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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

SEP 17 2018

PUBLIC SERVICE
COMMISSION

In the Matter of

CMN-RUS, Inc.

Complainant

v.

Windstream Kentucky East, LLC

Respondent

No. 2018-00157

**Second Set of Discovery Requests from CMN-RUS, Inc.
to Windstream Kentucky East, Inc.**

CMN-RUS, Inc. (“CMN”), herewith submits this Second Set of Discovery Requests to Windstream Kentucky East, LLC (“Windstream”) in accordance with the Commission’s scheduling Order issued August 7, 2018 (the “8/7/18 Order”). For ease of reference to its requests, CMN picks up these second-set discovery requests where the first left off, beginning with Request # 17.

Definitions (the term added in this set is in **bold**):

“Windstream” or “you” means Windstream Kentucky East, LLC.

“Windstream Affiliate” means a partnership, corporation, LLC, trust (including any telecom real estate investment trust or REIT), or other business entity that is (a) a parent company of Windstream, (b) another subsidiary of a parent company of Windstream, (c) under common control with you or your parent, or (d) listed among the scores of “Windstream Companies” for any jurisdiction on the Kinetic website under “Windstream Legal Notices: Windstream Companies Tariffs and Price Lists,” <http://www.tariffs.net/windstream/> (last visited Aug. 10, 2018). For the purposes of this definition, “Windstream affiliate” includes Uniti.

“Windstream Group” means all Windstream-related entities, including Windstream and Windstream Affiliates.

“CMN” means CMN-RUS, Inc.

“300 Pole Rule” means your rule, policy, or practice, that limits the number of poles for which an attacher may apply to 300 poles in a rolling 30-day period.

“KDL” means Windstream KDL, LLC, a Windstream Affiliate.

“KIH Amendment” means 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”); a copy of the KIH Amendment was attached to the Complaint as Appendix C.

DISCOVERY REQUESTS

17. As requested in 1 CMN 14, provide the documentation of the termination of the KIH Amendment. If there is no documentation, describe how the KIH Amendment was terminated, by whom, and for what reason.

18. In response to 1 CMN 12’s request for LFUCG franchise agreements with Windstream or a Windstream Affiliate, you provided two franchise agreements for a “telecommunications (or other non-cable) system,” without their referenced exhibits.

- a. Produce full copies of the franchise agreements or other such documents requested in 1 CMN 12 and in part b below.
- b. What entity (or entities) within the Windstream Group has been franchised to provide cable television service in Lexington-Fayette County? Provide the applicable franchise agreement

or other authorization document. If there is no such document, describe how the entity or entities is authorized to provide cable service or to construct, maintain, and operate facilities along public roads in Lexington-Fayette County.

19. Refer to your listing of entities, “Windstream – Fayette County: Person, entity, organization (including any Windstream affiliate),” WIN 0303, in response to 1 CMN 15’s request for “each person, entity, or organization (including any Windstream Affiliate) which has or had an attachment, or applied to have an attachment, to one or more Windstream poles in Fayette County” since January 1, 2013.

- a. Identify which entities listed currently have attachments, and which are (or were) Windstream affiliates. If a current attacher or a Windstream Affiliate which has or had an attachment or applied to have an attachment on a Windstream pole in Fayette County since January 1, 2013, is not listed on WIN 0303, state the entity’s full legal name and identify it as a current attacher or Windstream Affiliate (or both) as applicable.
- b. Provide the applicable attachment contract for each entity listed in WIN 0303 or in response to part a above. (If a contract has already been provided in full, identify the name of the other party and the document WIN #s.)

20. (a) Identify each Windstream Affiliate that attaches, has attached, or applied to attach to Windstream poles in Fayette County since January 1, 2013, (b) provide the applicable attachment agreement or specify as to each for which there is no written agreement, the terms and conditions of those pole attachments, and (c) describe the process (including the application process) by which any Windstream Affiliate attaches to a Windstream pole.

21. Refer to the Joint Pole Use Agreement with Kentucky Utilities Company (“KU”), you provided as part of the response to Staff Request No. 8 (WIN 2488-2505).

- a. Admit that (i) the Agreement is in effect in Fayette County, (ii) there are no rental charges between you and KU for attachments to each other's poles, and (iii) each party is given up to 60 days to pay any itemized statement for work performed after it is presented by the other party.
- b. Are there poles in Fayette County that Windstream has excluded from Joint Use pursuant to art.II.B? If so, state (i) the number of such poles that Windstream has excluded and (ii) the number and general location of such poles excluded by Windstream each year since July 1, 2013, to date.
- c. How are pole attachments by Windstream Affiliates treated under the Agreement with KU? Include in your response an explanation of whether such Affiliate attachments are treated as Windstream attachments (*e.g.*, for purposes of reserving space (art.IV.A) and space allocation (art.V.G)) or as attachments of third parties (art.XV).
- d. Describe what Windstream does "to achieve and maintain as nearly as practicable the Objective Percentage Ownership of the Parties" (art.X.C).
- e. Provide the counts as to each party of the Joint Use poles from any inventory conducted by the parties (see art.X.B and the Supplemental Agreement (WIN 2506)) since July 1, 2006. Also provide any statistics of ownership or percentage ownership of Joint Use poles located in Fayette County since July 1, 2013 to date.
- f. Explain whether or under what circumstances poles are included in the Objective Percentage Ownership where they are in configurations (for which there are actual examples in Fayette County), in which Electric poles and Telephone poles are located next to each other or are on parallel paths (*e.g.*, along each side of a street) to each other.

- g. Provide statistics for the operation of art.IX of the Agreement (abandonment of joint use poles) since July 1, 2013, to date, including (i) poles Windstream has abandoned (discontinued use) as licensee, (ii) poles KU abandoned ownership to Windstream, and (iii) statistics relating to poles in Fayette County. Explain whether poles abandoned by the owner party or the licensee party remain Joint Use poles subject to the Agreement or part of the Objective Percentage Ownership calculation.
- h. Supplement the pole data provided in response to 1 CMN 10 (*see* WIN 0234) with data as to the number of poles and acquisition/disposition dollar amount for poles transferred to or from KU pursuant to the abandonment (art.IX), adjustment (art.X), and compensation (art.XI) provisions of the Agreement.
- i. Provide (i) a copy of page 13 of the Agreement (*see* WIN 2500) on which all the text is readable, and (ii) to the extent not covered by the data provided in part h above, the art.XI.B “recapitulations” exchanged between KU and Windstream since July 1, 2013.
- j. State the amounts paid by or to Windstream at the end of each calendar year after 2005 to purchase poles (art.XI.C) or as an equity settlement (art.XI.D) both in total and for poles in Fayette County. State the number of poles in Fayette County transferred to or from Windstream at the end of each calendar year (after 2005) pursuant to sub-article C and provide documentation regarding such poles transferred (*e.g.*, bills of sale), including as to their location.

22. Supplement the listing of entities on WIN 0882 (1 PSC 7) with the WIN #s of the corresponding contract, correct any misinformation, and provide any corresponding contracts not already provided or contract pages omitted.

23. Supplement the listing of entities on WIN 2161 (1 PSC 8) with the WIN #s of the corresponding contract, correct any misinformation, and provide any corresponding contracts not already provided or contract pages omitted.

24. Supplement or extend the chart of "Lexington, KY" applications and pole counts provided as part of the response to 1 CMN 1a and 1 PSC 14 to go back month-by-month to January 2015, to carry forward to the most recent month for which the data are available, and to provide data for Windstream throughout its territory (*N.B.* as defined, Windstream is only Windstream Kentucky East). Are the pole counts the actual number of poles for which attachment is requested or are they maximum estimates obtained by multiplying the application count by 25 poles per application?

25. With respect to invoices (paid or unpaid) referenced in your responses or direct testimony:

- a. identify and provide copies of invoices for work performed for Windstream by Byers Engineering, referenced in Windstream's response to Staff Request No. 3(c);
- b. identify and provide copies of invoices for work performed for Windstream by Triple D, referenced in Windstream's response to Staff Request No. 3(c); and
- c. provide copies of any invoices issued by Windstream to CMN or its affiliates relating to pole attachments that Windstream alleges were paid late or are past due, and with respect to each, state the date issued and the date paid (*N.B.* as defined, Windstream is only Windstream Kentucky East).

26. Admit that Windstream received payment from CMN of \$98,129.22 for Triple D make-ready from CMN on August 5, 2018, but had not paid Triple D for any of that amount as of August 21, 2018. Has Windstream paid Triple D anything since then for any CMN-related

construction? If so, when and how much? Does Windstream pay to Byers and Triple D all of the amounts that it charges to CMN for their work? If not, what amount does Windstream keep for itself? Describe (with reference, as applicable, to specific provisions in the contracts provided in response to Staff Request No. 4) any obligation of the Windstream Group to pay Triple D or Byers within a set period of time, including the time period allowed.

27. Identify the pole referenced and provide the make-ready estimate which Ms. Sanders alleges “CMN has not yet paid” on lines 11 and 12 of page 4 of her testimony? If known, provide the geolocation data, pole number, pole owner, date, and time of the photos provided in her exhibit 1. Describe and provide any written report made to Windstream and any notice given to CMN related to the photos (WIN 3225-26) or what Ms. Sanders describes on lines 7-9 of page 4 and lines 18-20 of page 1 of her testimony.

28. Mr. King alleges on lines 22 and 23 of page 6 of his testimony that CMN has “struggles” in submitting complete and satisfactory applications. Describe in detail any such “struggles” by CMN in submitting applications to Windstream (*N.B.* as defined, Windstream is only Windstream Kentucky East).

29. Refer to the allegation by Mr. Lloyd on lines 11 and 12 of page 6 of his testimony that “CMN ... fails to follow the application process.” Identify and describe any failures to follow application process by CMN in applying to Windstream for attachment to its poles (*N.B.* as defined, Windstream is only Windstream Kentucky East).

30. On pages 6-7 of his testimony, Mr. Lloyd asserts that it “would be a serious liability for Windstream to hire another person to review the quality of the Engineering Surveys and the make ready construction, and that “[h]aving non-employees review the surveys and construction creates a greater chance of accidents occurring.” What is the basis for Mr. Lloyd’s latter

assertion? Provide any evidence, data, or studies that support a link between non-employee review and an increased chance of accidents. Do Mr. Lloyd's assertions about "a serious liability" and "a greater chance of accidents" apply if Windstream hires "another person" as its employee?

31. With respect to Exhibit 4 to Mr. Lloyd's testimony, provide the following information and documents:

- a. Any and all notices of each incident provided to CMN, an affiliate of CMN, or a contractor of CMN or an affiliate of CMN.
- b. Any and all reports or records of damage provided to 811 or any other party reporting the incident.
- c. Explanation of "billed status" and "unbilled status."
- d. Copies of all bills referenced in Exhibit 4.
- e. Explanation of "source" and "FNOL."
- f. Any pictures taken by Windstream or any contractor of Windstream supporting the damage.
- g. Copies of any damage tickets and explanation for lack of such ticket with respect to any incident.
- h. Dates upon which Windstream or its contractor(s) performed locates.
- i. Any documents or other evidence that the Windstream facilities were properly located for the third-party construction/excavation.

32. Refer to your listing and description of five "Windstream Teams" with "a material role in processing or reviewing applications for pole attachments or the completion of make-ready work for Windstream East" in response to Staff Request No. 5.

- a. Are any of these teams or a member of such team located in Kentucky or direct employees of Windstream (*N.B.* as defined, Windstream means only Windstream Kentucky East)? If so, identify the team, members of the team and who is or is not a direct employee or located in Kentucky.
- b. Does each team provide services for all Windstream Group poles nationwide? If not, describe any narrower focus or service area by the applicable team.
- c. For a recent period of time and for each team, how many full time equivalent members are on the team and what is the range of salaries paid to team members?
- d. Have temporary employees ever been hired for any of the teams? If so, identify the time period of the hire and number of employees hired, and as to each such hiring episode, state the reason for the hiring of temporary employees and the full name of any licensee/applicant that paid all or part of the cost for the temporary employee(s).

33. Provide data about the number of times the review or quality control part of the make ready process was either outsourced or handled by temporary Windstream Group employees for the pole applications received in 2016 and those received in 2017, for any Windstream Group pole or for any Windstream pole. Data should be provided separately as to each year, for Windstream Group and Windstream, and for both outsourcing and temporary employees.

34. List the occurrences since January 1, 2015, that a Windstream Group licensee has been allowed to undertake (itself or through a contractor) the survey or other make-ready work for pole attachments and for each such occurrence identify the licensee, the reason it was so allowed (e.g., contract right because work not completed by Windstream Group within a specific time frame), and if any of the poles were Windstream poles.

35. With respect to the 300-Pole Rule or any other means by which Windstream limits an applicant or licensee to applying to attach to no more than 300 poles in a rolling 30-day period:

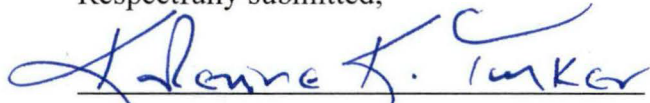
- a. Admit that the contract provided as WIN 1473-1507 does not limit the licensee to applying to attach to no more than 300 poles in a rolling 30-day period.
- b. List the other Windstream attachment agreements, by date, other party, and WIN #s, that do not limit applications to no more than 300 poles in a rolling 30-day period. Provide any such agreements not already produced in response to Staff Requests No. 7 and 8.
- c. Identify any (and each) Windstream Affiliate that is subject to a limit of applying to attach to no more than 300 Windstream poles in a rolling 30-day period.
- d. For each instance in which Windstream has waived the 300-Pole Rule, amended a contract or other agreement to eliminate the restriction, or entered into an agreement that does not set a maximum on the number of applications or poles that can be requested in a 30-day period, (i) identify the respective licensee/applicant, (ii) produce or identify (by WIN #s) the applicable agreement, if any, (iii) the number of applications submitted and of poles per application, and (iv) the months in or over which the applications were submitted.

36. (a) Admit that the contract provided as WIN 1473-1507 specifies that Windstream shall inform the licensee of its estimated charges for make-ready work within 45 days of receipt of the licensee's application (*see* WIN 1480). (b) List the other Windstream attachment agreements, by date, other party, and WIN #s (or produce a copy of the agreement), that contain a similar deadline and the number of days given for the deadline. (c) Identify any (and each) Windstream Affiliate, for which there is no deadline for informing it of estimated make-ready

charges or which, as a matter of practice, is routinely informed of such estimated charges more than 45 days after the corresponding application is submitted.

37. (a) Admit that the contract provided as WIN 1473-1507 specifies that the licensee has the option to use contractors to complete the make-ready survey work if Windstream does not do so within 45 days (*see* WIN 1480). (b) List the other Windstream attachment agreements, by date, other party, and WIN #s (or produce a copy of the agreement), that contain a similar right for the licensee and the number of days after which the licensee may exercise the right. (c) Identify any (and each) Windstream Affiliate which does not have a similar right as a licensee on Windstream poles or which, as a matter of practice, does not routinely use Windstream Group resources or contractors to complete the make-ready survey work on its own schedule.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 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.



T. Combs
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