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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION JUN 01 2018
Case No. 2018-00157

In the Matter of
CMN-RUS, INC.

PUBLIC SERVICE
COMMISSION
COMPLAINANT

v.

WINDSTREAM KENTUCKY EAST, INC.

DEFENDANT

**WINDSTREAM KENTUCKY EAST, INC.'S ANSWER TO
CMN-RUS, INC.'S COMPLAINT**

Defendant, Windstream Kentucky East, Inc. ("Windstream") hereby responds to the Complaint of the Complainant, CMN-RUS, Inc. ("CMN"), as follows:

FIRST DEFENSE

1. Windstream has insufficient information to admit or deny the allegations in Paragraph No. 1 of the Complaint, so for that reason, they are denied.

2. Windstream has insufficient information to admit or deny the allegations in Paragraph No. 2 of the Complaint, so for that reason, they are denied.

3. Windstream has insufficient information to admit or deny the allegations in Paragraph No. 3 of the Complaint, so for that reason, they are denied.

4. As to the allegations in Paragraph No. 4 of the Complaint, it is admitted that Windstream and CMN would be direct competitors if CMN overbuilds the LFUCG service area. To the extent a response is required for the remaining statements in Paragraph No. 4 of the Complaint, Windstream has insufficient information to admit or deny the remaining allegations in Paragraph No. 4 of the Complaint, so for that reason, they are denied.

5. As to the allegations in Paragraph No. 5 of the Complaint, it is admitted that CMN contacted Windstream and requested a copy of Windstream's standard Pole Attachment License

Agreement (the “License Agreement”). It is admitted that Windstream provided CMN with a copy of the License Agreement. Windstream specifically denies that the License Agreement contains provisions that are unreasonable or unlawful. The provisions of the License Agreement are consistent with Kentucky law and the standards of the telecommunications industry. It is admitted that Section 8 of the License Agreement limits the number of poles that an attacher may apply for to 300 poles in a rolling 30-day period (the “300-pole rule”). In order to effectively manage the use of its resources, Windstream limits the number of applications it will process in a rolling 30-day period. In all circumstances, except for the Kentucky Information Highway (“KIH”) Amendment, Windstream has included the 300-pole rule in its pole attachment agreements. Even in the case of the KIH Amendment, which is no longer in operation, the underlying agreement with KIH contains the same limitations. Currently, KIH must abide by the 300-pole rule. Windstream admits that there are no specific time frames for application, survey, and make ready processing in the License Agreement, but denies that this renders the License Agreement unlawful or unreasonable. Except as expressly admitted herein, all other allegations in Paragraph No. 5 of the Complaint are denied.

6. As to the allegations in Paragraph 6 of the Complaint, Windstream states that the License Agreement, which is attached to the Complaint, speaks for itself.

7. As to the allegations in Paragraph No. 7 of the Complaint, Windstream admits that CMN has expressed to Windstream its desire to attach to 12,500 poles. Windstream denies that eight (8) to twelve (12) months is a reasonable period to attach to this number of poles. It is admitted that it would take until 2021 to attach to 12,500 at 300 poles per month. Except as expressly admitted herein, all other allegations in Paragraph No. 7 of the Complaint are denied.

8. Windstream has insufficient information to admit or deny the allegations in Paragraph No. 8 of the Complaint, so for that reason, they are denied.

9. As to the allegations in Paragraph No. 9 of the Complaint, Windstream admits that there was a conference call between representatives of Windstream and CMN on December 12, 2017, and it admits that during that call, CMN's representatives requested amendment to the License Agreement. Except as expressly admitted herein, all other allegations in Paragraph No. 7 of the Complaint are denied.

10. As to the allegations in Paragraph No. 10 of the Complaint, Windstream admits that a conference call between Windstream representatives and CMN representatives took place on December 19, 2017. Windstream denies it was unwilling to negotiate any provisions of its License Agreement with CMN. Windstream admits its representatives told CMN representatives during that call that it was reticent to negotiating with CMN while CMN has a current outstanding invoice due to a Windstream affiliate for over \$1.3 million. The Windstream affiliate, Windstream KDL, LLC ("Windstream KDL"), has a third-party pole attachment arrangement with Duke Energy ("Duke") and CMN wherein Windstream KDL is the intermediary between CMN and Duke. Because of this arrangement, Duke has invoiced a past due amount to Windstream KDL for over \$1.3 million in past due make ready charges. While CMN alleges that it disputes the amounts due, that does not alleviate the negative impact of this outstanding invoice on Windstream. Except as expressly admitted herein, all other allegations in Paragraph 10 of the Complaint are denied.

11. As to the allegations in Paragraph 11 of the Complaint, Windstream has insufficient information to admit or deny CMN's motivations in attempting to utilize Windstream's CATV Pole Attachment Tariff (the "Tariff"). Windstream specifically denies refusing to negotiate terms and conditions with CMN and that CMN's only course of action was to seek to attach via the Tariff.

Windstream admits that the Tariff does not expressly contain the 300 pole rule but states that the application of this rule does not make the Windstream's actions unreasonable or unlawful. Except as expressly admitted herein, all other allegations in Paragraph No. 11 of the Complaint are denied.

12. As to the allegations contained in Paragraph 12 of the Complaint, it is admitted that Windstream informed CMN as to the process for applying for attachment under the Tariff and that the 300-pole rule applied to the Tariff sometime in January 2018. Windstream admits that CMN submitted applications to attach under the Tariff sometime thereafter. Windstream denies that the applications submitted were processed in an unreasonably slow time frame. Except as expressly admitted, all other allegations in Paragraph No. 12 of the Complaint are denied.

13. As to the allegations contained in Paragraph 13 of the Complaint, the statutes and regulations referenced speak for themselves. To the extent Paragraph 13 makes any allegations against Windstream, these are expressly denied.

14. Windstream denies the allegations in Paragraph No. 14 of the Complaint.

15. Windstream denies the allegations in Paragraph No. 15 of the Complaint.

16. As to the allegations contained in Paragraph 16 of the Complaint, the statutes and regulations referenced speak for themselves. To the extent Paragraph 16 makes any allegations against Windstream, these are expressly denied.

17. As to the allegations contained in Paragraph 17 of the Complaint, the statutes and regulations referenced speak for themselves. To the extent Paragraph 17 makes any allegations against Windstream, these are expressly denied.

18. As to the allegations contained in Paragraph 18 of the Complaint, the statutes and regulations referenced speak for themselves. All other allegations in Paragraph No. 18 of the Complaint are denied.

19. As to the allegations contained in Paragraph 19 of the Complaint, the statutes and regulations referenced speak for themselves. All other allegations in Paragraph No. 19 of the Complaint are denied.

20. Windstream has insufficient information to admit or deny the allegations in Paragraph No. 20 of the Complaint, so for that reason, they are denied

21. As to the allegations contained in Paragraph 21 of the Complaint, the statute referenced speaks for itself. All other allegations in Paragraph No. 21 of the Complaint are denied.

22. As to the allegations contained in Paragraph 22 of the Complaint, Windstream admits that it is a direct competitor of CMN and that Windstream representatives have informed CMN representatives that a billing dispute, previously described in this Answer at Paragraph 10, makes Windstream reticent to negotiate with CMN. However, Windstream specifically denies any allegation that it is has not attempted to negotiate a terms agreeable to both Windstream and CMN concerning the matters described in the Complaint. Except as expressly admitted, all other allegations in Paragraph No. 22 of the Complaint are denied.

23. As to the allegations contained in Paragraph 23 of the Complaint, Windstream expressly denies that the outstanding amounts owed by CMN to Windstream KDL have no effect on Windstream. Windstream admits that it has not actually been forced to pay the amounts owed under the invoice at issue. Windstream further states that the dispute concerning the Windstream KDL and Duke is described herein at Paragraph 10. Except as expressly admitted herein, all other allegations in Paragraph 23 of the Complaint are denied.

24. As to the allegations contained in Paragraph 24 of the Complaint, regulations referenced speak for themselves. Windstream has insufficient information to admit or deny the allegations in Paragraph No. 24 of the Complaint, so for that reason, they are denied.

25. As to the allegations contained in Paragraph 25 of the Complaint, the statutes and regulations referenced speak for themselves. All other allegations in Paragraph No. 25 of the Complaint are denied.

26. As to the allegations contained in Paragraph 26 of the Complaint, it is admitted that CMN communicated to Duke that Windstream should be removed from the dispute and CMN and Duke should resolve the dispute themselves. However, no resolution has occurred and Windstream remains squarely in the middle of a dispute concerning a \$1.3 million invoice owed by CMN. Windstream has insufficient information to admit or deny the allegations in Paragraph No. 26 of the Complaint, so for that reason, they are denied.

27. As to the allegations contained in Paragraph 27, it is admitted that Windstream amended its License Agreement in an agreement with KIH, which, upon information and belief is a project by the Commonwealth of Kentucky, rather than a private business, to allow for applications containing more than 300 poles to be submitted within a rolling thirty (30) day period for review. KIH paid for additional resources and all extra costs associated with this increased demand. Windstream's relationship with KIH is inherently different than its relationship with CMN. While the projects may be similar, CMN is not related to a government entity, CMN was not seeking in this instance to deploy a network on state-wide basis, and at no point was Windstream embroiled in a billing dispute with a third party for \$1.3 million due to KIH's actions. Except as expressly admitted, all other allegations in Paragraph No. 27 of the Complaint are denied.

28. Windstream denies that CMN is entitled to any of the relief it seeks in its Prayer for Expedited Consideration and Relief.

29. Any allegations of CMN's Complaint not expressly admitted herein are hereby denied.

SECOND DEFENSE

CMN's Complaint fails to state a claim upon which relief can be granted and it should be dismissed.

THIRD DEFENSE

Windstream states affirmatively that its License Agreement is lawful and reasonable.

FOURTH DEFENSE

Windstream states affirmatively that its Tariff and associated practices are lawful and reasonable.

FIFTH DEFENSE

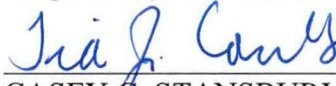
Windstream reserve the right to add additional defenses to the extent that discovery or other factual developments provide a basis for such defenses.

WHEREFORE, Defendants, Windstream Kentucky East, LLC having responded to CMN's Complaint, pray that the Commission:

1. Dismiss CMN's Complaint with prejudice and award CMN no damages from Windstream;
2. In the alternative, hold a hearing in this matter;
3. Tax the costs of this action, including Windstream's attorneys' fees and costs, against CMN;

4. Award to Windstream such other relief as the Commission deems just and proper.

Respectfully submitted,



CASEY C. STANSBURY

TIA J. COMBS

MAZANEC, RASKIN & RYDER CO., LPA

230 Lexington Green Circle, Suite 605

Lexington, KY 40503

(859) 899-8499

(859) 899-8498 – Fax

cstansbury@mrrlaw.com

tcombs@mrrlaw.com

Counsel for Defendant,

Windstream Kentucky East, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing was served on June 1, 2018

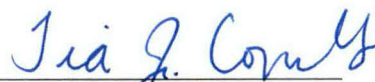
upon the following:

by hand delivery:

Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

via first class USPS mail, postage prepaid, and via email:

Katherine K. Yunker
McBrayer, McGinnis, Leslie & Kirkland, PLLC
201 East Main Street, Suite 900
Lexington, KY 40507
Kyounger@mmlk.com
Counsel for Complainant,
CMN-RUS, Inc.



Counsel for Defendant,

Windstream Kentucky East, Inc.