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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

CMN-RUS, Inc.

Complainant

v.

Windstream Kentucky East, LLC

Respondent

No. 2018-00157

**Direct Testimony of John Greenbank
on behalf of CMN-RUS, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2018, pursuant to the Commission's 8/7/18 Order ¶2, a conformed copy of the verified direct testimony of John Greenbank, with three (3) attached exhibits, 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 have also provided PSC Staff Counsel Benjamin Bellamy with a courtesy copy of this Response in the form served on the attorneys for Respondent.


Katherine J. Combs
Attorney for Complainant

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VERIFICATION by John Greenbank

EXHIBITS attached

- 1 Spreadsheet, “Windstream LX Applications” (as of 9/4/18)
- 2 Spreadsheet, “Windstream Invoice Payment” (as of 9/4/18)
- 3 Map demonstrating an issue for access to areas with an intermix of pole ownership

1 INTRODUCTION

2 **Q1. State your name, position, and business address.**

3 A. John Greenbank, Executive Vice President, CMN-RUS, Inc., and its affiliates, Metro
4 Fibernet, LLC, Metronet Technologies, LLC and Metronet Holdings, LLC
5 (collectively, "MetroNet"). My business address is 3701 Communications Way,
6 Evansville, IN 47715

7 **Q2. Summarize your educational background and business experience.**

8 A. I have extensive experience in all aspects of building, operating and maintaining fiber
9 networks. Prior to serving with MetroNet, I served as President of Kentucky Data
10 Link, Inc., a wholesale fiber transport provider now known as Windstream KDL,
11 LLC. During my tenure at KDL, I was part of a team that grew the company from an
12 entity with no fiber assets in 1998 to one with 27,000 fiber route miles by 2012.
13 Before working at KDL, I used my telecommunications experience while running
14 other small telecom companies since 1980.

15 **Q3. Provide a brief description of your duties at CMN.**

16 A. I am responsible for overseeing all aspects of MetroNet's construction efforts.

17 **Q4. Have you previously testified before this Commission?**

18 A. No

19 **Q5. What is the purpose of your testimony?**

20 A. To describe CMN's experience with requesting pole attachments from Windstream in
21 the Lexington-Fayette Urban County area, to explain some of the challenges created
22 by Windstream's actions, to describe the material conditions Windstream has
23 imposed on CMN that are not in Windstream's tariff, to describe to the Commission

1 the high volume plan CMN proposed to Windstream, and to describe some of the
2 ways that Windstream is treating us less favorably than other pole attachers.

3 **Q6. Are you sponsoring any exhibits or schedules?**

4 A. Yes, I am sponsoring two spreadsheets that show (a) the length of time it has taken
5 for Windstream to process pole applications (Exh.1) and (b) CMN's payment of
6 Windstream invoices on the LFUC project (Exh.2), and also a map (Exh.3) demon-
7 strating an issue for access to areas with an intermix of pole ownership. These
8 exhibits were prepared by me or under my supervision.

9 **Q7. Describe CMN and give a brief summary of its business.**

10 A. CMN is a competitive local exchange carrier ("CLEC") and a "telecommunications
11 carrier" as are defined in the Communications Act of 1934. CMN is also a cable
12 television service provider. Since 2005, CMN and its affiliates have constructed and
13 operated fiber-to-the-premises ("FTTP") networks offering high quality voice, cable
14 television and gigabit data/Internet services to residential and business consumers.
15 CMN's high speed broadband services help communities compete on the national and
16 international stage and foster innovation, job creation and economic growth.

17 In early December 2017, CMN was awarded a franchise by the Lexington-
18 Fayette Urban County Government ("LFUCG") to offer cable television services to
19 residential and business customers within Fayette County, including the Lexington
20 urban area ("the Franchise"). The full Franchise Agreement (CMN 00001-44) has
21 been filed by CMN in this proceeding as part of its response to 1 PSC 1.

22 **Q8. Did the network and other facilities by which CMN will provide service and**
23 **meet its Franchise obligations already exist in Fayette County?**

1 A. No. CMN is investing nearly \$100 million in Lexington and the surrounding area. It
2 will deliver the cable television service over a 100% fiber-to-the-premises network,
3 and is overbuilding Fayette County with that fiber network. This significant
4 construction project (“LFUC Project”) includes attaching to over 19,000 poles in
5 Fayette County. The Franchise requires CMN’s system to be technically capable of
6 providing services within “the Baseline Coverage Area” by early December 2021.
7 The Baseline Coverage Area is specifically defined in the Franchise Agreement, but
8 in brief, the concept is tied to getting fiber broadband services to much of the
9 unserved areas within the LFUCG’s urban services boundary (*i.e.* those urban areas
10 that do not have FTTP service). CMN also has regulatory and business reasons for
11 building out the network as quickly as is feasible, and will continue to commit the
12 resources to do so.

13 **Q9. Are there CMN affiliates involved with constructing or operating the fiber**
14 **network in Fayette County? If so, name them, explain the relationship of each to**
15 **CMN, and provide a general description of its role in the LFUC Project.**

16 A. Metro Fibernet, LLC, Metronet Technologies, LLC, Metronet Holdings, LLC are
17 affiliates of CMN and are all involved in the LFUC Project to some degree.

18 • Metro Fibernet, LLC (“MFN”) is a CLEC and a “telecommunications carrier”
19 as are defined in the Communications Act of 1934. Since early 2011, MFN
20 has constructed and operated FTTP networks offering high quality voice and
21 gigabit data/Internet services to residential and business consumers in Illinois,
22 Indiana and Kentucky.

1 • Metronet Technologies, LLC (“MNT”) is a construction company. It is not a
2 CLEC or a “telecommunications carrier” as defined in the Communications
3 Act of 1934. MNT contracts with third parties to perform construction of
4 MFN’s and CMN’s network.

5 • Metronet Holdings, LLC is the direct or indirect parent company of CMN,
6 MFN and MNT. Individuals employed by Metronet Holdings, LLC are
7 assigned to CMN, MFN and MNT projects, including the LFUC Project.

8 **Q10. Why has CMN filed the complaint initiating this proceeding?**

9 A. To build out its 100% FTTP network, CMN must attach to a significant number of
10 poles owned or controlled by Windstream Kentucky East, LLC (“Windstream”).
11 Windstream has impeded the LFUC Project by restricting to 300 poles the number of
12 poles for which it will accept attachment applications within a rolling 30-day period.
13 Even with this small number of poles to process, Windstream has taken an
14 unreasonably long period of time, sometimes taking more than 90 days to process
15 applications for 25 or fewer poles.

16 **Q11. From CMN’s perspective, why is Windstream impeding applications and**
17 **processing?**

18 A. Whatever excuse or justification Windstream puts forward, it seems self-evident that
19 it is throttling the processing for anti-competitive purposes. Windstream admits that
20 CMN is and will be a direct competitor in this market. Any delay in CMN’s complet-
21 ing its network works to the advantage of Windstream and CMN’s other competitors.
22 While Windstream delays CMN’s entry into the market, Windstream is able to update

1 its network infrastructure and blanket the area with target marketing to capture addi-
2 tional market share.

3 NEGOTIATIONS with WINDSTREAM

4 **Q12. Does CMN have a signed agreement with Windstream about attaching to its**
5 **poles?**

6 A. No. CMN tried to negotiate a pole attachment license agreement with Windstream.
7 CMN requested Windstream's form pole attachment agreement. Upon review of that
8 agreement, CMN saw that it contained a provision restricting the number of poles to
9 300 for which CMN could apply to attach in a 30 day period. Windstream was
10 unwilling to negotiate the terms of the pole attachment agreement. Therefore, CMN
11 decided to attach under the Tariff.

12 **Q13. Describe the negotiations between CMN and Windstream.**

13 A. In November 2017, CMN requested, and Windstream sent, its form pole attachment
14 agreement. That pole attachment agreement restricted applications to 300 poles per
15 month. CMN determined that Windstream's Tariff did not impose the 300 poles per
16 month restriction, and that Windstream had entered into an agreement with KIH that
17 allowed KIH to attach at a rate of up to 1500 poles in a 30 day period.

18 Therefore, CMN requested a December conference call with Windstream to
19 discuss attaching under Windstream's Tariff or modifying Windstream's form pole
20 attachment agreement to contain the terms and conditions granted to KIH, *i.e.* Wind-
21 stream would process up to 1500 poles in a 30 day period and CMN would reimburse
22 Windstream for costs associated with retaining the additional necessary resources.

1 Windstream refused the request to amend the agreement to be like that granted to
2 KIH, and the negotiations ended.

3 **Q14. Why did CMN propose the KIH arrangement for larger volume applications**
4 **and attachments?**

5 A. We proposed the KIH arrangement because it would help Windstream perform
6 services needed by CMN in a timely manner. CMN personnel reviewed the KIH
7 amendment and determined that it would allow submission of larger order applica-
8 tions and to have them processed in time frames CMN could accept. For example,
9 the KIH amendment application processing time frame is the same as the “larger
10 order” application processing time frame prescribed by the FCC’s 2011 Order— that
11 within 60 days of receiving a complete “larger order” application, the application
12 must be processed.

13 **Q15. How would the KIH arrangement help Windstream perform services in a**
14 **reasonable time frame acceptable to CMN?**

15 A. The KIH arrangement allowed Windstream to avoid stretching its resources without
16 losing quality control. Under the KIH arrangement, Windstream could select addi-
17 tional qualified resources and thus could ensure that it was fully satisfied with each
18 resource’s quality of work and safety record. Under the KIH arrangement, Wind-
19 stream could require the new attacher (in this case, CMN) to pay for all the additional
20 resources needed to process the larger orders. The KIH arrangement provided for a
21 \$80,800 per month KIH payment to Windstream until such time as KIH terminated
22 the amendment, when it no longer needed to submit applications for more than 300
23 poles in a 30 day period. CMN did not object to the monthly amount, and would

1 have been willing to pay it. In fact, during the call Anita Larson and I had with
2 Windstream representatives in December of 2017, we made it clear to Windstream
3 that CMN was willing to pay the amount. We also made it clear that CMN would
4 pick up the cost for any other additional resources.

5 Under the KIH amendment, if the attacher fails to (a) submit applications in
6 conformance with the comprehensive and specific guidelines required by Wind-
7 stream, (b) attach in the manner prescribed by Windstream for safety or other reasons,
8 or (c) pay amounts when due, the KIH amendment not only allows Windstream to
9 terminate the amendment, but also the entire pole attachment license agreement. In
10 addition, if the attacher fails to follow Windstream's attachment requirements,
11 Windstream could assess a penalty of \$100 per noncompliant pole.

12 **Q16. Was CMN prepared to take on the additional obligations that the KIH**
13 **arrangement would have required?**

14 A. I was aware that the KIH amendment would impose additional obligations on CMN.
15 From experience, I was confident that CMN could perform the terms and conditions
16 of the KIH amendment. Actual experience with Windstream attachments in the
17 LFUC area over the past six months has confirmed my belief that this was something
18 CMN could do.

19 **Q17. What happened in the December 2017 negotiations?**

20 A. Anita Larson and I participated for CMN; Michelle Laughlin, Dan King, and James
21 Lloyd participated from Windstream. During the initial conference call, on Decem-
22 ber 12, 2017, I told the Windstream team participants that Metronet would need to
23 submit a high volume of pole attachment applications. I told them that it was

1 important to us that the applications be processed without delay, and that we wanted
2 to enter into a high volume plan in which we would pay for additional resources for
3 Windstream to process the high volume of applications. I specifically mentioned that
4 I was aware of the KIH agreement and particularly the amendment that allowed for
5 the processing of applications for more than 300 poles in a 30 day period. I told them
6 that we would like to have such an amendment to any pole attachment agreement we
7 entered into with Windstream and asked if Windstream would be willing to enter into
8 an amendment like the KIH amendment with us. Mr. King stated that the Wind-
9 stream participants on the call would need to discuss with other representatives of the
10 Windstream group of companies whether Windstream would be willing to enter into
11 such an amendment with us. He stated that they would have the discussion and report
12 back to us.

13 The following week, on December 19, 2017, the same parties participated in
14 another conference call. During this call, Mr. King stated that Windstream manage-
15 ment was unwilling to negotiate terms of the pole attachment agreement, and said that
16 it was because of outstanding Duke Energy invoices. This was a reference to
17 invoices totaling \$1,136,274.06, presented by Windstream KDL, LLC ("KDL") to
18 CMN in January and March of 2017 to "true up" estimated make ready costs
19 demanded by Duke Energy for pole attachments in Indiana.

20 **Q18. Did CMN agree that this was a sufficient reason not to negotiate an attachment**
21 **agreement for poles in the LFUC area?**

22 A. No. Anita Larson reminded the Windstream participants that the Duke invoices were
23 validly disputed in good faith. She also reminded them that Duke had not provided

1 any support for the amounts invoiced and the amounts were invoiced years after the
2 work was performed. Windstream reiterated that it wanted the amounts off its books
3 and would not negotiate the pole attachment agreement until the amounts were off.

4 **Q19. Was that the end of negotiations over the form pole attachment agreement?**

5 A. Yes.

6 **Q20. What pole-attachment arrangement does CMN have with Windstream, and how
7 was that reached?**

8 A. CMN attaches to Windstream's poles under its currently-effective Tariff on file with
9 the Commission. The Tariff was an acceptable alternative because it did not have a
10 300 poles per month limitation. Also, the Tariff specifies that an application be sub-
11 mitted 45 days prior to the date CMN intended to attach, thus imposing a 45 day limit
12 on pole attachment processing. In December 2017, Anita Larson had asked Wind-
13 stream about the possibility of attaching under the Tariff, since CMN is a cable televi-
14 sion company or operator as defined by the Tariff. Windstream representatives con-
15 firmed that CMN could attach under the Tariff. By a 1/12/18 email (CMN 00317),
16 Anita Larson asked the process to attach under the Tariff; by 1/18/18 emails (CMN
17 00321), Windstream responded with instructions about the process.

18 EXPERIENCE with WINDSTREAM

19 **Q21. Has CMN applied to Windstream for pole attachments?**

20 A. Yes. On March 13, 2018, CMN started submitting applications to attach to Wind-
21 stream poles. As of August 31, 2018, CMN has submitted over 90 applications to
22 Windstream to attach to 1544 poles.

23 **Q22. What has been CMN's experience with its applications to Windstream?**

1 A. Windstream has enforced its 300 poles per 30 day period limit, rejecting applications
2 for poles in excess of this limit. *See, e.g.* 6/20/18 email from Felicia Nicole Hodges
3 (Windstream) to Lauren Sandefur (CMN 00382). This is the only reason Windstream
4 has rejected CMN applications. CMN's primary problem remains the rate at which it
5 can submit applications (no more than 300 poles in a 30 day period). Even with this
6 small number of poles per 30 day period, Windstream's processing time frames have
7 been unreasonably slow.

8 In March of 2018, CMN submitted 322 poles. It took Windstream an average
9 of 88 days to process these poles. Some applications took more than 90 days, which
10 is twice the time frame allowed by the FCC's 2011 Order. In April, Windstream took
11 58 days on average to process pole applications. It was not until May 2018, after
12 CMN filed its complaint with the Commission, that Windstream processed applica-
13 tions within the 45 day period contemplated by its Tariff and by the FCC's 2011
14 Order. Unfortunately, in June, the pole processing rate started to slow and the gap
15 between submittal and approval again exceeded the 45 days contemplated by Wind-
16 stream's Tariff and the FCC's 2011 Order. As of August 31, 2018, of the applica-
17 tions submitted in July, only five (5) had been processed — with a per application
18 processing time of 50 days. As of September 4, 2018, applications filed in July and
19 not yet processed have been pending on average for 58 days. Two applications for
20 seven poles each having been pending for over 60 days. *See* "Windstream LX Appli-
21 cations" spreadsheet attached as Exhibit 1.

22 **Q23. What has been CMN's experience with respect to attaching to Windstream**
23 **poles?**

1 A. As a result of the 300 poles per month limitation, CMN and its affiliate Metronet
2 estimate that they attach to only 880 poles per month on average for the LFUC
3 Project — despite the higher-volume and faster throughput of applications to other
4 pole utilities. The majority of these 880 poles are poles owned by other utilities. If
5 CMN could apply for and obtain permission from Windstream to attach to its poles at
6 a faster pace, CMN estimates that Metronet could attach at a rate of approximately
7 2200 poles per month. Due to weather and other factors, the actual rate of attachment
8 might be more or less, but the increase would be significant compared to Wind-
9 stream's throttled process.

10 **Q24. What is CMN's pole attachment safety record?**

11 A. CMN's aerial safety record is excellent. In its responses to information requests,
12 Windstream has alleged incidents of damage to its facilities from underground con-
13 struction (laying conduit for Metronet fiber). The alleged incidents are of no rele-
14 vance to pole attachment construction, because CMN and its affiliates do not use their
15 underground contractors to attach facilities to poles or in any type of aerial construc-
16 tion. Furthermore, I am skeptical of Windstream's allegations of fault and negligent
17 practices. In April of 2018, Windstream sent Metronet a "cease and desist" letter
18 (CMN 00342-43) in which it demanded that we cease and desist from unsafe con-
19 struction practices. Our Director of Safety and Quality Assurance investigated Wind-
20 stream's incident allegations. As can be seen from our letter of response dated April
21 23, 2018 (CMN 348-54), none of the Metronet contractors was at fault.

22 **Q25. Does CMN's submit complete and quality attachment applications to**
23 **Windstream?**

1 A. CMN has a team of several individuals experienced and well-qualified to submit
2 complete and quality pole applications. Representatives of CMN and Windstream
3 have bi-weekly calls every other Thursday to discuss pole applications matters.
4 Neither during these calls nor through other communications has Windstream
5 complained about CMN's pole attachment applications being incomplete or of poor
6 quality. To date, Windstream has not rejected a single application for an application
7 deficiency. To date, the only reason Windstream has rejected a CMN application is
8 because the application exceeded the 300 poles per month restriction.

9 In its response to CMN's information Request No. 1(a), Windstream cites five
10 (5) rejected applications. Two of the five rejection examples occurred more than a
11 year ago, and the other three rejection examples occurred roughly a year ago — and
12 all were about pole attachments in Indiana. It is important to understand that these
13 applications were not requesting permission to attach to Windstream's or any of its
14 affiliates' poles. Rather, they were applications submitted by CMN to Duke through
15 KDL to obtain permission to attach to Duke's poles. It was Duke, not KDL or
16 Windstream, that was requesting additional information in connection with the five
17 applications. In addition to the 15% markup CMN pays KDL on Duke invoices,
18 CMN pays KDL \$3,700 each month to pass through CMN's applications to Duke.
19 These applications did not draw on Windstream's resources. Rather the resources
20 utilized by KDL in connection with these applications were specifically being paid
21 for by CMN.

22 **Q26. Has CMN kept current with its Windstream payment obligations relating to**
23 **LFUC Project attachments?**

1 A. CMN pays undisputed invoices in a timely manner. Of the 60 invoices CMN
2 received from Windstream prior to August 24, 2018, CMN has paid Windstream's
3 make ready invoices on average in 14 days. Many of these invoices have been paid
4 on the date of receipt. To be clear, all 60 of these invoices were issued by Wind-
5 stream Kentucky East, LLC for make ready work on poles owned in Kentucky. *See*
6 "Windstream Invoice Payment" spreadsheet attached as Exhibit 2. This is true
7 despite that Windstream's invoices do not provide details or supporting documenta-
8 tion. Pole owners' failure to provide adequate detail and support has long been a
9 problem in deployment of broadband. For this reason, the FCC in its 2018 Order
10 starting at ¶109 specifically discusses this problem and requires that sufficient detail
11 be provided.

12 EFFECT on CMN

13 **Q27. What has been the effect on CMN of Windstream's restrictions and delays?**

14 A. Because CMN will suffer from loss of momentum, failure to meet customer
15 expectations, inability to solicit new business, inability to maximize market share
16 while competitors grab more market share, and other results that are very real but
17 hard to quantify, it is difficult to measure in dollars the total impact that Wind-
18 stream's conduct has had on CMN and its affiliate, Metro Fibernet, LLC. However,
19 there is no avoiding the reality that Windstream's actions are having a negative
20 impact on CMN and its affiliates, while the delays are obviously advantageous to
21 Windstream.

22 **Q28. How have the delays affected the LFUC Project?**

1 A. As stated in its complaint, CMN is investing close to \$100,000,000 in the Lexington
2 and surrounding area market (the “LFUC Market”). An investment of this magnitude
3 requires a long time period to produce an acceptable return on investment. Therefore,
4 CMN needs to acquire customers as the fiber network is being deployed throughout
5 the LFUC area to create revenue as early as possible in the Project.

6 In order to serve any customer in the LFUC Market, a fiber connection from
7 that customer’s premises all the way back to CMN’s equipment hub must be estab-
8 lished. This architecture requires the deployment of hundreds of routes throughout
9 CMN’s coverage footprint. Almost all of CMN’s routes necessarily require access to
10 the public right of way for underground construction and access to both Windstream
11 and Kentucky Utilities Company (“KU”) utility poles. Therefore, without the ability
12 to deploy fiber on Windstream poles in a timely fashion, CMN cannot sell services to
13 a material number of homes and businesses. *See* map showing an example of this
14 phenomenon in one neighborhood, attached as Exhibit 3. Moreover, the capital spent
15 on those portions of the routes that are buried or located on KU utility poles becomes
16 stranded investment without the ability to produce revenue until fiber can be deployed
17 on Windstream’s poles. CMN anticipated the critical nature of having access to
18 Windstream’s utility poles, and so requested a high volume plan that would at the
19 same time eliminate the burden of Windstream’s having to expend additional money
20 and resources to accommodate CMN’s buildout schedule.

21 Windstream’s 300-pole restriction creates additional problems for CMN.
22 Pursuant to its video franchise with the LFUCG, CMN is required to complete the
23 fiber network in its initial service footprint by December 2021. Having to wait on the

1 availability of Windstream's poles — when, under the proposed high volume plan,
2 they would available in a more timely manner — will artificially extend the length of
3 the project. Due to the number of variables in such a complex project, this delay,
4 coupled with any other unanticipated occurrence such as a vendor or material
5 shortage, could result in CMN's missing its LFUCG deadline. Additionally, the
6 LFUCG has conveyed its hope that CMN can complete the buildout as soon as
7 possible.

8 In addition, the construction of a ubiquitous fiber network throughout a
9 community the size of the LFUC Market is necessarily invasive and disruptive.
10 Having timely access to Windstream's utility poles will shorten CMN's construction
11 timelines and minimize the need to construct duplicative facilities.

12 **Q29. Are there effects on competition and competitiveness?**

13 A: Yes. By unnecessarily delaying CMN's access to its utility poles, Windstream is
14 preventing a competitor from coming into the market and denying Lexington
15 consumers the ability to choose another provider. There is evidently a pent-up
16 demand among Lexington consumers for a reliable, high-speed network (*see*
17 Windstream 5/9/18 press release, CMN 185-86), and Windstream's restriction of
18 CMN's ability to initiate service presents the risk of consumer disappointment and
19 loss of confidence in CMN as a service provider.

20 While CMN is unable to fully serve the LFUC Market, Windstream is able to
21 sell business services to subscribers, locking the subscriber into contracts with terms
22 of three years or more. While CMN's network is still under construction, Wind-
23 stream and CMN's other competitors are able to respond to requests for proposals

1 that require near term delivery of services dates that CMN may be unable to meet due
2 to Windstream delays.

3 Major construction in the right of way is necessarily invasive and can be
4 disruptive to the public. By needlessly delaying CMN's network deployment, Wind-
5 stream is extending the time CMN needs to spend in the right of way which can detri-
6 mentally impact the initial goodwill it will receive from consumers as a new market
7 entrant. Also, as CMN goes through a neighborhood during initial construction, there
8 is an initial buzz where potential customers get excited about having a new provider.

9 When CMN is not able to capitalize on this enthusiasm, its penetration levels suffer.

10 COMPARISON with OTHERS

11 **Q30. Does the LFUC Project include attaching to poles in Fayette County of other**
12 **utilities?**

13 A. Yes. As noted in our responses to Staff Request No. 9, Metronet has submitted
14 applications to attach to 9911 poles of KU and to 656 poles of Blue Grass Energy
15 Cooperative Corporation.

16 **Q31. How do the arrangements and experience with KU and Blue Grass Energy**
17 **compare (or contrast) with the arrangements and experience with Windstream?**

18 A. Blue Grass Energy has fewer poles to which CMN wants to attach (656 total). It al-
19 lowed CMN to submit applications for more than 300 poles in a given 30 day period;
20 CMN submitted applications to attach to all the Blue Grass Energy poles to which it
21 needs access in connection with the LFUC Project.

22 Although CMN wishes to attach to 10,661 KU poles (over 2000 more poles
23 than Windstream), CMN's experience with KU has been entirely different from its

1 experience with Windstream. The results are the most important difference. CMN
2 has submitted applications to attach to 9911 KU poles, and has received approval to
3 attach to 3439 poles (1/3 of the poles submitted). KU is accepting and processing
4 applications at such a rate that CMN needs only to apply to attach to 700 additional
5 poles.

6 KU agreed to a “high volume plan” that allows MFN to submit up to 2500
7 poles in a 30 day period. *See High Volume Pole Attachment Application Plan (CMN*
8 *00136-46)*. This plan is designed to help KU perform services needed by CMN in
9 time frames acceptable to CMN.

10 **Q32. How does the KU high-volume plan enable and support a reasonable rate of**
11 **applications submission and processing?**

12 A. KU allows MFN, an affiliate of CMN, to attach to up to 2,500 poles in a 30 day
13 period. KU needs additional resources in order to process this high volume of appli-
14 cations. KU agreed to retain two contract designers for as long as MFN needs them.
15 MFN agreed to pay for the cost of these contract designers as well as overhead asso-
16 ciated with the contractors and the oversight of these contractors. The parties agreed
17 to a ramp-up period to allow KU a reasonable amount of time to engage the necessary
18 resources.

19 KU allows MFN to obtain estimates of make ready in the electrical space
20 from contractors approved by KU. If KU elects to perform the electrical make ready,
21 KU agrees to complete the make ready work within 60 days. If KU does not elect to
22 perform the make ready, MFN can perform the electrical make ready using KU ap-
23 proved contractors. Safety and quality of this important outsourced function are

1 assured to KU by requiring that all electrical make ready comply with KU's standards
2 and the applicable requirements of the NESC, NEC and all other applicable codes and
3 laws and KU's construction and safety practices. KU can have an inspector accom-
4 pany the approved contractors while they perform electrical make ready work. These
5 inspectors are engaged at MFN's cost. All make ready labor and materials are paid
6 for by MFN.

7 To further ensure the safety of the attachments and attachment processes, at
8 MFN's expense, KU conducts post construction inspections of attachments. Any
9 noncompliance discovered during a post attachment inspection is rectified at MFN's
10 cost. MFN is also assessed a penalty for each pole where any noncompliance with
11 KU's standards is identified. Additionally, if there is unauthorized work in the elec-
12 trical space or standards noncompliance, KU can revoke or suspend the use of the
13 high volume plan.

14 All expenses (labor, materials, overhead, oversight, etc.) that KU incurs under
15 the high volume plan must be paid or reimbursed by MFN. If MFN fails to pay
16 amounts it has agreed to pay, KU may terminate the high-volume plan. To further
17 protect KU from financial exposure, MFN is required to post and maintain a bond.

18 **Q33. Has Windstream agreed to more favorable pole attachment rates, terms, and**
19 **conditions with other attachers?**

20 A. Yes. Windstream agreed to process in excess of 300 poles per month for KIH.
21 Windstream entered into a Pole Attachment License Agreement with KIH (WIN
22 0268-302) that contained the 300 poles per 30 day restriction; however, the parties
23 amended the KIH agreement to process applications for 1500 poles per month

1 provided that KIH paid \$80,800 per month for the additional resources needed.

2 See First Amendment to Pole Attachment License Agreement (WIN 0264-67).

3 This amendment, with its per-month payment, was not intended to extend for the
4 entire term of the underlying Agreement. Rather, it was intended to last only as long
5 as KIH needed to submit high volume applications.

6 **Q34. Are there generally-accepted, workable standards for pole attachment timelines,
7 application processing, etc.?**

8 A. Yes. The FCC has developed rules specifically tailored for high volume application
9 scenarios. As set out in CMN's complaint, most notable are the rules set forth in the
10 Report and Order and Order on Reconsideration adopted by the FCC on April 7,
11 2011, WC Docket No. 07-245; GN Docket No. 09-51, also known as the "2011
12 Order". The FCC does not allow pole owners to deny or refuse to consider applica-
13 tions based upon volume, but it allows the pole owner additional time to process the
14 applications for "larger orders" in a 30 day period, *i.e.* orders that are in excess of the
15 lesser of 300 or 0.5% of the owner's poles in a state but do not exceed the lesser of
16 3000 poles or 5% of the owner's poles in a state. For these larger orders, under the
17 2011 Order, a pole owner may add 15 days to the 45 day survey period and 45 days to
18 the 60 day make ready period.

19 During consideration of the 2011 Order, some pole owners objected to the
20 imposition of time frames. However, since then the FCC has adopted rules that allow
21 access to poles even more quickly, notably the Third Report and Order and Declara-
22 tory Ruling adopted by the FCC on August 2, 2018 ("the 2018 Order"). The rules in
23 the 2018 Order continue the FCC's efforts to promote broadband deployment by

1 speeding the process of attaching to utility poles. As stated by the FCC in the first
2 paragraph of the 2018 Order, “Now more than ever, access to this vital infrastructure
3 must be swift, predictable, safe and affordable, so that broadband providers can
4 continue to enter new markets and deploy facilities that support high speed broad-
5 band.” Under the 2018 Order, the FCC adopted one touch make ready where the new
6 attacher performs all make-ready work. This will dramatically improve attachment
7 time frames in the states where the FCC regulations are directly applicable.

8 **Q35. Are faster time frames reasonable and feasible for Windstream?**

9 A. Yes. Even under the slower, now-outdated time frames adopted years ago, Wind-
10 stream’s conduct would be deemed unreasonable, insufficient and inadequate. While
11 the FCC and more-local governments are amending their rules to facilitate faster,
12 more efficient broadband deployment, Windstream refuses even to adhere to the time
13 frames adopted several years ago that the FCC now considers to be too slow. The
14 FCC, state and local governments, and industry want to move forward, while
15 Windstream wants to take a step back.

16 Despite Windstream’s contention that it is incapable of processing
17 applications at a pace faster than 300 poles in a 30 day period, in the majority of
18 states where Windstream affiliates own or control poles, they are required to achieve
19 a faster pace by law, and in Kentucky, Windstream has agreed to the faster time
20 frames. Under the amendment it entered into with KIH, Windstream agreed to
21 process up to 1500 poles in a 30 day period. Windstream is capable of processing
22 CMN’s applications at a faster pace, but for competitive reasons, it does not want to.

23 **Q36. What are the requirements for Windstream affiliates in other states?**

1 A. FCC rules govern pole attachments in three-quarters of the states where Windstream
2 and its affiliates own poles, listed by Windstream in response to CMN's Request
3 No. 9 (WIN 0002). Under FCC rules, Windstream is not allowed to limit the number
4 of submittals to applications for only 300 poles. Currently, in a state where pole
5 attachments are regulated by the FCC, Windstream would not be able to refuse to
6 process more than 300 poles in a 30 day period. Under the FCC's 2011 Order,
7 Windstream is required to process up to 3000 poles submitted during a 30 day period.
8 Furthermore, under the 2011 Order, Windstream would be required to process these
9 3000 poles in a 60 day period, which is a shorter time frame than Windstream has
10 processed 300 poles in some 30 day periods. Yet 3000 poles in a 30 day period is
11 twice the number of poles CMN requested.

12 The FCC has now adopted One Touch Make Ready and shortened the time
13 frame during which a pole owner may process small applications (300 poles in a 30
14 day period) from 45 days to 15 days and for larger applications (up to the lesser of
15 3000 poles or 5% of poles in the state during a 30 day period) from 60 days to 30
16 days. In short, during the first quarter of 2019, in most states where Windstream
17 owns poles, Windstream will have to process pole applications for as many as 3000
18 poles in a 30 day period much more quickly than it is processing CMN's applications
19 for fewer than 300 poles during a 30 day period.

20 CONCLUSION

21 **Q37. What relief does CMN seek from the Commission in this proceeding?**

22 A. CMN seeks an order from the Commission directing Windstream to grant CMN
23 access to its poles on fair, just and reasonable terms. Industry best practice would be

1 for Windstream to comply with the framework set forth in the Third Report and Order
2 and Declaratory Ruling adopted by the FCC on August 2, 2018 and released on
3 August 3, 2018. However, an order by the Commission ordering Windstream to
4 comply with the time frames set forth in the Report and Order and Order on
5 Reconsideration adopted by the FCC on April 7, 2011, WC Docket No. 07-245; GN
6 Docket No. 09-51 would be an improvement over the current situation. In addition,
7 Windstream affiliates have been subject to those time frames in other states and
8 Windstream itself agreed to substantially similar time frames relatively recently in a
9 high-volume arrangement with KIH.

10 **Q38. Can you summarize why this requested relief should be given?**

11 A. Yes. Windstream has imposed restrictions and delays in the pole-attachment process
12 that are neither part of its Tariff nor fair, just, and reasonable terms for its pole-
13 attachment service. In addition, Windstream's treatment of CMN discriminates
14 against a direct competitor, and its refusal to even negotiate toward arrangements
15 provided to others is for the stated reason of aiding the business of an affiliate in
16 another jurisdiction. The time frames that CMN asks the Commission to order Wind-
17 stream to follow simply require it to furnish adequate, efficient, and reasonable
18 service and to render that service to CMN in accordance with generally-applicable
19 standards and the Windstream Tariff.

20 **Q39. Does this conclude your testimony?**

21 A. Yes.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

CMN-RUS, Inc.

Complainant

v.

Windstream Kentucky East, LLC

Respondent

No. 2018-00157

Direct Testimony Verification

STATE OF INDIANA)

COUNTY OF VANDERBURGH)

I, John Greenbank, being duly sworn, state that the attached is my Direct Testimony in the above-styled matter, that I would respond in the same manner to the questions if so asked upon taking the stand, and that my testimony is true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.



John Greenbank

Subscribed and sworn to this 24 day of ~~September~~ ^{August}, 2018, before me, a Notary Public in and before said County and State.



Notary Public

(SEAL)

My Commission expires: 7-27-25



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

Windstream LX Applications

9/4/18 date used for <i>days since submittal</i> calculation					
Windstream Application	Poles	Submittal Date	Approved Date	Days to Approve	Days Since Submittal
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	

9/4/18 date used for <i>days since submittal</i> calculation					
Windstream Application	Poles	Submittal Date	Approved Date	Days to Approve	Days Since Submittal
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-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-FR05-05W	25	7/5/18	8/24/18	50	
LX-FR05-06W	25	7/5/18	8/24/18	50	
LX-FR05-10W	17	7/5/18	8/24/18	50	
LX-FR06-01W	25	7/5/18	8/24/18	50	
LX-FR07-16W	5	7/5/18	8/24/18	50	
LX-FR05-07W	25	7/5/18			61
LX-FR05-08W	24	7/5/18			61
LX-FR06-02W	25	7/5/18			61
LX-FR06-03W	25	7/5/18			61
LX-FR06-04W	10	7/5/18			61
LX-FR07-17W	23	7/5/18			61
LX-FR07-18W	7	7/5/18			61
LX-FR07-19W	7	7/5/18			61
LX-FR08-01W	25	7/9/18			57

9/4/18 date used for <i>days since submittal</i> calculation					
Windstream Application	Poles	Submittal Date	Approved Date	Days to Approve	Days Since Submittal
LX-FR08-02W	25	7/11/18			55
LX-FR06-05W	13	7/16/18			50
LX159-02W	4	7/17/18			49
LX164-01W	4	7/17/18			49
LX025-02W	1	8/2/18			33
LX101-01W	5	8/6/18			29
LX132-02W	17	8/6/18			29
LX136-01W	25	8/6/18			29
LX136-02W	13	8/6/18			29
LX158-01W	10	8/6/18			29
LX166-02W	6	8/6/18			29
LX166-03W	25	8/6/18			29
LX173-01W	17	8/6/18			29
LX174-01W	16	8/6/18			29
LX175-01W	21	8/6/18			29
LX276-02W	17	8/6/18			29
LX105-01W	25	8/7/18			28
LX105-02W	25	8/7/18			28
LX105-03W	25	8/7/18			28
LX105-04W	7	8/7/18			28
LX134-01W	25	8/7/18			28
LX134-02W	7	8/7/18			28
LX103-02W	8	8/9/18			26
LX049-04W	2	8/13/18			22
LX083-06W	3	9/4/18			0
LX-FR11-05	1	9/4/18			0

Windstream Invoice Payment

Greenbank Direct Testimony
Ky. PSC 2018-00157

Title	Pole Company App. ID	MR Invoice Received	MR Invoice Total	MR Invoice Paid	Days to Invoice Paid
LX009-01W	JUPR2862	6/21/18	\$6,628.32	7/13/18	22
LX025-01W	JUPR4229	7/17/18	\$1,636.97	7/25/18	8
LX025-02W					0
LX047-01W	JUPR3169	6/29/18	\$910.12	7/13/18	14
LX049-01W	JUPR2917	6/29/18	\$6,522.82	7/13/18	14
LX049-03W	JUPR3757	7/17/18	\$5,403.36	7/25/18	8
LX049-04W	JUPR6369				0
LX053-01W	JUPR3172	7/17/18	\$978.08	7/25/18	8
LX059-01W	JUPR3997	7/17/18	\$779.35	7/25/18	8
LX064-01W	JUPR3173	6/12/18	\$192.80	7/13/18	31
LX083-06W					0
LX101-01W	JUPR6227				0
LX103-02W	JUPR6368				0
LX105-01W	JUPR6238				0
LX105-02W	JUPR6239				0
LX105-03W	JUPR6240				0
LX105-04W	JUPR6241				0
LX132-01W	JUPR1527	6/12/18	\$7,924.79	7/13/18	31
LX132-02W	JUPR6216				0
LX134-01W	JUPR6237				0
LX134-02W	JUPR6236				0
LX135-01W	JUPR1688	6/12/18	\$5,526.92	7/13/18	31
LX135-02W	JUPR1634	6/12/18	\$2,272.46	7/13/18	31
LX135-03W	JUPR1639	8/15/18	\$3,711.30	8/15/18	0
LX135-04W	JUPR1640	6/12/18	\$3,718.71	7/13/18	31
LX135-05W	JUPR1674	6/12/18	\$3,953.73	7/13/18	31
LX135-06W	JUPR1675	6/12/18	\$3,394.89	7/13/18	31
LX136-01W	JUPR6224				0
LX136-02W	JUPR6226				0
LX151-01W	JUPR2835	6/12/18	\$192.80	7/13/18	31
LX158-01W	JUPR6215				0
LX159-01W	JUPR2834	6/29/18	\$1,063.63	7/13/18	14
LX159-02W	JUPR5535				0
LX164-01W	JUPR5634				0
LX165-01W	JUPR2838	7/24/18	\$2,152.14	7/25/18	1
LX166-01W	JUPR2836	6/29/18	\$490.28	7/13/18	14
LX166-02W	JUPR6220				0
LX166-03W	JUPR6221				0
LX167-01W	JUPR1699	6/12/18	\$2,964.39	7/13/18	31
LX167-02W	JUPR1694	6/12/18	\$2,559.50	7/13/18	31
LX167-03W	JUPR1695	6/29/18	\$8,222.14	7/13/18	14
LX167-04W	JUPR1702	6/29/18	\$3,821.57	7/13/18	14
LX167-05W	JUPR1703	6/29/18	\$5,584.63	7/13/18	14

Windstream Invoice Payment

Greenbank Direct Testimony
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Title	Pole Company App. ID	MR Invoice Received	MR Invoice Total	MR Invoice Paid	Days to Invoice Paid
LX173-01W	JUPR6219				0
LX174-01W	JUPR6218				0
LX175-01W	JUP6217				0
LX221-01W	JUPR4000	7/17/18	\$2,757.20	7/25/18	8
LX276-01W	JUPR2839		\$1,487.20		0
LX276-02W	JUPR6223				0
LX-FR01-03W	JUPR2833	6/12/18	\$289.20	7/13/18	31
LX-FR02-01W	JUPR1681	6/29/18	\$5,901.83	7/13/18	14
LX-FR02-02W	JUPR1682	6/29/18	\$4,199.60	7/13/18	14
LX-FR02-03W	JUPR1685	6/29/18	\$3,345.28	7/13/18	14
LX-FR02-04W	JUPR1677	6/29/18	\$1,409.47	7/13/18	14
LX-FR03-02W	JUPR4750	8/14/18	\$192.80	8/15/18	1
LX-FR04-05BiW	JUPR1693	6/29/18	\$1,631.04	7/13/18	14
LX-FR05-05W	JUPR5214	8/30/18			0
LX-FR05-06W	JUPR5213				0
LX-FR05-07W	JUPR5215				0
LX-FR05-08W	JUPR5216				0
LX-FR05-09W	JUPR3758	7/17/18	\$8,584.65	7/25/18	8
LX-FR05-10W	JUPR5217				0
LX-FR05-11W	JUPR4295	7/17/18	\$5,534.37	7/25/18	8
LX-FR06-01W	JUPR5220	8/30/18			0
LX-FR06-02W	JUPR5222				0
LX-FR06-03W	JUPR5223				0
LX-FR06-04W	JUPR5224				0
LX-FR06-05W	JUPR5576				0
LX-FR07-01W	JUPR2840	6/22/18	\$7,895.95	7/29/18	37
LX-FR07-02W	JUPR2916	7/17/18	\$2,512.64	7/25/18	8
LX-FR07-03W	JUPR3174	6/12/18	\$192.80	7/13/18	31
LX-FR07-04W	JUPR3126	6/29/18	\$2,182.56	7/13/18	14
LX-FR07-05W	JUPR4297	7/24/18	\$3,662.11	7/25/18	1
LX-FR07-06W	JUPR4298	8/14/18	\$10,718.94	8/15/18	1
LX-FR07-07W	JUPR4300	7/17/18	\$4,373.36	7/25/18	8
LX-FR07-08W	JUPR4301	7/17/18	\$4,199.48	7/25/18	8
LX-FR07-09W	JUPR4450	8/14/18	\$7,018.63	8/15/18	1
LX-FR07-10W	JUPR4451	8/14/18	\$4,866.50	8/15/18	1
LX-FR07-11W	JUPR4452	8/14/18	\$5,685.61	8/15/18	1
LX-FR07-12W	JUPR4453	8/14/18	\$1,740.46	8/15/18	1
LX-FR07-13W	JUPR4454	8/14/18	\$4,457.17	8/15/18	1
LX-FR07-14W	JUPR4751	8/17/18	\$2,171.09	8/17/18	0
LX-FR07-15W	JUPR4752	8/17/18	\$1,535.59	8/17/18	0
LX-FR07-16W	JUPR5221	8/30/18	\$3,072.00		0
LX-FR07-17W	JUPR5225				0
LX-FR07-18W	JUPR5226				0

Windstream Invoice Payment

Greenbank Direct Testimony
Ky. PSC 2018-00157

Title	Pole Company App. ID	MR Invoice Received	MR Invoice Total	MR Invoice Paid	Days to Invoice Paid
LX-FR07-19W	JUPR5227				0
LX-FR08-01W	JUPR5229				0
LX-FR08-02W	JUPR5314				0
LX-FR09-01W	JUPR3995	7/17/18	\$1,794.74	7/25/18	8
LX-FR10-01W	JUPR3996	7/17/18	\$241.00	7/25/18	8
LX-FR11-01W	JUPR3998	6/12/18	\$241.00	7/13/18	31
LX-FR11-02W	JUPR3999	7/17/18	\$1,935.28	7/25/18	8
LX-FR11-05W					0
LX-Winchester Reroute-01W	JUPR4749	8/17/18	\$1,339.22	8/17/18	0

