders@windstream.com>; Lloyd,  
James <James.Lloyd@windstream.com>  
**Subject:** RE: MetroNet Lexington Applications

Thanks Sarah, we can keep submitting applications though so we aren't sitting on them right?

Lauren Sandefur

Permit Specialist

**From:** Hays, Sarah K [mailto:Sarah.K.Hays@windstream.com]  
**Sent:** Wednesday, March 21, 2018 1:39 PM  
**To:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>  
**Cc:** Hodges, Felicia N <Felicia.N.Hodges@windstream.com>; Edwards, Kimberly  
<Kimberly.Edwards@windstream.com>; Sanders, Ashley L <Ashley.L.Sanders@windstream.com>; Lloyd,  
James <James.Lloyd@windstream.com>  
**Subject:** MetroNet Lexington Applications

Lauren,

We have received 375 poles over 18 applications from MetroNet since March 14. We can only accept 300 poles over a 30 day rolling calendar period to allow our field adequate time to survey these poles.

Since we are over the 300 poles we allow, the next application date we will be able to start processing application from MetroNet will be 04/18/18. By this date, 191 poles will have rolled out of the 30 days and we will be able to accept 116. After that date we will be able to stay at 300 poles for the 30 day period.

Let me know if you have any questions or concerns.

Thank you,

**Sarah Hays**

**Analyst II – Engineering Support | Windstream**

11101 Anderson Drive, Suite 100 | Little Rock, AR 72212

[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)

o: 501.748.5864 | f: 330.486.3600

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**Date:** 3/23/2018 10:00:32 AM  
**Sent:** 3/23/2018 9:59:57 AM  
**Subject:** FW: METRONET CONSTRUCTION  
**From:** Edwards, Kimberly <Kimberly.Edwards@windstream.com>  
**To:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>; Nicole Sugg <Nicole.Sugg@metronetinc.com>;  
**CC:** Hays, Sarah K <Sarah.K.Hays@windstream.com>; Lloyd, James <James.Lloyd@windstream.com>;  
Rucker, Jamie <Jamie.Rucker@windstream.com>;

---

Lauren/Nicole,

Please see the email string below regarding Windstream cut cables – at 248 Catera Trace and another on Darlington Circle. Is the MetroNet contractor contacting 811 or taking normal precautions before digging? This is impacting Windstream customers in the area and this is completely unacceptable. Windstream has escalating concerns on how many Windstream cables are being cut. What are the next steps to getting these issues addressed and to have the cuts Windstream has identified properly fixed? Will MetroNet please send notification of all cuts to Windstream for inspection and to properly resolve? We would like to have a meeting as soon as possible to discuss this in detail.

Please advise ASAP.

Thank you,

**Kimberly Edwards**  
Manager – Engineering Support | Windstream  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)  
o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**From:** Williamson, Tim  
**Sent:** Thursday, March 22, 2018 4:50 PM  
**To:** Henson, Jason <[Jason.Henson@windstream.com](mailto:Jason.Henson@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Cc:** Mateyoke, Charles <[Charles.Mateyoke@windstream.com](mailto:Charles.Mateyoke@windstream.com)>; Trimble, David <[David.Trimble@windstream.com](mailto:David.Trimble@windstream.com)>; Roberts, Barry <[Barry.Roberts@windstream.com](mailto:Barry.Roberts@windstream.com)>; McAbee, Phillip <[Phillip.McAbee@windstream.com](mailto:Phillip.McAbee@windstream.com)>  
**Subject:** RE: METRONET CONSTRUCTION

**Thanks Jason! We need to stop these actions.**

**Timothy Williamson**  
Director of Field Operations | Windstream Lexington KY  
130 W. New Circle Rd. Suite 170 Lexington, KY 40505  
O: 859-357-6105 / M: 859-421-9766  
[tim.williamson@windstream.com](mailto:tim.williamson@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)

**From:** Henson, Jason  
**Sent:** Thursday, March 22, 2018 5:49 PM  
**To:** Williamson, Tim <[Tim.Williamson@windstream.com](mailto:Tim.Williamson@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>  
**Cc:** Mateyoke, Charles <[Charles.Mateyoke@windstream.com](mailto:Charles.Mateyoke@windstream.com)>; Trimble, David <[David.Trimble@windstream.com](mailto:David.Trimble@windstream.com)>; Roberts, Barry <[Barry.Roberts@windstream.com](mailto:Barry.Roberts@windstream.com)>; McAbee, Phillip

<Phillip.McAbee@windstream.com>

**Subject:** Re: METRONET CONSTRUCTION

Tim,

I have sent this down to James Lloyd as well. Hoping they may have some contacts from the Joint Use discussions they had with Metronet.

Jason Henson

OSP Design Manager KY-NY-PA

c:859-361-0323 o:859-258-2196

[jason.henson@windstream.com](mailto:jason.henson@windstream.com)

On Mar 22, 2018, at 5:41 PM, Williamson, Tim <[Tim.Williamson@windstream.com](mailto:Tim.Williamson@windstream.com)> wrote:

**Barry and David,**

**Who do we address this with? This is just some of what we have.**

**Timothy Williamson**

**Director of Field Operations | Windstream Lexington KY**

130 W. New Circle Rd. Suite 170 Lexington, KY 40505

O: 859-357-6105 / M: 859-421-9766

[tim.williamson@windstream.com](mailto:tim.williamson@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)

**From:** Mateyoke, Charles

**Sent:** Thursday, March 22, 2018 5:16 PM

**To:** Williamson, Tim <[Tim.Williamson@windstream.com](mailto:Tim.Williamson@windstream.com)>; Henson, Jason

<[Jason.Henson@windstream.com](mailto:Jason.Henson@windstream.com)>; Trimble, David <[David.Trimble@windstream.com](mailto:David.Trimble@windstream.com)>

**Subject:** METRONET CONSTRUCTION

Just to update everyone Metro net has cut two more cables today. One at 248 Catera Trace a 200 pair cable in the East and one on Darlington Circle in the Lakeside was a 400 pair, possible dead cable though. The other thing that has come up is there are numerous buried drops that have been cut during this process as well. Metronet contractor is putting wire nuts on the pairs and then taping it up with electrical tape and then putting back in the ground and covering it up. We know of 4 – 5 drops, but do not know how many they have done that we do not know about. Without having the Ranger-seal closure on the splice, it will sooner or later go bad and will need replaced. I am not quite sure what steps should be taken either by Metronet to let us know a drop has been cut or to prevent them from splicing them together the way they are.

**Tom Mateyoke**

**Local Manager - Operations | Windstream**

1401 Higbee Mill Road | Lexington, KY 40503

o: 859 272-0214 | m: 859 221-7914

[charles.mateyoke@windstream.com](mailto:charles.mateyoke@windstream.com)

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**WINDSTREAM SERVICES, LLC**

Mailstop B1F03-71A  
4001 Rodney Parham Road  
Little Rock, Arkansas 72212

Kent Smith  
*Director Senior Counsel*

501 748.3634  
Email [Kent.Smith@windstream.com](mailto:Kent.Smith@windstream.com)

  
**windstream**

April 5, 2018

**VIA OVERNIGHT MAIL**

Metro FiberNet, LLC  
Attn: John Cinelli, President  
3701 Communications Way  
Evansville, IN 47715

Re: Cease and Desist Negligent Construction Practices in Lexington, KY

Dear Mr. Cinelli:

I am writing to notify you of the negligent construction practices taking place by some of your subcontractors, including specifically your subcontractor RLM Underground ("RLM"), but potentially applicable to any other subcontractors, you may have in Lexington, Kentucky. Windstream's customers have experienced outages as a direct result of your subcontractor's cuts to Windstream's copper cables, fiber cables, and other drops, these cuts could have easily been avoided if the subcontractor had obtained the proper locates. Furthermore, our Technicians and Engineers have started to see issues where a Metro FiberNet subcontractor has cut Windstream's facilities and instead of reporting it, they have attempted to repair the cut on their own using electrical tape. As I'm sure you are aware using electrical tape to fix a buried facility is neither industry standard nor is it even a reasonable practice and, furthermore, is not acceptable to Windstream.

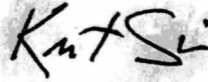
As a direct result of these activities Windstream's customers are experiencing unnecessary outages and Windstream is incurring unnecessary expense to not only troubleshoot the customer issues but also to correctly repair our facilities. While Windstream understands that mistakes can happen during the construction process, these actions are negligent and the attempts to self-repair are unacceptable.

Windstream will continue to submit damage claims in its ordinary course of business. Windstream further requests that Metro FiberNet through its subcontractors cease and desist these negligent construction practices. Specifically, we request that any subcontractor immediately implement full locate requests and notify Windstream of any cuts by calling 1-800-347-1991 (Option 2, # sign, # sign, Option 1) and take no further action to attempt a repair. Windstream requests written assurances of the actions Metro FiberNet will take. If this continues Windstream will take whatever legal action necessary to protect its rights and property. Nothing contained in this letter should be considered as a waiver of any rights and claims of Windstream or its subsidiaries, which are hereby expressly reserved.

April 5, 2018  
Page 2

I look forward to hearing from you as outlined above.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Smith".

Kent Smith  
Director – Senior Counsel

cc: Metro FiberNet, LLC  
Legal & Regulatory Department  
8837 Bond Street  
Overland Park, KS 66214



Date: 4/11/2018 4:23:15 PM  
Sent: 4/11/2018 4:23:03 PM  
Subject: RE: LX167-05W  
From: Hodges, Felicia N <Felicia.N.Hodges@windstream.com>  
To: Lauren Sandefur <Lauren.Sandefur@metronetinc.com>;  
Lauren,

The FCC regulation states that we have 45 days to review once those days are up then I will be able to provide updates to these applications. The only application that was sent back with the one in yellow. At this time we have a total of 372 under review now. Let me know if you have further questions or concerns.

Thank you,

**Felicia( Nicole )Hodges**  
Coordinator - Engineering Support | Windstream  
11101 Anderson Dr. Ste. 100 | Little Rock, AR 72212  
[Felicia.N.Hodges@Windstream.com](mailto:Felicia.N.Hodges@Windstream.com)  
o: 501.748.4743 | f: 330.425.0850

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**From:** Lauren Sandefur [mailto:[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)]  
**Sent:** Wednesday, April 11, 2018 9:20 AM  
**To:** Hodges, Felicia N <Felicia.N.Hodges@windstream.com>  
**Subject:** FW: LX167-05W

Good Morning Felicia,  
Could you provide an update on the list of applications below?  
I also need to know which applications have not been reviewed yet.  
Thank you so much!

Lauren Sandefur  
Permit Specialist

**From:** Hodges, Felicia N [mailto:[Felicia.N.Hodges@windstream.com](mailto:Felicia.N.Hodges@windstream.com)]  
**Sent:** Monday, March 26, 2018 12:36 PM  
**To:** Lauren Sandefur <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>  
**Subject:** RE: LX167-05W

I can provide a list of the ones kept please see below: Everything was sent except the one in yellow. I sent that back to you.

Title	Number of Poles	Application Submit Date
LX135-01W	25	3/14/2018
LX132-01W	25	3/14/2018
LX135-02W	25	3/17/2018
LX135-03W	25	3/17/2018
LX135-04W	25	3/17/2018
LX135-05W	25	3/17/2018
LX135-06W	3	3/17/2018
LX-FR01-03W	3	3/17/2018
LX-FR02-04W	10	3/17/2018
LX-FR02-03W	25	3/17/2018
LX-FR02-01W	25	3/17/2018
LX-FR02-02W	25	3/17/2018
LX-FR04-05BiW	12	3/19/2018
LX167-01W	25	3/19/2018
LX167-02W	25	3/19/2018
LX167-033 3+W	25	3/19/2018
LX167-04W	25	3/19/2018
LX167-05W	22	3/19/2018

**Felicia( Nicole )Hodges**

Coordinator - Engineering Support | Windstream  
 11101 Anderson Dr. Ste. 100 | Little Rock, AR 72212  
[Felicia.N.Hodges@Windstream.com](mailto:Felicia.N.Hodges@Windstream.com)  
 o: 501.748.4743 | f: 330.425.0850

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**From:** Lauren Sandefur [<mailto:Lauren.Sandefur@metronetinc.com>]

**Sent:** Monday, March 26, 2018 12:16 PM

**To:** Hodges, Felicia N <[Felicia.N.Hodges@windstream.com](mailto:Felicia.N.Hodges@windstream.com)>

**Subject:** FW: LX167-05W

Good Afternoon Nicole,

Is this the last of our rejected applications?

If you can provide a list of the ones you guys are keeping that would be great.

Thank you,

Lauren Sandefur  
Permit Specialist

**From:** Windstream Jointuse [<mailto:Windstream.Jointuse@windstream.com>]  
**Sent:** Tuesday, March 20, 2018 4:21 PM  
**To:** Lauren Sandefur <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>  
**Cc:** Hays, Sarah K <[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>; Permits <[Permits@metronetinc.com](mailto:Permits@metronetinc.com)>  
**Subject:** RE: LX167-05W

Lauren,

Windstream is in receipt of your request. The request has been assigned the number JUPR1703 and submitted to the Windstream Engineer, Ashley Sanders as of 3/20/18 to be processed. Let me know if you have any questions or concerns.

Thank you,

**Felicia( Nicole )Hodges**  
Coordinator - Engineering Support | Windstream  
11101 Anderson Dr. Ste. 100 | Little Rock, AR 72212  
[Felicia.N.Hodges@Windstream.com](mailto:Felicia.N.Hodges@Windstream.com)  
o: 501.748.4743 | f: 330.425.0850

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Make downtime extinct with Windstream SD-WAN Concierge

**From:** Lauren Sandefur [<mailto:Lauren.Sandefur@metronetinc.com>]  
**Sent:** Monday, March 19, 2018 2:20 PM  
**To:** Windstream Jointuse <[Windstream.Jointuse@windstream.com](mailto:Windstream.Jointuse@windstream.com)>  
**Cc:** Hays, Sarah K <[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>; Permits <[Permits@metronetinc.com](mailto:Permits@metronetinc.com)>  
**Subject:** LX167-05W

Good Afternoon,

Please see attached for proposal titled LX167-05W. This is a proposal for Windstream poles. Let me know if you have any questions or need anything else.

Thank you,

Lauren Sandefur  
Metronet | Permit Specialist  
3701 Communications Way | Evansville, IN 47715  
Office: 812.213.1328  
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**METRONET.**

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# METRONET

THE POWER OF FIBER

Anita Larson  
Vice President and  
Senior Counsel  
812.213.1095  
anita.larson@metronetinc.com

April 23, 2018

VIA EMAIL at [kent.smith@windstream.com](mailto:kent.smith@windstream.com)

Mr. Kent Smith  
Director – Senior Counsel  
Mailstop B1F03-71A  
4001 Rodney Parham Road  
Little Rock, ARK 72212

Re: Windstream's Letter dated April 5, 2018

Dear Mr. Smith:

Windstream's letter of April 5, 2018, was referred to me for response. MetroNet appreciates notification of Windstream's concerns and welcomes the opportunity to respond. MetroNet takes very seriously the safety of persons and property during construction. Although Windstream's letter provided little detail, because of MetroNet's safety centrality, MetroNet has investigated Windstream's concerns and wishes to share its findings. In summary, based upon its investigation, MetroNet disputes allegations that a MetroNet contractor has employed negligent construction practices. In none of the instances investigated was a MetroNet contractor at fault. Therefore, MetroNet will dispute any invoice for damages submitted to MetroNet in connection with the strikes on the properties described below.

To our knowledge, the following are the addresses at which Windstream contends strikes of its facilities by MetroNet contractors occurred and an overview of our findings:

Address	Findings
205 CROSSFIELD PLACE Cable cut in two places CMR PD # 180309524292	Locates were properly obtained. Locate Ticket ID# 1802261329  The facilities were improperly marked.  Attached as <b>Tab 1</b> are pictures of 205 Crossfield Place before Windstream's excavators were deployed. As shown, the potholed area where MetroNet's facilities are located is approximately thirty inches (30") away from the paint marking Windstream's facilities.  Windstream contends that a MetroNet contractor struck Windstream's facilities at two locations at or near this address. To MetroNet's knowledge, the location of a second strike was not identified by Windstream, and therefore, cannot be investigated by MetroNet.
221 CATERA TRACE CMR PD# 180322528532	Locates were properly obtained, but there is no record of damage at this address.
248 CATERA TRACE	Locates were properly obtained, but there is no record of damage at this address.
2512 AND 2508 TIPCHIK	Locates were properly obtained, but there is no record of damage at these addresses.

MetroNet  
8837 Bond Street  
Overland Park, KS 66214

3100 AYLESBURY PLACE CMR PD# 180328530432	<p>Locates were properly obtained. Locate Ticket ID# 1803081182</p> <p>The facilities were properly marked, which allowed the contractor to avoid damaging Windstream's facilities.</p> <p>As a part of MetroNet's investigation, it exposed the location where its facilities crossed Windstream's facilities at this address. As shown in the pictures attached as <b>Tab 2</b>, MetroNet verified that its facilities are 16 inches (16") above the Windstream facilities.</p>
636 ANDOVER VILLAGE CT CMR PD# 180309524582	<p>Locates were properly obtained. Locate Ticket ID# 1802230323</p> <p>The facilities were improperly marked.</p> <p>In the picture attached as <b>Tab 3</b>, the solid red line is where USIC originally showed the location of Windstream's facilities. Due to weather and the passage of time, the original paint no longer appears. The orange flags and orange paint in the attached picture are the correct locates placed by USIC <i>after the strike</i>. Because USIC's original locates of Windstream's facilities appeared where the solid red line appears, the contractor placed MetroNet's facilities where the orange paint and markings appear in the attached, and consequently, struck Windstream's facilities. Again, the orange paint appearing in the picture was not there when MetroNet's facilities were placed. USIC has told MetroNet that it accepts responsibility for the misplaced locates at this address. Windstream can verify this information with USIC.</p>

If Windstream has additional information that it believes MetroNet should consider or investigate, please let us know.

Windstream's letter asserts that instead of reporting strikes of Windstream's facilities, MetroNet attempts to repair cuts using electrical tape. Our investigation does not support this assertion. In the instances above where Windstream asserts that a contractor of MetroNet struck Windstream facilities, neither MetroNet nor the contractor was aware of the strike at the time it happened, and therefore, neither reported the strike nor attempted to repair it. Had MetroNet been aware of the strikes, it would have reported them. Although there was no attempt to repair any of the cables cuts mentioned above, MetroNet or the contractor admittedly attempts to temporarily repair *known*<sup>1</sup> strikes of *service drops* in an effort to reduce periods of service interruption. Neither MetroNet nor the contractor makes any attempt to repair mainline cables. It is our understanding that Windstream wishes MetroNet or the contractor to temporarily repair service drops. Per a conversation with Charles Mateyoke, if a MetroNet contractor inadvertently strikes a service drop, MetroNet or the contractor may perform a temporary repair of the drop, as long as it sends an email to the Mr. Mateyoke with the address where the strike occurred and it leaves the service drop exposed where temporarily repaired. After permanent repairs are completed by Windstream, Windstream has agreed to notify MetroNet so it can perform or verify site restoration.

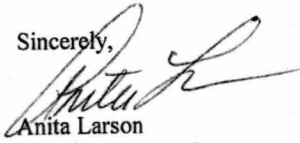
Finally, as noted above, we are a safety conscious company. Therefore, we would greatly appreciate Windstream notifying us promptly when Windstream believes that a MetroNet contractor has damaged Windstream's facilities. We ask that this notification be provided at least as promptly as Windstream notifies USIC. This will allow MetroNet to conduct a meaningful and thorough investigation before the area has been disturbed or the facilities have been remarked.

Again, MetroNet appreciates Windstream bringing its concerns to our attention. If Windstream has any questions, please do not hesitate to contact me.

<sup>1</sup> Generally, the contractor does not know if it strikes a service drop unless a resident comes out of his/her premise and informs the contractor that the resident has lost service.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Anita Larson", with a stylized flourish extending to the right.

Anita Larson  
Vice President and  
Senior Counsel

Cc: George Kemp  
Director of Safety and Quality Control

TAB 1 - 205 CROSSFIELD PLACE



This picture shows that the potholed area, where MetroNet's facilities are placed, is approximately thirty inches (30") from the paint marking where Windstream's facilities were supposed to be.





Windstream's mainline conduit appears in blue. MetroNet's duct appears in orange and roughly 16" above Windstream's conduit.



Windstream's mainline conduit appears in blue. MetroNet's duct appears in orange and roughly 16" above Windstream's conduit.

TAB 3 - 636 ANDOVER VILLAGE

USIC marked Windstream's facilities where the red line appears. The orange markings, which were placed after the strike, show the actual location of Windstream's facilities.

04/11/2018

**Date:** 5/9/2018 5:21:43 PM

**Sent:** 5/9/2018 5:21:08 PM

**Subject:** Clarifying MetroNet Authorization on Windstream Attachments

**From:** Hays, Sarah K <Sarah.K.Hays@windstream.com>

**To:** Nicole Sugg <Nicole.Sugg@metronetinc.com>; Addison Burk <Addison.Burk@metronetinc.com>;  
Lauren Sandefur <Lauren.Sandefur@metronetinc.com>;

**CC:** Edwards, Kimberly <Kimberly.Edwards@windstream.com>

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MetroNet,

Windstream has received information from the field that indicates MetroNet understands they have the authority to move existing Windstream attachments on Windstream owned poles and non-Windstream owned poles. We would like to clarify, as this is incorrect. MetroNet does not have authorization to move any Windstream attachments. Only Windstream OSP personnel are authorized to move a Windstream attachment.

Please let us know if you have any questions or concerns.

Thank you,

**Sarah Hays**

**Analyst II – Engineering Support | Windstream**

11101 Anderson Drive, Suite 100 | Little Rock, AR 72212

[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)

o: 501.748.5864 | f: 330.486.3600

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**Date:** 5/10/2018 5:26:00 PM  
**Sent:** 5/10/2018 5:26:46 PM  
**Subject:** CMN vs. Windstream  
**From:** Anita Larson  
**To:** 'King, Daniel' <Daniel.King@windstream.com>;  
**Attachments:** CMN vs. Windstream 051018 (CLEAN).docx

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Dan: MetroNet's construction is being significantly restrained by Windstream's unwillingness to process applications on a timely basis. We have worked (and continue to work) to get the Duke invoice resolved, but in the meantime, we don't feel that it is reasonable to slow down the attachment process on that basis or any other basis. As a matter of courtesy, I want to share a draft of the complaint that we intend to file with the KY PSC.

I am traveling today and tomorrow. I will be back in the office on Monday if you would like to discuss this.

Thanks,  
Anita

Anita Larson  
Vice President and Senior Counsel  
8837 Bond Street  
Overland Park, KS 66214  
Email: [anita.larson@metronetinc.com](mailto:anita.larson@metronetinc.com)  
(o): 812.213.1095  
(m): 785.331.7296

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

**CMN-RUS, Inc.**

3701 Communications Way

Evansville, IN 47715

Complainant

v.

**Windstream Kentucky East, LLC**

4001 Rodney Parham Road

Little Rock, AR 72212

Respondent

No. \_\_\_\_\_

**COMPLAINT**

CMN-RUS, Inc. ("CMN"), pursuant to 807 KAR 5:001 §12, submits this Complaint requesting that the Commission find Windstream Kentucky East, LLC ("Windstream") in violation of (i) KRS 278.160 and 807 KAR 5:011 for unlawfully unilaterally imposing material conditions not set forth in its tariff; (ii) KRS 278.260 for offering CMN services that are unreasonable, insufficient and inadequate; and, (iii) KRS 278.170 for subjecting CMN to an unreasonable prejudice or disadvantage. CMN also requests expedited consideration and relief from the Commission because Windstream's actions are having a significant material adverse effect on CMN. The Commission has jurisdiction over this matter under KRS 278.040 and 278.160.

**BACKGROUND**

1. CMN is a competitive local exchange carrier ("CLEC") and a "telecommunications carrier" as are defined in the Communications Act of 1934. The Commission recognizes CMN as both a CLEC (Utility ID # 5055160) and a long-distance carrier (# 22205516). CMN is also a cable television service provider.

2. Since 2005, CMN and its affiliates have constructed and operated fiber-to-the-premise (FTTP) networks offering high quality voice, cable television and gigabit



data/Internet services to residential and business consumers. CMN and its affiliates deliver services to approximately 250,000 homes and businesses. CMN's high speed broadband services help communities compete on the national and international stage and foster innovation, job creation and economic growth.

3. CMN has a Franchise Agreement with the Lexington Fayette Urban County Government (the "LFUCG") to offer cable television services to residential and business customers within the confines of Lexington and Fayette County (the "LFUCG Franchise"). For obvious business reasons, CMN wishes to build out its network in the LFUCG service area as quickly as possible. Furthermore, the LFUCG Franchise imposes a deadline by which CMN's network must be constructed. This deadline will be challenging for CMN to meet if Windstream's unlawful conduct described below is allowed to persist.

4. Once CMN's network is constructed, Windstream and CMN will be direct competitors in the LFUCG service area. To enter the LFUCG service area as an over builder, CMN needs access to utility poles on reasonable and just terms. CMN has successfully worked with utilities over the years to gain access to poles. For example, Kentucky Utilities Company ("KU") has been willing to negotiate a High Volume Pole Attachment Application Plan with prospective pole attachers. KU's high volume plan allows a CMN affiliate to submit applications for up 2,500 poles in a 30 day period and provides for reasonable pole attachment procedures and timeframes.

5. In preparation to enter the LFUCG service area, during the fall of 2017, CMN contacted Windstream to obtain Windstream's pole attachment agreement for review and consideration. In November of 2017, Windstream provided a copy of a Pole Attachment License Agreement. See Pole Attachment License Agreement (the "License Agreement") attached as Appendix A. Upon review of the License Agreement, CMN identified several provisions that were unreasonable and unlawful. The primary areas of concern are provisions in Section 8 of the License Agreement. Specifically, Windstream limits the number of poles for which CMN may apply for access to 300 poles in a rolling 30 day period (the "300 Pole Restriction") and Windstream makes no commitments to time frames for application, survey and make ready processing .

6. The 300 Pole Restriction in Section 8.A of the License Agreement reads as follows (emphasis added):

Before Licensee shall have a right to place Attachments to any Poles of Licensor, Licensee shall make application for and receive a revocable, nonexclusive License which shall be in the form of a Licensor countersigned Application for Pole License (Exhibit B). *Each Exhibit B Application for Pole License shall contain no more than twenty-five (25) Poles and Licensee may submit up to twelve (12) Exhibit B, Application for Pole License within a rolling thirty (30) day period.* Licensor will process Applications for Pole Licenses in the order in which they are received; provided, however, that when Licensee has multiple Applications for Pole Licenses on file with Licensor, Licensee may designate its desired priority of completion with respect to all such Application for Pole Licenses. Licensee shall not under any circumstances attach any equipment to any guy wires or anchors owned by Licensor.

7. To deliver its gigabit broadband services in the LFUCG service area, CMN will need to access approximately 12,500 Windstream poles. CMN is not seeking to attach to all 12,500 poles at once. CMN wants to obtain approval to attach its facilities to these poles over a reasonable period of time, optimally over the next eight (8) to twelve (12) months. Unfortunately, if applications for attachment are restricted in number as set forth in Section 8.A, it will take CMN until the end of 2021 to obtain approval to attach CMN's facilities to Windstream's poles.

8. This 300 Pole Restriction presents a serious economic and regulatory challenge for CMN. Any delay in attaching to poles delays CMN's ability to realize a return on its investment, which will total close to \$100 million in the LFUCG and surrounding service areas. Also, CMN committed to the LFUCG to have its cable system technically capable of providing cable services as described in the Franchise Agreement by the close of 2021. Windstream's 300 Pole Restriction and total absence of processing time frames puts in jeopardy CMN's ability to meet LFUCG's expectations. Competitive necessity requires exceeding these expectations, not merely meeting them.

9. Knowing that the terms of Windstream's License Agreement, particularly Section 8, would have a material adverse impact on CMN's business, CMN requested a conference call with Windstream to discuss the terms of the agreement. On December 12, 2017, representatives of CMN and Windstream participated in a conference call. During this call, CMN requested that Windstream amend the License Agreement to contain



substantially the same terms and conditions as it entered into in connection with the Kentucky Information Highway project (hereinafter referred to as the “KIH Amendment”<sup>1</sup>). Accordingly, CMN asked Windstream to increase the number of applications Windstream would process from 300 poles per rolling 30 days to 1,500 per rolling 30 days and to give CMN non-discriminatory application, survey, estimate and make ready process time lines. CMN acknowledged that under the terms and conditions of the KIH Amendment, Windstream charges for the additional resources necessary for Windstream to process the higher volume of applications. CMN made it abundantly clear that it was willing to pay for such resources as well. During this call, Windstream stated that it would consider CMN’s request and the parties agreed to reconvene in one week.

10. On December 19, 2017, representatives of CMN and Windstream reconvened in another conference call. During this call, Windstream reported that it was not willing to negotiate any provisions with CMN. As explained in more detail in paragraphs 22 and 23 of this Complaint, Windstream stated that CMN has two invoices outstanding to a Windstream affiliate and that while the invoices remain outstanding, Windstream would not negotiate with CMN. CMN reminded Windstream that the invoices were disputed in good faith, but Windstream’s position remained firm.

11. Because Windstream refused to negotiate terms and conditions, CMN determined the only course of action available to it would be to attach to Windstream’s poles under Windstream’s CATV Pole Attachment Tariff. See CATV Pole Attachment Tariff P.S.C. KY NO. 11 attached as Appendix C (the “Tariff”). The Tariff does not contain the 300 Pole Restriction. Windstream agreed that CMN, as a cable television provider, could attach under the Tariff.

12. On January 12, 2018, CMN requested that Windstream provide the process under which it could apply to attach to Windstream poles pursuant to its Tariff. Despite the Tariff containing no 300 Pole Restriction, on January 18, 2018, Windstream informed CMN that it would limit the number of poles per application to 25 and the number of

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<sup>1</sup> The KIH Amendment is the First Amendment to Pole Attachment License Agreement dated July 7, 2016, by and between Windstream Kentucky East, LLC and the Commonwealth of Kentucky, Kentucky Communications Network Authority, and the Finance and Administration Cabinet in connection with the Kentucky Information Highway project (the “KIH”). See KIH Amendment attached as Appendix B. The favorable terms of the KIH Amendment were not provided to the Kentucky Communications Network Authority (“Licensee”) because of any governmental status. To the contrary, the agreement which the KIH Amendment amends was conditioned upon the Licensee being a competitive local exchange carrier (“CLEC”) or a “telecommunications carrier” as defined in the Communications Act of 1934. See FN 12.

applications to 12 per rolling 30-day period. Thereafter, CMN submitted applications to attach to Windstream poles. Not only has Windstream refused to accept applications totaling more than 300 poles in a rolling 30 day period, but also, Windstream has processed the applications it has accepted in an unreasonably slow time frame.

## **CLAIMS**

### **WINDSTREAM HAS IMPOSED MATERIAL CONDITIONS NOT IN ITS TARIFF**

13. Windstream's imposition of additional, material restrictions not in its Tariff violates KRS 278.160 and 807 KAR 5:011. Specifically, KRS 278.160(1) requires Windstream to show "all rates and conditions for service established by it and collected or enforced" in its tariff schedules on file with the Commission.

14. Because Windstream has failed to satisfy the requirements in Section 278.160 and Section 5.011, prior to imposing the 300 Pole Restriction, imposition of the restriction is illegal and unenforceable.

15. If the 300 Pole Restriction is important to Windstream, it should seek approval from the Commission to amend the Tariff. However, in the event that Windstream seeks the Commission's approval, for the reasons CMN describes below, approval should be denied. As more fully described below, Windstream's 300 Pole Restriction is vastly out of pace with industry norms and in violation of existing federal and state laws and regulations. While the Federal Communications Commission ("FCC") is moving toward more streamlined and expedited pole attachment processes, Windstream should not be allowed to move in the opposite direction.

### **WINDSTREAM'S POLE PROCESSING PROCEDURES ARE UNREASONABLY SLOW**

16. Over the years, Congress has passed laws and the FCC has promulgated regulations to reduce barriers to broadband deployment. Understanding the importance of timely access to poles, the FCC has imposed specific timelines to which pole owners must adhere. Most notable are the timelines set forth in the FCC's 2011 Order<sup>2</sup>. Generally, a

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<sup>2</sup> Report and Order and Order on Reconsideration adopted April 7, 2011, WC Docket No. 07-245; GN Docket No. 09-51 (the "2011 Order").

pole owner has 45 days from receipt of a complete application to respond to an applicant's request to attach to the owner's poles<sup>3</sup>. Unless the application is denied for one of four specified legitimate reasons<sup>4</sup>, the pole owner must provide an estimate of charges for necessary make ready work within 14 days<sup>5</sup>. The prospective attacher has at least 14 days to respond to this estimate and pay the estimated charges. Upon receipt of the payment for the estimated charges, generally the pole owner and existing attachers have 60 days (with the owner able to request an additional 15 days in certain circumstances) to conduct the necessary make ready<sup>6</sup>.

17. During the FCC's rule making process, pole owners commented that larger orders will take additional time to process. The FCC agreed and gave pole owners additional time for "larger orders." Specifically, 47 CFR 1.1420(g) provides as follows:

For the purposes of compliance with the time periods in this section:

(1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

(2) A utility may add 15 days to the survey period described in paragraph (c) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(3) A utility may add 45 days to the make-ready periods described in paragraph (e) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(4) A utility shall negotiate in good faith the timing of all requests for pole attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(5) A utility may treat multiple requests from a single cable operator or telecommunications carrier as one request when the requests are filed within 30 days of one another.

The federal regulations do not allow the utility to reject applications using the process Windstream has unilaterally adopted. In the 2011 Order, the FCC noted that, if there is a failure to have and adhere to timelines, pole attachments may become subject to excessive delays. The 2011 Order specifically refers to a record showing "pervasive and widespread

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<sup>3</sup> 47 CFR 1.1420(c)

<sup>4</sup> Access may be denied if there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes. 47 USC 224(f).

<sup>5</sup> 47 CFR 1.1420(d)

<sup>6</sup> 47 CFR 1.1420(e)

problems of delays in survey work, delays in make ready performance ... and other issues.”<sup>7</sup>

18. Under federal regulation, if a pole owner fails to comply with the survey and make ready deadlines, the entity seeking to attach can exercise statutorily prescribed self-help remedies. Again, under no circumstances do federal regulations grant a pole owner the right to simply reject “larger orders.” Windstream has simply refused to negotiate at all concerning the processing of all of CMN’s orders, which by definition constitutes bad faith in accordance with FCC rules. In short, Windstream’s refusal to process more than 300 poles in a rolling 30 day period would be deemed unreasonable and unlawful under federal regulations.

19. Windstream’s pole attachment processes are also unlawful under Kentucky law. Although the Commonwealth of Kentucky has exercised its right to reverse-preempt federal pole attachment regulations and the jurisdiction of the FCC, the standard for accessing poles under Kentucky law is basically the same as the standard established by federal law, *i.e.*, access to poles must be on reasonable terms. FCC rules and orders provide a logical benchmark for what is and is not considered to be reasonable. Terms that have been found to be unreasonable in other jurisdictions do not become reasonable simply because the poles are in Kentucky.

20. As noted in paragraph 4, KU has been willing to negotiate a High Volume Pole Attachment Application Plan with prospective pole attachers that contains more reasonable time frames.

#### WINDSTREAM REFUSES TO GIVE CMN POLE ATTACHMENT TERMS IT GIVES TO OTHERS

21. Windstream’s refusal to process CMN’s “larger orders” and abide by reasonable survey and make ready time frames violates KRS 278.170(1) which provides:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and

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<sup>7</sup> 2011 Order at ¶21.

contemporaneous service under the same or substantially the same conditions.

In light of the favorable terms given by Windstream to KIH, Windstream's refusal to allow CMN substantially the same terms subjects CMN to an unreasonable prejudice and disadvantage.

22. As noted above, Windstream's stated reason for refusing to give CMN terms substantially similar to the terms set forth in the KIH Amendment is that CMN owes Windstream money and until such money is paid Windstream should not be required to process CMN poles under the more favorable terms and conditions offered to KIH. However, Windstream and CMN will be direct competitors for cable and other broadband service customers in the LFUCG service area. Regardless of Windstream's apparent motives, its actions have the effect of substantially reducing competition, and CMN submits that Windstream is aware of such adverse consequences. Slowing CMN's entry into the LFUCG market limits consumer choice.

23. In March of 2017, Windstream KDL, LLC ("KDL"), an affiliate of Windstream, submitted an invoice to CMN for reimbursement of make ready costs for make ready work performed in Indiana. The invoices are not owed to Windstream and are entirely unrelated to CMN's request under the Tariff to attach to any poles owned by Windstream.<sup>8</sup> In addition, the make ready charges for which KDL has invoiced CMN are not for charges actually paid by KDL or any other affiliate of Windstream. Rather, KDL's invoices are passing through a request for reimbursement from a unrelated third party utility for service performed by such unrelated third party. Although there may be an accounts payable book entry on KDL's financials (which should be offset by a corresponding receivable), neither Windstream nor any of its affiliates (including KDL) need ever be out of pocket for one dime of the invoiced amounts.

24. Even if CMN owed money directly to Windstream Kentucky East, LLC and the invoices were directly related to CMN's attachments under the Tariff, Windstream cannot use the invoices as an excuse to deny CMN attachment terms offered to others because the invoices are disputed in good faith and CMN has continued to pay undisputed

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<sup>8</sup> The invoices disputed by CMN in good faith were issued pursuant to the Pole Attachment Rights/Dark Fiber Rights Exchange agreement between CMN and KDL, dated February 7, 2005.

invoices. CMN is actively engaged in good faith negotiations to resolve such outstanding invoices. 807 KAR 5:006, Section 11(6) provides:

A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer:

(a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and

(b) Stays current on subsequent bills.

807 KAR 5:006 Section 12 provides:

Status of Customer Accounts During Billing Dispute. With respect to a billing dispute to which Section 11 of this administrative regulation does not apply, a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills.

25. If Kentucky had not exercised its right to reverse-preempt federal pole attachment regulations and the jurisdiction of the FCC, Windstream's denial of reasonable terms of access based upon the unpaid invoices would also be a violation of federal law. Under federal law, access may be denied if there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.<sup>9</sup> Non-payment of an invoice disputed in good faith has been determined by the FCC to be unreasonable and unlawful.<sup>10</sup>

26. The invoices that Windstream's justification relies upon are clearly disputed in good faith. CMN disputed the invoices because the invoices were not accompanied by any supporting documentation, were for services provided by a third party years before the date of invoice, and are for patently unreasonable amounts. A utility has an obligation to provide a reasonable amount of information sufficient to substantiate its make-ready charges<sup>11</sup>. CMN understands, however, that KDL is in the middle. In order to avoid any adverse effect on KDL, CMN disputed the invoice directly to the third party utility and

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<sup>9</sup> 47 USC 224(f).

<sup>10</sup> Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co., Consolidated Order, 14 FCC Rcd 11599 at ¶18. The FCC determined that KCPL could not condition access on payment of a disputed claim and that debt collection is not permissible grounds for denial of access.

<sup>11</sup> Knology v. Georgia Power Company, FCC 03-292, File No. PA 01-006 at ¶59 through ¶62 interpreting 47 U.S.C. §224.



gained that third party utility's assurance that until the dispute is settled, KDL would not suffer adverse consequences. CMN also requested that this third party withdraw the invoice issued to KDL and allow CMN and the third party to resolve the issue without KDL as an intermediary. To our knowledge, this third party utility has not taken any adverse action against Windstream or any of its affiliates (including KDL) as a result of the disputed, unpaid invoices.

27. CMN's pole attachment needs are substantially similar to KIH's needs addressed by the terms of the KIH Amendment. Windstream was willing to enter into an agreement with the KIH only as long as KIH is a CLEC or a "telecommunications carrier" as defined in the Communications Act of 1934, just like CMN<sup>12</sup>. Even if KIH and CMN were not both CLECs or "telecommunications carriers", CMN and KIH pole attachment requirements place the same burdens and obligations on Windstream in that both (i) are prospective attachers to Windstream's poles, (ii) seek to deploy high speed broadband in the Commonwealth of Kentucky, and (iii) need to attach to Windstream's poles more quickly than the 300 Pole Restriction allows.

### **PRAYER FOR EXPEDITED CONSIDERATION AND RELIEF**

WHEREFORE, CMN requests that the Commission grant expedited consideration and relief as follows:

- (1) Find Windstream's imposition of a 300 Pole Restriction not set forth in its Tariff in violation of KRS 278.160 and 807 KAR 5:011;
- (2) Find Windstream's offering of services to CMN subject to the 300 Pole Restriction and without reasonable application, survey and make ready processing time frames is unreasonable, insufficient and inadequate;
- (3) Find Windstream's refusal to process CMN pole applications under the terms and conditions granted to KIH as unreasonably prejudicial and disadvantageous;

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<sup>12</sup> Section 2(b) of the Pole Attachment License Agreement between Windstream and KIH dated July 7, 2016, provides in relevant part, "The parties acknowledge that [Windstream] is entering into this Agreement because [KIH] has represented it is a competitive local exchange carrier ("CLEC") or a "telecommunications carrier" as are defined in the Communications Act of 1934, as amended (hereinafter the "Communications Act") and desires to provide telecommunications service ("Services") as defined in the Communications Act; and that [KIH] is authorized to provide these Services under its franchise or other lawful authority within its service area where [Windstream] owns Poles. In the event [KIH] no longer has the status as a "telecommunications carrier" or "CLEC" or the authority to offer these Services in the state where the Poles are located, [Windstream] shall have the right to terminate this Agreement and require [KIH] to remove all of its facilities from [Windstream's] Poles."

- (4) Order Windstream to (i) process pole applications in accordance with standards established by the FCC and grant CMN the remedies afforded by federal regulation, (ii) process pole applications in accordance with procedures similar to ones set forth in the KU High Volume Pole Attachment Application Plan, or (iii) allow CMN to utilize the process granted by Windstream to KIH.

Respectfully submitted,

---

Katherine K. Yunker

[kyunker@mmlk.com](mailto:kyunker@mmlk.com)

McBrayer, McGinnis, Leslie & Kirkland PLLC

201 East Main Street; Suite 900

Lexington, KY 40507-1310

859-231-8780, ext. 137

*Attorney for CMN-RUS, Inc.*



**Date:** 5/11/2018 9:21:47 AM  
**Sent:** 5/11/2018 9:21:34 AM  
**Subject:** Windstream Approved Applications  
**From:** Hays, Sarah K <Sarah.K.Hays@windstream.com>  
**To:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>;  
**CC:** Edwards, Kimberly <Kimberly.Edwards@windstream.com>; Addison Burk  
<Addison.Burk@metronetinc.com>; Nicole Sugg <Nicole.Sugg@metronetinc.com>;

---

Lauren,

Good morning. I have heard back from our engineer and the following 14 applications that total 334 poles have been approved w/ make ready . We will have the make ready estimates to you in 14 days.

LX132-01W
LX135-01W
LX135-02W
LX135-03W
LX135-04W
LX-FR02-01W
LX-FR02-02W
LX-FR02-03W
LX-FR04-05BiW
LX167-01W
LX167-02W
LX167-03W
LX167-04W
LX167-05W

Let me know if you have any questions or concerns.

Thank you,

**Sarah Hays**

**Analyst II – Engineering Support | Windstream**

11101 Anderson Drive, Suite 100 | Little Rock, AR 72212

[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)

o: 501.748.5864 | f: 330.486.3600

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**Date:** 5/11/2018 12:09:39 PM  
**Sent:** 5/11/2018 12:09:27 PM  
**Subject:** RE: CMN vs. Windstream  
**From:** King, Daniel <Daniel.King@windstream.com>  
**To:** Anita Larson <Anita.Larson@metronetinc.com>;

---

Anita:

I wanted to let you know that I have circulated the proposed complaint internally, and we had a meeting this morning to discuss. We would like to have an opportunity to provide our general responses to MetroNet before the complaint is filed. Could MetroNet give us until the end of business Wednesday to get a written response to you? Then you would be free to file the complaint whenever MetroNet sees fit.

Dan

**Daniel J. King**  
**Senior Counsel – Commercial Contracts Team | Windstream**  
3701 Communications Way | Evansville, IN 47715  
[Daniel.King@windstream.com](mailto:Daniel.King@windstream.com) | windstream.com  
o: 812.759.7973 | m: 812.480.4786

**From:** Anita Larson [mailto:[Anita.Larson@metronetinc.com](mailto:Anita.Larson@metronetinc.com)]  
**Sent:** Thursday, May 10, 2018 4:27 PM  
**To:** King, Daniel <Daniel.King@windstream.com>  
**Subject:** CMN vs. Windstream

Dan: MetroNet's construction is being significantly restrained by Windstream's unwillingness to process applications on a timely basis. We have worked (and continue to work) to get the Duke invoice resolved, but in the meantime, we don't feel that it is reasonable to slow down the attachment process on that basis or any other basis. As a matter of courtesy, I want to share a draft of the complaint that we intend to file with the KY PSC.

I am traveling today and tomorrow. I will be back in the office on Monday if you would like to discuss this.

Thanks,  
Anita

*Anita Larson*  
*Vice President and Senior Counsel*  
8837 Bond Street  
Overland Park, KS 66214  
Email: [anita.larson@metronetinc.com](mailto:anita.larson@metronetinc.com)  
(o): 812.213.1095  
(m): 785.331.7296

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Date: 5/22/2018 4:51:36 PM  
Sent: 5/22/2018 4:51:15 PM  
Subject: RE: Metronet Applications  
From: Hays, Sarah K <Sarah.K.Hays@windstream.com>  
To: Addison Burk <Addison.Burk@metronetinc.com>;  
CC: Lauren Sandefur <Lauren.Sandefur@metronetinc.com>; Nicole Sugg <Nicole.Sugg@metronetinc.com>;

Addison,

We communicated with MetroNet that since the initial batch of applications from MetroNet included 375 poles, the engineer would need 60 days to respond since this was 75 poles over the 300 poles for the rolling 30 calendar days and then the 14 days for make ready response.

There are three applications that we are waiting to respond to, and I have contacted the engineer and have still not heard a response back. It looks like she's been in meetings since lunch.

I will check with her in the morning to see if she has an update.

Thank you,

**Sarah Hays\***

**Analyst II – Engineering Support | Windstream**  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)  
o: 501.748.5864 | f: 330.486.3600

**From:** Addison Burk [mailto:Addison.Burk@metronetinc.com]  
**Sent:** Tuesday, May 22, 2018 1:12 PM  
**To:** Hays, Sarah K <Sarah.K.Hays@windstream.com>  
**Cc:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>; Nicole Sugg <Nicole.Sugg@metronetinc.com>  
**Subject:** RE: Metronet Applications

Hey Sarah,

Thank you very much for the information. According to FCC guidelines, there is 45 days to survey and an additional 14 days for a make ready response. All applications in question are past 60 days for both survey and make ready with no progress or response. With the restrictions of only being able to submit 300 poles a month, there is a strong emphasis and focus on those applications outstanding with Windstream. I want to ensure that we are in good communication and standings with Windstream during this process but at the same time processing applications within FCC guidelines.

I greatly appreciate your willingness to help and the open line of communication you have provided. My fear is going forward this could potentially be an issue for both sides regarding timelines. If there is anything we can do to contribute in this process, let me know. Feel free to reach out with any questions or concerns.

Thank you,

Addison Burk  
Permitting Supervisor

**From:** Hays, Sarah K <Sarah.K.Hays@windstream.com>  
**Sent:** Tuesday, May 22, 2018 12:02 PM  
**To:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>  
**Subject:** RE: Metronet Applications

Lauren,

I attached the email that I sent on 05/11 with the update on 14 of these applications where they were approved w/ make ready. I have contacted the engineer for the other three, see highlighted below.

We have 14 days after our approval to send the make ready estimates.

Let me know if you have any questions.

Thank you,

**Sarah Hays**  
Analyst II – Engineering Support | Windstream  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)  
o: 501.748.5864 | f: 330.486.3600

**From:** Lauren Sandefur [mailto:Lauren.Sandefur@metronetinc.com]  
**Sent:** Tuesday, May 22, 2018 11:20 AM  
**To:** Hays, Sarah K <Sarah.K.Hays@windstream.com>  
**Subject:** Metronet Applications

Windstream Application	Poles	Submittal Date	Days Since Submittal
LX135-01W	25	3/15/2018	68
LX132-01W	25	3/14/2018	69
LX135-03W	25	3/17/2018	66
LX135-04W	25	3/17/2018	66
LX135-05W	25	3/17/2018	66
LX135-06W	3	3/17/2018	66
LX-FR02-04W	10	3/17/2018	66
LX-FR02-03W	25	3/17/2018	66
LX-FR02-01W	25	3/17/2018	66
LX-FR02-02W	25	3/17/2018	66
LX135-02W	25	3/19/2018	64
LX-FR04-05BiW	12	3/19/2018	64
LCP-LX167-01W	25	3/19/2018	64
LCP-LX167-02W	25	3/19/2018	64
LCP-LX167-03W	25	3/19/2018	64
LCP-LX167-04W	25	3/19/2018	64
LCP-LX167-05W	22	3/19/2018	64

---

Good Morning Sarah,  
Here is the first batch of applications that we are waiting to hear back on.  
Please let me know if you need any more information.  
Thank you!

**Lauren Sandefur**  
Metronet | Permit Specialist  
3701 Communications Way | Evansville, IN 47715  
Office: 812.213.1328  
[www.MetronetInc.com](http://www.MetronetInc.com)

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**Date:** 6/4/2018 3:38:00 PM  
**Sent:** 6/4/2018 3:38:01 PM  
**Subject:** FW: LX135-01 Metronet Application  
**From:** Lauren Sandefur  
**To:** Nicole Sugg <Nicole.Sugg@metronetinc.com>;  
**Attachments:** Application and pole data sheet.xlsx

Here is that email below from Kim stating that it would work.

Lauren Sandefur  
Permit Specialist

**From:** Edwards, Kimberly <Kimberly.Edwards@windstream.com>  
**Sent:** Tuesday, February 13, 2018 9:54 AM  
**To:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>  
**Cc:** Hays, Sarah K <Sarah.K.Hays@windstream.com>  
**Subject:** RE: LX135-01 Metronet Application

Good morning Lauren,

Windstream OSP has reviewed the information you provided and they will accept the Pole Inventory Report in replacement of the Pole Attachment Data Sheets, however they will require a signed standard Windstream Pole Attachment Application form – see attached.

There is a \$75.00 application processing fee – with a maximum of 25 poles/application and a \$50.00 post inspection fee/pole.

Please note: Windstream will accept up to 300/poles per 30 rolling calendar days.

Please let me know of any other questions or concerns.

Thank you,

Kim

**Kimberly Edwards**  
**Manager – Engineering Support | Windstream**  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)  
o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**Evolve your WANosaurus**

**From:** Edwards, Kimberly  
**Sent:** Monday, February 12, 2018 7:07 AM

**To:** 'Lauren Sandefur' <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>

**Subject:** RE: LX135-01 Metronet Application

Good morning Lauren,

The Windstream OSP Managers/Supervisors in the field are currently reviewing the application/inventory report you provided to determine if this is acceptable. Since these are not the Windstream standard forms for pole attachments, I will need their approval to accept.

As soon as they have reviewed and provide their feedback, I will let you know.

Thank you,

Kim

**Kimberly Edwards**

**Manager – Engineering Support | Windstream**

11101 Anderson Drive, Suite 100 | Little Rock, AR 72212

[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)

o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**Evolve your WANosaurus**

**From:** Lauren Sandefur [<mailto:Lauren.Sandefur@metronetinc.com>]

**Sent:** Friday, February 09, 2018 11:12 AM

**To:** Edwards, Kimberly <[Kimberly.Edwards@windstream.com](mailto:Kimberly.Edwards@windstream.com)>

**Subject:** RE: LX135-01 Metronet Application

Good Morning Kim,

Per my conversation yesterday with Brandie, she was reviewing our application to see if this would be ok to submit.

If you have a chance to review it today that would be great, I just need an update for Monday morning.

Thanks!

**Lauren Sandefur**

Permit Specialist

**From:** Lauren Sandefur

**Sent:** Thursday, February 8, 2018 10:43 AM

**To:** 'Brandie.Mcgehee@windstream.com' <[Brandie.Mcgehee@windstream.com](mailto:Brandie.Mcgehee@windstream.com)>

**Subject:** LX135-01 Metronet Application

Good Morning Brandie,

Attached are the files for LX135-01, please let me know if these will work for you.

When applying we have to apply under the name 'CMN-RUS, Inc'.

There is a LX135-02 that will be submitted once we get this one figured out.

Thank you!

**Lauren Sandefur**

Metronet | Permit Specialist

3701 Communications Way | Evansville, IN 47715

Office: 812.213.1328

[www.MetronetInc.com](http://www.MetronetInc.com)

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NOTE TO ALL FIRMS: IF YOU CHOOSE NOT TO PROCEED WITH THE APPLICATION - YOU WILL BE  
BILLED FOR WINDSTREAM'S ENGINEERING TIME. THERE ARE NO EXCEPTIONS TO THIS POLICY!!!!

EXHIBIT B  
Windstream CORPORATION  
APPLICATION FOR POLE LICENSE

PROPOSAL #:  
Submit in Duplicate

Name of Firm Applying: \_\_\_\_\_ Contact Name, Phone # \_\_\_\_\_  
Street Address, City, ST, ZIP of Firm Applying \_\_\_\_\_ EMAIL ADDRESS \_\_\_\_\_  
Authorized Signature & Date: \_\_\_\_\_

By this application & signature, my firm is agreeing to pay all engineering fees associated with this application if my firm chooses NOT to proceed with the project. If we choose to proceed all <b>ESTIMATED</b> fees, including engineering & makeready <b>MUST BE PAID IN FULL UP FRONT.</b> NON PAYMENT OF FEES WILL RESULT IN ALL FUTURE APPLICATIONS BEING PLACED ON HOLD <i>NOTE: Final costs will be determined by actual time &amp; material required to do the make-ready work. Any difference in charges will be billed accordingly.</i>												
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	
Licensee to complete	Licensee to complete	Licensee to complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Windstream to Complete	Windstream To Complete	Windstream To Complete	
Windstream Lead & Structure No. (Pole No.)	Power Pole No.	Location: Street, City, Township, Zip Code	Height, Class, Ownership of Pole	Hgt of highest Tel Cable	Hgt of highest Tel Drop	Hgt of lowest Power Cable	Hgt of other attachmts on pole	# & type of Attachmts	Height Licensee to attach at	Licenser Work Description	Bill for Rent Y or N	
1												
2												
3												
4												
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21												
22												
23												
24												
25												
ESTIMATED TOTAL COSTS												
PLEASE ATTACH DRAWINGS TO THIS APPLICATION - IT WILL NOT BE PROCESSED WITHOUT THEM												

Submit to: Windstream.JointUse@Windstream.com.  
Windstream OSP Construction Manager/Engineer Authorized Signature & Date: \_\_\_\_\_

**Windstream Pole Attachment Data Sheet**  
EXHIBIT B - PART II

WINDSTREAM POLE NUMBER		POWER POLE NUMBER																										
STREET LOCATION		NAME OF ATTACHER																										
CITY/BORO/TOWNSHIP		DATE	FIELD PERSONNEL NAME																									
ATTACHMENT TYPE <input type="checkbox"/> Cable <input type="checkbox"/> Power Supply <input type="checkbox"/> Service Drop <input type="checkbox"/> Overhead Guy																												
POLE SIZE	TRANSFORMER/DEVICE ON POLE <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT      TOP OF CONDUIT RISER HEIGHT																									
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input type="checkbox"/> No; If yes ➡ <input type="checkbox"/> Primary <input type="checkbox"/> Secondary																										
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="2" style="width:15%; text-align: center;"><b>MAKE READY WORK</b></td> <td style="width:15%;">REQUIRED <input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td colspan="2" style="width:70%;">IF YES, PROVIDE ADDITIONAL DETAIL</td> </tr> </table>				<b>MAKE READY WORK</b>	REQUIRED <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, PROVIDE ADDITIONAL DETAIL																						
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	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="4" style="width:15%; text-align: center; vertical-align: middle;"><b>POLE DRAWING</b></td> <td style="width:15%;">POLE NO. ➡</td> <td style="width:15%;">BEFORE</td> <td style="width:15%;">AFTER</td> </tr> <tr> <td>*TYPE OF POWER ATTACHMENT ➡</td> <td colspan="2"> <input type="checkbox"/> Neutral      <input type="checkbox"/> Secondary         </td> </tr> <tr> <td colspan="3"> <div style="display: flex; align-items: flex-start;"> <div style="flex: 1;"> <p>Company Name</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> </div> <div style="flex: 2; text-align: center;"> </div> </div> </td> </tr> <tr> <td colspan="3"> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%; text-align: center;"><b>SPAN</b></td> <td style="width:15%;">MID-SPAN HEIGHT Ft.</td> <td colspan="2" style="width:70%;">SPAN CROSSES OVER (Check all that apply)</td> </tr> <tr> <td></td> <td></td> <td colspan="2"> <input type="checkbox"/> Body of Water    <input type="checkbox"/> Street    <input type="checkbox"/> Driveway    <input type="checkbox"/> Field    <input type="checkbox"/> Interstate  <input type="checkbox"/> Swimming Pool    <input type="checkbox"/> Building    <input type="checkbox"/> Railroad    <input type="checkbox"/> Yard    <input type="checkbox"/> Parking Lot         </td> </tr> </table> </td> </tr> <tr> <td colspan="4" style="height: 50px; vertical-align: top;">NOTE</td> </tr> </table>				<b>POLE DRAWING</b>	POLE NO. ➡	BEFORE	AFTER	*TYPE OF POWER ATTACHMENT ➡	<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary		<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;"> <p>Company Name</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> </div> <div style="flex: 2; text-align: center;"> </div> </div>			<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%; text-align: center;"><b>SPAN</b></td> <td style="width:15%;">MID-SPAN HEIGHT Ft.</td> <td colspan="2" style="width:70%;">SPAN CROSSES OVER (Check all that apply)</td> </tr> <tr> <td></td> <td></td> <td colspan="2"> <input type="checkbox"/> Body of Water    <input type="checkbox"/> Street    <input type="checkbox"/> Driveway    <input type="checkbox"/> Field    <input type="checkbox"/> Interstate  <input type="checkbox"/> Swimming Pool    <input type="checkbox"/> Building    <input type="checkbox"/> Railroad    <input type="checkbox"/> Yard    <input type="checkbox"/> Parking Lot         </td> </tr> </table>			<b>SPAN</b>	MID-SPAN HEIGHT Ft.	SPAN CROSSES OVER (Check all that apply)				<input type="checkbox"/> Body of Water <input type="checkbox"/> Street <input type="checkbox"/> Driveway <input type="checkbox"/> Field <input type="checkbox"/> Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input type="checkbox"/> Yard <input type="checkbox"/> Parking Lot		NOTE		
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		<input type="checkbox"/> Body of Water <input type="checkbox"/> Street <input type="checkbox"/> Driveway <input type="checkbox"/> Field <input type="checkbox"/> Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input type="checkbox"/> Yard <input type="checkbox"/> Parking Lot																										
NOTE																												

Date: 6/11/2018 3:40:57 PM

Sent: 6/11/2018 3:40:31 PM

Subject: RE: Windstream Make Ready

From: Edwards, Kimberly <Kimberly.Edwards@windstream.com>

To: Nicole Sugg <Nicole.Sugg@metronetinc.com>;

Hays, Sarah K <Sarah.K.Hays@windstream.com>; Mcgehee, Brandie

CC: <Brandie.Mcgehee@windstream.com>; Rucker, Jamie <Jamie.Rucker@windstream.com>;

Lloyd, James <James.Lloyd@windstream.com>; Permits <Permits@metronetinc.com>;

Pizzo, Amanda <Amanda.Pizzo@windstream.com>;

Nicole,

Windstream respectfully declines the offer from MetroNet to take care of the make ready work required on Windstream owned poles. We will continue to work with our contractors to complete the make ready required for approved MetroNet pole attachment applications.

Please let me know of any other questions or concerns.

Thank you,

Kim

**Kimberly Edwards**

**Manager – Engineering Support | Windstream**

11101 Anderson Drive, Suite 100 | Little Rock, AR 72212

[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com) | [windstreambusiness.com](http://windstreambusiness.com)

o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

Evolve your WANosaurus

**From:** Nicole Sugg [mailto:Nicole.Sugg@metronetinc.com]

**Sent:** Thursday, June 07, 2018 10:08 AM

**To:** Edwards, Kimberly <Kimberly.Edwards@windstream.com>

**Cc:** Hays, Sarah K <Sarah.K.Hays@windstream.com>; Mcgehee, Brandie

<Brandie.Mcgehee@windstream.com>; Rucker, Jamie <Jamie.Rucker@windstream.com>; Lloyd, James

<James.Lloyd@windstream.com>; Permits <Permits@metronetinc.com>; Pizzo, Amanda

<Amanda.Pizzo@windstream.com>

**Subject:** RE: Windstream Make Ready

Thank you Kim!

Who would I need to contact if I want to discuss taking the burden of dealing with the electrical make ready off of Windstream's plate? With KU, once they approve our applications, we are responsible for hiring an approved contractor chosen by them and completing the necessary work.

I am interested in discussing with the appropriate party the opportunity for us to take care of the make ready work for our applications we put in to you also.

Nicole Sugg

OSP Field Construction Process Manager

**From:** Edwards, Kimberly [<mailto:Kimberly.Edwards@windstream.com>]

**Sent:** Wednesday, June 6, 2018 1:18 PM

**To:** Nicole Sugg <[Nicole.Sugg@metronetinc.com](mailto:Nicole.Sugg@metronetinc.com)>

**Cc:** Hays, Sarah K <[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>; Mcgehee, Brandie <[Brandie.Mcgehee@windstream.com](mailto:Brandie.Mcgehee@windstream.com)>; Rucker, Jamie <[Jamie.Rucker@windstream.com](mailto:Jamie.Rucker@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; Permits <[Permits@metronetinc.com](mailto:Permits@metronetinc.com)>; Pizzo, Amanda <[Amanda.Pizzo@windstream.com](mailto:Amanda.Pizzo@windstream.com)>

**Subject:** RE: Windstream Make Ready

Hello Nicole,

I will get with the Poles Team and the field regarding the make ready invoice breakdown or list of average costs per move. More to come on this.

Thank you,

Kim

**Kimberly Edwards**

Manager – Engineering Support | Windstream

11101 Anderson Drive, Suite 100 | Little Rock, AR 72212

[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com) | [windstreambusiness.com](mailto:windstreambusiness.com)

o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

Evolve your WANosaurus

**From:** Nicole Sugg [<mailto:Nicole.Sugg@metronetinc.com>]

**Sent:** Tuesday, June 05, 2018 4:24 PM

**To:** Edwards, Kimberly <[Kimberly.Edwards@windstream.com](mailto:Kimberly.Edwards@windstream.com)>

**Cc:** Hays, Sarah K <[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>; Mcgehee, Brandie <[Brandie.Mcgehee@windstream.com](mailto:Brandie.Mcgehee@windstream.com)>; Rucker, Jamie <[Jamie.Rucker@windstream.com](mailto:Jamie.Rucker@windstream.com)>; Lloyd, James <[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>; Permits <[Permits@metronetinc.com](mailto:Permits@metronetinc.com)>

**Subject:** RE: Windstream Make Ready

Kim,

Thank you so much for the below. I think this is going to help us immensely moving forward.

Only question I have is in regards to the Make Ready Recommendations. We received invoices but with no attachments itemizing what moves we would be paying for. Can you help me out with understanding that portion of the process?

I can't let my people approve an invoice if we don't know exactly what make ready needs to happen in Windstream's opinion. What would maybe help if you can't give us the breakdown for the invoice is if you can supply my Make Ready Engineer with a list of average costs per move etc. Is that a possibility?

Thanks again,

Nicole Sugg

OSP Field Construction Process Manager

**From:** Edwards, Kimberly [<mailto:Kimberly.Edwards@windstream.com>]

**Sent:** Monday, June 4, 2018 4:10 PM

**To:** Nicole Sugg <[Nicole.Sugg@metronetinc.com](mailto:Nicole.Sugg@metronetinc.com)>

**Cc:** Hays, Sarah K <[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>; McGehee, Brandie

<[Brandie.McGehee@windstream.com](mailto:Brandie.McGehee@windstream.com)>; Rucker, Jamie <[Jamie.Rucker@windstream.com](mailto:Jamie.Rucker@windstream.com)>; Lloyd, James

<[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>

**Subject:** FW: Windstream Make Ready

Good afternoon Nicole,

We met with the OSP Manager for Lexington, KY regarding the status of the initial applications received from MetroNet as well as to review the process in the field for processing the applications.

We have three packets (total of 75 poles) in which we are currently preparing the make ready invoices. These should be sent to MetroNet either late this afternoon or early morning tomorrow. We are also expecting the make ready estimates on 4 more packets for an additional 100 poles by the end of this week. The progress on the initial applications has been delayed slightly due to another large pole attachment project in the Lexington, KY area, however resources have been reallocated to mitigate additional delays.

The process in the field for the MetroNet applications is as follows:

- \*OSP receives the accepted pole attachment application packets from the Windstream Permitting Team
- \*OSP reviews each of the packets to determine what Windstream exchanges are impacted and to how many poles are impacted per exchange, they review the
- \*OSP send the application, print, exchange information to the engineering contractor
- \*The engineering contractor completes the field survey work for each application and create an OSP job for any applicable make ready work required
- \*The OSP Manager reviews the job and provides approval
- \*Once the job is fully approved the estimated make ready costs are sent to the Windstream Poles Team
- \*The Poles Team prepares a make ready invoice and sends to MetroNet
- \*Once confirmation of payment is received from the Windstream Poles Team – the field distributes the job and the make ready work is scheduled with the contractor.

We have asked the OSP Manager to join the bi-weekly MetroNet KY calls going forward to assist with any questions you may have for OSP Engineering regarding current status.

Please let me know of any questions or concerns.

Thank you,

Kim

**Kimberly Edwards**

**Manager – Engineering Support | Windstream**

[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com)

o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

**From:** Edwards, Kimberly

**Sent:** Friday, June 01, 2018 7:23 AM

**To:** [Nicole.Sugg@metronetinc.com](mailto:Nicole.Sugg@metronetinc.com)

**Cc:** McGehee, Brandie <[Brandie.McGehee@windstream.com](mailto:Brandie.McGehee@windstream.com)>; Hays, Sarah K

<[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>; Rucker, Jamie <[Jamie.Rucker@windstream.com](mailto:Jamie.Rucker@windstream.com)>; Lloyd, James

<[James.Lloyd@windstream.com](mailto:James.Lloyd@windstream.com)>

**Subject:** Windstream Make Ready

Good morning Nicole,

We have an internal meeting scheduled for Monday - 06/04/2018 to discuss the MetroNet KY applications received and the current status.

I will provide you an update, after this internal meeting, including additional information on the process the field is utilizing for working the applications to complete the make ready estimates and point of contact information for Windstream OSP personnel.

Please let me know of any questions or concerns.

Thank you,

Kim

**Kimberly Edwards**

**Manager – Engineering Support | Windstream**

[Kimberly.edwards@windstream.com](mailto:Kimberly.edwards@windstream.com)

o: 501.748.3691 | m: 501.514.1390 | f: 330.425.0642

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Date: 6/20/2018 2:15:12 PM  
Sent: 6/20/2018 2:14:43 PM  
Subject: RE: LX-FR07-02-02W Pole Application//Rejected  
From: Windstream Jointuse <Windstream.Jointuse@windstream.com>  
To: Lauren Sandefur <Lauren.Sandefur@metronetinc.com>;  
CC: Permits <Permits@metronetinc.com>; Hays, Sarah K <Sarah.K.Hays@windstream.com>;  
Sanders, Ashley L <Ashley.L.Sanders@windstream.com>;  
Lauren,

This application has been rejected. At this time Windstream has received 300 poles for the month of June from MetroNet. Let me know if you have any questions or concerns.

Thank you,

**Felicia( Nicole )Hodges**  
Coordinator - Engineering Support | Windstream  
11101 Anderson Dr. Ste. 100 | Little Rock, AR 72212  
[Felicia.N.Hodges@Windstream.com](mailto:Felicia.N.Hodges@Windstream.com)  
o: 501.748.4743 | f: 330.425.0850

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Make the most of your WAN with SD-WAN. See how.

**From:** Lauren Sandefur [mailto:[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)]  
**Sent:** Wednesday, June 20, 2018 10:45 AM  
**To:** Windstream Jointuse <Windstream.Jointuse@windstream.com>  
**Cc:** Permits <Permits@metronetinc.com>  
**Subject:** LX-FR07-02-02W Pole Application

Good Afternoon,  
Please see attached for proposal titled LX-FR07-02-02W Pole Application. This is a proposal for Windstream poles. Let me know if you have any questions or need anything else.  
Thank you

**Lauren Sandefur**  
Metronet | Permit Specialist  
3701 Communications Way | Evansville, IN 47715  
Office: 812.213.1328  
[www.MetronetInc.com](http://www.MetronetInc.com)

**METRONET**

Date: 8/6/2018 10:44:44 AM  
Sent: 8/6/2018 10:44:16 AM  
Subject: RE: Metronet - LX Applications  
From: Hays, Sarah K <Sarah.K.Hays@windstream.com>  
To: Lauren Sandefur <Lauren.Sandefur@metronetinc.com>; Hodges, Felicia N <Felicia.N.Hodges@windstream.com>;

Good morning, Lauren!

I heard from Ashley over the weekend and she said she has gotten a lot of applications back from our contractor and will be sending those out this week.

Thank you,

**Sarah Hays**

Analyst II – Engineering Support | Windstream  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)  
o: 501.748.5864 | f: 330.486.3600

**From:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>  
**Sent:** Monday, August 6, 2018 8:37 AM  
**To:** Hays, Sarah K <Sarah.K.Hays@windstream.com>; Hodges, Felicia N <Felicia.N.Hodges@windstream.com>  
**Subject:** Metronet - LX Applications

Good Morning,  
I hope you all had a good weekend!  
I am just following up on a few applications that are at 60 days since submittal.

LX-FR07-06W
LX-FR07-07W
LX-FR07-08W
LX-FR07-09W
LX-FR07-10W
LX-FR07-11W
LX-FR07-12W
LX-FR07-13W

Thank you!

**Lauren Sandefur**  
Metronet | Permit Specialist  
3701 Communications Way | Evansville, IN 47715  
Office: 812.213.1328  
[www.MetronetInc.com](http://www.MetronetInc.com)





**METRONET.**

Date: 8/13/2018 4:06:15 PM  
Sent: 8/13/2018 4:05:51 PM  
Subject: RE: Windstream Tracking Sheet  
From: Sanders, Ashley L <Ashley.L.Sanders@windstream.com>  
Lauren Sandefur <Lauren.Sandefur@metronetinc.com>; Hays, Sarah K  
To: <Sarah.K.Hays@windstream.com>; Hodges, Felicia N  
<Felicia.N.Hodges@windstream.com>;

As of this morning, I have sent all of these exhibit b's back to Sarah and WS Poles, nothing further on my end.

LX-FR07-06W  
LX-FR07-09W  
LX-FR07-10W  
LX-FR07-11W  
LX-FR07-12W  
LX-FR07-13W  
LX-FR03-02W

These will be done on my end this week and exhibit b will be sent back to Sarah and WS Poles.

LX-Winchester Reroute-01W  
LX-FR07-14W  
LX-FR07-15W

Thanks,

**Ashley L. Sanders**  
**Manager OSP Engineering - KY | Windstream**  
130 W New Circle Rd, Ste 170, Lexington, KY 40505  
[ashley.l.sanders@windstream.com](mailto:ashley.l.sanders@windstream.com)  
office: 859.357.6206 | fax: 859.357.6203

**From:** Lauren Sandefur <Lauren.Sandefur@metronetinc.com>  
**Sent:** Monday, August 13, 2018 3:59 PM  
**To:** Hays, Sarah K <Sarah.K.Hays@windstream.com>; Hodges, Felicia N <Felicia.N.Hodges@windstream.com>; Sanders, Ashley L <Ashley.L.Sanders@windstream.com>  
**Subject:** RE: Windstream Tracking Sheet

Good Afternoon,

I just wanted to follow up that the remaining applications have not been sent back to me.

I have received the following applications:

LX-FR03-02  
LX-FR07-09  
LX-FR07-13

Thanks!

**Lauren Sandefur**  
Permit Specialist

**From:** Hays, Sarah K <[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>  
**Sent:** Thursday, August 9, 2018 12:00 PM  
**To:** Lauren Sandefur <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>; Hodges, Felicia N <[Felicia.N.Hodges@windstream.com](mailto:Felicia.N.Hodges@windstream.com)>; Sanders, Ashley L <[Ashley.L.Sanders@windstream.com](mailto:Ashley.L.Sanders@windstream.com)>  
**Subject:** RE: Windstream Tracking Sheet

Lauren,

Here is your spreadsheet updated with Ashley's notes. The ones in red you should receive by the end of the week. The ones in black will be in her next batch. Thanks!

LX-FR07-06W	25	6/6/2018		64	Will receive
LX-FR07-09W	25	6/6/2018		64	Will receive
LX-FR07-10W	25	6/6/2018		64	Will receive
LX-FR07-11W	25	6/6/2018		64	Next batch
LX-FR07-12W	25	6/6/2018		64	Next batch
LX-FR07-13W	19	6/7/2018		63	Will receive
LX-FR03-02W	4	6/18/2018		52	Will receive
LX-Winchester Reroute-01W	10	6/18/2018		52	Next batch
LX-FR07-14W	25	6/19/2018		51	Next batch
LX-FR07-15W	9	6/19/2018		51	Next batch

**Sarah Hays**  
Analyst II – Engineering Support | Windstream  
11101 Anderson Drive, Suite 100 | Little Rock, AR 72212  
[sarah.k.hays@windstream.com](mailto:sarah.k.hays@windstream.com)  
o: 501.748.5864 | f: 330.486.3600

**From:** Lauren Sandefur <[Lauren.Sandefur@metronetinc.com](mailto:Lauren.Sandefur@metronetinc.com)>  
**Sent:** Thursday, August 9, 2018 10:52 AM  
**To:** Hays, Sarah K <[Sarah.K.Hays@windstream.com](mailto:Sarah.K.Hays@windstream.com)>; Hodges, Felicia N <[Felicia.N.Hodges@windstream.com](mailto:Felicia.N.Hodges@windstream.com)>; Sanders, Ashley L <[Ashley.L.Sanders@windstream.com](mailto:Ashley.L.Sanders@windstream.com)>  
**Subject:** Windstream Tracking Sheet

Good Morning,  
I just wanted to send this out before our call today regarding the applications that are outstanding.  
Thanks!

**Lauren Sandefur**  
Metronet | Permit Specialist  
3701 Communications Way | Evansville, IN 47715  
Office: 812.213.1328  
[www.MetronetInc.com](http://www.MetronetInc.com)

**METRONET.**

### Request

17. State whether CMN is currently submitting applications for pole attachments to Windstream East and, if so:

- a. Identify how many applications for pole attachments have been submitted during each month since CMN first submitted applications and the number of applications that have been processed as of the date of this request;
  - b. Describe the rate at which Windstream East has processed the applications each month;
  - c. State whether make-ready work has been completed for any of the poles for which applications have been filed;
  - d. Describe the process by which, and the rate at which make-ready work is being completed;
  - e. Describe how costs are being allocated between all parties involved.
- 

### Response

Yes, CMN is currently submitting applications for pole attachments to Windstream East.

- a. *See attached spreadsheet (CMN 000181-82).*
- b. *See attached spreadsheet (CMN 000181-82).*
- c. Yes, make ready has been completed on some of the poles for which applications have been filed.
- d. Windstream performs make ready work on Windstream poles. The make ready process and completion time frames are controlled by Windstream.
- e. CMN pays Windstream the following charges:
  - A fee of \$75.00 per application (the number of poles per application cannot exceed 25), *plus*
  - \$50.00 per pole, *plus*

- make ready charges, *plus*
- annual per pole rent of \$12.12 for 2-user pole and \$5.64 per 3-user pole.

See two (2) examples of Windstream make-ready invoices attached to this response (CMN 00183-84).

## LX Windstream Tracking Sheet

8/22/18 date used for <i>days since submittal</i> calculation							
Windstream Application	Poles	Submittal Date	Approved Date	Days to Approve	Days Since Submittal	45 Day Target	60 Day Target
LX135-01W	25	3/13/18	6/6/18	85			
LX132-01W	25	3/14/18	6/6/18	84			
LX135-04W	25	3/17/18	6/14/18	89			
LX135-05W	25	3/17/18	6/15/18	90			
LX135-03W	25	3/18/18	6/14/18	88			
LX135-06W	3	3/18/18	6/15/18	89			
LX-FR02-01W	25	3/18/18	6/15/18	89			
LX-FR02-02W	25	3/18/18	6/15/18	89			
LX-FR02-03W	25	3/18/18	6/15/18	89			
LX-FR02-04W	10	3/18/18	6/15/18	89			
LX135-02W	25	3/19/18	6/6/18	79			
LX167-03W	25	3/19/18	6/18/18	91			
LX167-04W	25	3/19/18	6/18/18	91			
LX167-05W	22	3/19/18	6/19/18	92			
LX-FR04-05BiW	12	3/19/18	6/15/18	88			
LX167-01W	25	4/19/18	6/29/18	71			
LX167-02W	25	4/19/18	6/29/18	71			
LX151-01W	1	4/19/18	6/13/18	55			
LX159-01W	2	4/19/18	6/19/18	61			
LX166-01W	1	4/19/18	6/20/18	62			
LX276-01W	6	4/19/18	6/21/18	63			
LX-FR01-03W	5	4/19/18	6/13/18	55			
LX-FR07-01W	25	4/19/18	6/21/18	63			
LX009-01W	20	4/23/18	6/21/18	59			
LX049-01W	25	4/23/18	6/21/18	59			
LX-FR07-04W	18	4/26/18	6/21/18	56			
LX047-01W	3	4/30/18	6/21/18	52			
LX053-01W	25	4/30/18	6/28/18	59			
LX064-01W	25	4/30/18	6/13/18	44			
LX-FR05-09W	18	4/30/18	6/28/18	59			
LX-FR07-03W	1	4/30/18	6/13/18	44			
LX049-03W	25	5/22/18	6/28/18	37			
LX059-01W	3	5/23/18	7/12/18	50			
LX221-01W	7	5/23/18	6/28/18	36			
LX-FR09-01W	13	5/23/18	6/28/18	36			
LX-FR10-01W	2	5/23/18	6/28/18	36			
LX-FR11-01W	1	5/23/18	6/18/18	26			
LX-FR11-02W	3	5/23/18	6/28/18	36			
LX025-01W	13	6/4/18	7/3/18	29			
LX-FR05-11W	21	6/6/18	7/3/18	27			
LX-FR07-05W	25	6/6/18	7/20/18	44			
LX-FR07-06W	25	6/6/18	8/13/18	68			
LX-FR07-07W	25	6/6/18	7/3/18	27			
LX-FR07-08W	25	6/6/18	7/3/18	27			
LX-FR07-09W	25	6/6/18	8/10/18	65			
LX-FR07-10W	25	6/6/18	8/13/18	68			

**LX Windstream Tracking Sheet**

8/22/18 date used for <i>days since submittal</i> calculation							
LX-FR07-11W	25	6/6/18	8/13/18	68			
LX-FR07-12W	25	6/6/18	8/13/18	68			
LX-FR07-13W	19	6/7/18	8/9/18	63			
LX165-01W	10	6/11/18	7/18/18	37			
LX-FR03-02W	4	6/18/18	8/9/18	52			
LX-Winchester Reroute-01W	10	6/18/18	8/17/18	60			
LX-FR07-14W	25	6/19/18	8/17/18	59			
LX-FR07-15W	9	6/19/18	8/17/18	59			
LX-FR07-02W	18	6/28/18	7/11/18	13			
LX-FR06-02W	25	7/5/18			48	8/19/18	9/3/18
LX-FR06-03W	25	7/5/18			48	8/19/18	9/3/18
LX-FR06-04W	10	7/5/18			48	8/19/18	9/3/18
LX-FR07-17W	23	7/5/18			48	8/19/18	9/3/18
LX-FR07-19W	7	7/5/18			48	8/19/18	9/3/18
LX-FR07-16W	5	7/5/18			48	8/19/18	9/3/18
LX-FR05-05W	25	7/5/18			48	8/19/18	9/3/18
LX-FR05-06W	25	7/5/18			48	8/19/18	9/3/18
LX-FR05-07W	25	7/5/18			48	8/19/18	9/3/18
LX-FR05-08W	24	7/5/18			48	8/19/18	9/3/18
LX-FR05-10W	17	7/5/18			48	8/19/18	9/3/18
LX-FR06-01W	25	7/5/18			48	8/19/18	9/3/18
LX-FR07-18W	7	7/5/18			48	8/19/18	9/3/18
LX-FR08-01W	25	7/5/18			48	8/19/18	9/3/18
LX-FR08-02W	25	7/7/18			46	8/21/18	9/5/18
LX-FR08-01W	25	7/9/18			44	8/23/18	9/7/18
LX-FR08-02W	25	7/11/18			42	8/25/18	9/9/18
LX-FR06-05W	13	7/16/18			37	8/30/18	9/14/18
LX164-01W	4	7/17/18			36	8/31/18	9/15/18
LX159-02W	4	7/17/18			36	8/31/18	9/15/18
LX175-01W	21	8/6/18			16	9/20/18	10/5/18
LX132-02W	17	8/6/18			16	9/20/18	10/5/18
LX158-01W	10	8/6/18			16	9/20/18	10/5/18
LX174-01W	16	8/6/18			16	9/20/18	10/5/18
LX173-01W	17	8/6/18			16	9/20/18	10/5/18
LX166-02W	6	8/6/18			16	9/20/18	10/5/18
LX166-03W	25	8/6/18			16	9/20/18	10/5/18
LX276-02W	17	8/6/18			16	9/20/18	10/5/18
LX101-01W	5	8/6/18			16	9/20/18	10/5/18
LX136-01W	25	8/6/18			16	9/20/18	10/5/18
LX136-02W	13	8/6/18			16	9/20/18	10/5/18
LX134-01W	25	8/7/18			15	9/21/18	10/6/18
LX134-02W	7	8/7/18			15	9/21/18	10/6/18
LX105-01W	25	8/7/18			15	9/21/18	10/6/18
LX105-02W	25	8/7/18			15	9/21/18	10/6/18
LX105-03W	25	8/7/18			15	9/21/18	10/6/18
LX105-04W	7	8/7/18			15	9/21/18	10/6/18
LX103-02W	8	8/9/18			13	9/23/18	10/8/18
LX049-04W	2	8/13/18			9	9/27/18	10/12/18

# Windstream Kentucky East, LLC

P O Box 18317  
Little Rock, AR 72222

## INVOICE

Invoice Number: 6054766

Invoice Date: 08/17/2018

Customer #  
MetroNet

Customer Reference  
219000691-81462

Account Number

Due By  
08/17/2018

Amount Due  
\$2,171.09

Please Make Your Check Payable To:

Windstream Communications, LLC  
Attn: Misc Billing  
P O Box 18317  
Little Rock, AR 72222

MetroNet  
Accounts Payable  
8837 Bond St  
Overland, KS 66214

Invoice Make Ready  
Comment Proposal: LXFR0714W  
Permit: JU-4751  
Location: Allante Brook CT  
  
Engineer: Debbie Sullivan

For questions regarding this invoice, please contact Amanda  
Pizzo at 5017487291  
Email: Amanda.Pizzo@Windstream.com .

*Work / Permit will not begin/released until this invoice is paid in full.  
Construction will commence upon receipt of payment.*

*This is an estimate only, not a contract. Application fee and engineering costs  
are due regardless if make ready accepted.  
This estimate will expire 30 days from date of invoice.*

scription	Amount
LABOR	1978.96
Material	117.14
Permit	75.00
<hr/>	
Total Due	\$2,171.09

Please Return One Copy With Payment

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

KPSC 2018-00157 | CMN 00183



# Windstream Kentucky East, LLC

P O Box 18317  
Little Rock, AR 72222

## INVOICE

Invoice Number: 6054765

Invoice Date: 08/17/2018

Customer #  
MetroNet

Customer Reference  
219000691-81461

Account Number

Due By  
08/17/2018

Amount Due  
\$1,339.22

Please Make Your Check Payable To:

Windstream Communications, LLC  
Attn: Misc Billing  
P O Box 18317  
Little Rock, AR 72222

MetroNet  
Accounts Payable  
8837 Bond St  
Overland, KS 66214

Invoice Make Ready  
Comment Proposal: Winchester Reroute-01W  
Permit: JU-4749  
Location: Thunderstick Dr  
Engineer: Debbie Sullivan

For questions regarding this invoice, please contact Amanda  
Pizzo at 5017487291  
Email: Amanda.Pizzo@Windstream.com .

*Work / Permit will not begin/released until this invoice is paid in full.  
Construction will commence upon receipt of payment.*

*This is an estimate only, not a contract. Application fee and engineering costs  
are due regardless if make ready accepted.  
This estimate will expire 30 days from date of invoice.*

description	Amount
LABOR	1223.07
Material	41.15
Permit	75.00
<hr/>	
Total Due	\$1,339.22

Please Return One Copy With Payment

Please include Invoice Number on your check or money order. Late payment charges will be assessed on any unpaid balance.

KPSC-2018-00157 | CMN 00184