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

In the Matter of

CMN-RUS, INC.

COMPLAINANT

v.

WINDSTREAM KENTUCKY EAST, LLC

RESPONDENT

**WINDSTREAM KENTUCKY EAST, LLC'S ANSWERS TO
SECOND REQUESTS FOR INFORMATION FROM CMN-RUS, INC.**

Comes the Respondent, Windstream Kentucky East, LLC (“Windstream”),¹ and for its Answers to CMN-RUS, Inc.’s Second Set of Requests for Information, hereby states as follows:

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.

ANSWER:

The KIH Amendment is still a valid agreement, however, notice was provided on May 1, 2017 that KIH wished to return to 300 poles per month. The notice is provided at WIN7688-7689.

Witness Responsible for Answer: James Lloyd

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.

¹ Windstream Kentucky East, LLC has used the abbreviations herein that were used in CMN-RUS, Inc.’s Second Set of Requests for Information.

- 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.

ANSWER:

- a. Full copies of the franchise agreements requested in 1 CMN 12 and in part b below are attached at WIN7690-7768.
- b. Windstream Kentucky East, LLC is franchised to provide Cable TV Services in Lexington-Fayette County. This agreement is attached at WIN7769-7834.

Witness Responsible for Answer: James Lloyd, Joyce Latham

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.)

ANSWER:

- a. The entities listed below are currently attached to Windstream owned poles and were not listed in WIN 0303. As mentioned before, Windstream Affiliates do not apply to attach to any Windstream poles. Windstream is attached to Windstream poles in Fayette County.

| | | |
|-------------------------------|------------------|--------------|
| Wild Communications | Current Attacher | WIN0900-934 |
| Fleming Mason REC | Current Attacher | WIN2284-2302 |
| Inter-County Energy REC | Current Attacher | WIN2348-2359 |
| Intermountain Cable | Current Attacher | WIN0935-968 |
| Taylor County REC | Current Attacher | WIN2439-2450 |
| Crown Castle | Current Attacher | WIN1541-1572 |
| Windstream Kentucky East, LLC | Current Attacher | no agreement |

- b. The applicable attachment contracts for each entity listed in WIN0303 are attached to Windstream's answers to the PSC's First Set of Requests for Information-Response to PSC 7 and Response to PSC 8, bates numbers are as follows:

| | | |
|------------------------|------------------|--------------|
| AT&T | Current Attacher | WIN1362-1407 |
| Bluegrass Network | Current Attacher | WIN1678-1709 |
| Charter Communications | Current Attacher | tariff |
| KU | Current Attacher | WIN2488-2506 |

| | | |
|------------------------------|------------------|-----------------------------------------------------------------------------------------------|
| KIH | Current Attacher | WIN1573-1610 |
| Mobilitie/Bluegrass Backhaul | Current Attacher | WIN1440-1472 |
| Shelby Energy | Current Attacher | WIN7857-7871 (This agreement is the subject of a Petition for Confidential Treatment.) |
| Spectrum Cable TV | Current Attacher | tariff |
| Time Warner | Current Attacher | WIN1710-1742; 1948-1985 |
| Jackson Energy | Current Attacher | WIN2875-2910 |
| MetroNet | Current Attacher | tariff |
| Fibertech Networks LLC | Current Attacher | WIN1508-1540 |
| Cingular Wireless | Current Attacher | WIN1473-1507 |

Bates numbers for contracts for those entities identified in Part a are listed in Part a.

Windstream has also noticed that it neglected to provide the January 1, 1997 agreement with Blue Grass Energy previously. This is now attached at WIN7835-7856. (It is also the subject of a Petition for Confidential Treatment.)

Witness Responsible for Answer: James Lloyd, Joyce Latham

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.

ANSWER:

Windstream Kentucky East, LLC ² is the only Windstream Affiliate attached to Windstream Kentucky East poles in Fayette County since January 1, 2013. No Windstream Affiliates apply to attach to any Windstream poles.

Witness Responsible for Answer: James Lloyd

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).

² Throughout these responses, this entity has been referred to as “Windstream” to match the use of this term in CMN-RUS, Inc.’s Second Set of Requests for Production, however, it is referred to as its full legal name here for clarity.

- 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.

ANSWER:

Objection. To the extent that CMN is attempting to utilize the procedure under CR 36 for asking for requests for admissions, these are not authorized by the PSC’s August 7, 2018 order and, accordingly, Windstream is not required to answer these questions in the fashion required by CR 36. Without waiving said objection, Windstream further states as follows:

The agreement found at WIN2488-2505 (the “Windstream-KU Joint Use Agreement”) is a Joint Use Agreement created in 1997. Joint Use Agreements differ from Pole Attachment Agreements in that a Pole Attachment Agreement is a unilateral agreement in which one party, a Licensee, applies for a license to attach to a pole owner’s poles, a Licensor, for a fee. A Joint Use Agreement is a traditional attachment arrangement between a telecommunications and electric company; it is a bilateral agreement whereby both parties will be attaching to each other’s poles as an exchange of resources for little or no charge.

As CMN does not own poles in Kentucky, it must seek to attach to Windstream’s poles under a Pole Attachment Agreement. Since CMN is not eligible for the type of agreement

Windstream has with KU, the Windstream-KU Joint Use Agreement is irrelevant to an analysis of the current dispute between CMN and Windstream.

- a. The Windstream-KU Joint Use Agreement is effective in Fayette County, Kentucky and includes a provision that KU and Windstream do not charge each other rent for attachments under the Windstream-KU Joint Use Agreement.
- b. Windstream East has never exercised its rights under Article II B of the Windstream-KU Joint Use Agreement.
- c. Only Windstream Kentucky East, LLC can utilize the Windstream-KU Joint Use Agreement.
- d. Windstream keeps a log to account for the Objective Percentage Ownership of the Parties. If the percentage is determined to be unbalanced, a purchase of poles can occur to correct the imbalance.
- e. Windstream is attached to 22,675 KU poles and KU is attached to 17,029 Windstream poles in Lexington, Kentucky.
- f. Winchester Road (Hwy 60) in Lexington has both a KU strand and a Windstream strand, however, these poles are not included in the Objective Percentage Ownership.
- g. Windstream East nor KU has any abandoned poles that are documented in Windstream's records.
- h. Windstream East has not received any poles from KU.
- i. The only copy of the Windstream-KU Joint Use Agreement is the copy previously provided. Windstream East and KU have not exchanged any recapitulations.

- j. 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 is \$0.00. 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 is 0.

Witness Responsible for Answer: James Lloyd, Joyce Latham

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.

ANSWER:

Please see attached at WIN7872.

Windstream made one correction on this document, the AT&T agreement found at WIN1400-1407 was executed on October 8, 1991, not October 1, 1991, as previously listed.

To the extent CMN is requesting Windstream to provide documents that are the subject of a Petition for Confidential Treatment, these will not be provided.

Witness Responsible for Answer: James Lloyd

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.

ANSWER:

Please see attached at WIN7873.

To the extent CMN is requesting Windstream to provide documents that are the subject of a Petition for Confidential Treatment, these will not be provided.

Witness Responsible for Answer: James Lloyd

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?

ANSWER:

The Lexington, Kentucky pole attachment application count from January 2015 to present in a month by month format has already been provided at WIN0304-305. The pole count provided is an exact count. An updated version of this spreadsheet is now being produced at WIN7686.

Witness Responsible for Answer: Joyce Latham

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).

ANSWER:

- a. Copies of invoices for work performed for Windstream by Byers Engineering, referenced in Windstream's response to PSC Request No. 3(c) are provided at WIN7874-8013
- b. Copies of invoices for work performed for Windstream by Triple D, referenced in Windstream's response to PSC Request No. 3(c) are provided at WIN8014-8027
- c. Copies of invoices issued by Windstream to CMN or its affiliates related to pole attachments were paid late or are past due, and the date issued and date paid is provided at WIN8028 Please note that a large number of invoices responsive to this question were previously produced at the bates numbers noted on the spreadsheet located at WIN8250.

Witness Responsible for Answer: Joyce Latham, Ashley Sanders

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.

ANSWER:

Objection. To the extent that CMN is attempting to utilize the procedure under CR 36 for asking for requests for admissions, these are not authorized by the PSC's August 7, 2018 order and, accordingly, Windstream is not required to answer these questions in the fashion required by CR 36. Windstream further states as follows:

Payments made by CMN for invoices are shown in WIN8854-8969. Windstream has or will remit these amounts to Triple D or Byers, as applicable, within the periods stated below. Windstream does not pay Triple D for Windstream pays Byers and Triple D the same amounts it charges CMN. Any discrepancies from the total of the Byers and Triple D invoices against the CMN invoices is for work Windstream preformed itself, such as for processing and engineering done in house.

Windstream must pay Triple D within 60 days after it receives an invoice from Triple D. Triple D doesn't provide the invoice until Windstream releases the job. Windstream doesn't release the job until CMN has paid the make ready estimate.

Windstream must pay Byers within 45 days after an invoice is received. Windstream doesn't wait for Make Ready Estimate payment from CMN before paying Byers because the survey work has to be done in order to send CMN the estimate. At that time Byers has performed its service so we remit payment.

Witness Responsible for Answers: Joyce Latham, Ashley Sanders

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.

ANSWER:

The pole referenced on line 11 and 12 of the Direct Testimony of Ashley Sanders is CMN Pole Number 490W, and Windstream Pole Number 75250. Windstream Kentucky East is the pole owner. The geolocation is LAT: 37.99473; LONG: -84.43899. The data and time of the photos provided is August 17, 2018, 11:00 EST.

Witness Responsible for Answer: Joyce Latham, Ashley Sanders

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).

ANSWER:

The Zionsville Feeder Ring 1H Application, submitted on September 8, 2017, was incomplete because poles 1, 3, and 4 on the survey drawing did not match the poles in the field. Duke Energy rejected the application and request that CMN fix the inaccuracies and resubmitted a new application.

The Carmel CR054 A Application, submitted on June 17, 2017, was incomplete because the poles in field did not match the survey drawing. Duke Energy rejected the application and request that CMN fix the inaccuracies and resubmitted a new application.

The Brownstone A Pole Application, submitted on May 8, 2017, was submitted correctly. Windstream completed the Make Ready construction and gave CMN license to attach over a year ago. CMN still haven't attached to the poles.

The Fishers 13b Application, submitted on October 27, 2017, was incomplete because the survey drawing omitted poles. The application had to be corrected and resubmitted.

The Fishers 61 Application, submitted on September 23, 2017, was incomplete because the location coordinates provided by CMN for pole 252-714 were incorrect. CMN also included poles 199-596 which is not even in the route CMN was applying to attach to. The application had to be corrected and resubmitted.

Witness Responsible for Answer: James Lloyd

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).

ANSWER:

As stated in the Response to Request 28, Windstream has received several incomplete applications from CMN. In failing to correctly apply for attachment, CMN is failing to follow the application process.

In addition, as of August 21, 2018, CMN was past due on 106 Windstream invoices in Indiana. Of those 106, only 27 were allegedly in dispute. The other 79 have not been disputed,

CMN simply failed to pay. The total past due amount was \$1,254,569.04. The total amount past due amount on undisputed invoices was \$118,294.98. These invoices date back to January 2017.

Unfortunately, CMN's struggle to pay invoices also goes back further than January 2017. For years, CMN has consistently acted in bad faith in failing to pay its make ready invoices. This is evidenced at WIN3017-3024. From January 1, 2015, to present CMN has made payments on 343 invoices out of the 449 that were invoiced. Of the 343 that were paid, 225 of those were paid late, meaning CMN paid late 65.6 percent of the time. None of those 343 invoices were in dispute. CMN's continuous failure to pay invoices directly impedes the application process.

Witness Responsible for Answers: James Lloyd

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?

ANSWER:

Mr. Lloyd's comments do not necessarily mean to draw a distinction between third party engineers and engineers that work in-house for Windstream. His point is that a person doing an Engineering Survey, a safety function, should be a well-qualified, permanent employee, not someone hired quickly and temporarily for a single project. An engineer hired quickly and temporarily is more likely to be less qualified and less experienced, increasing the risk of that person making a costly mistake. This would be true even if the person was hired as a Windstream

employee. Mr. Lloyd's point is that Windstream should not be forced into using engineers less experienced and qualified than the ones they have on staff just so that CMN can rush through its project, as this would create a safety risk, and a corresponding liability, for Windstream.

Witness Responsible for Answer: James Lloyd

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.

ANSWER:

- 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 are provided at WIN8257.

- b. Windstream does not provide information to 811 centers. 811 centers send the locate and damage information to Windstream.
- c. “Billed status” is the invoice CMR has sent out to the party committing the damage to try and collect reimbursement for damaged property. “Unbilled status” means Windstream is still gather information concerning the damage and has not yet sent the invoice.
- d. Copies of all bills referenced in Exhibit 4 were provided as part of 31(a).
- e. “Source” means where the notice of loss originated from. “FNOL” means First Notice of Loss. An FNOL come from a Windstream Field Tech to CMR to inform CMR that a loss has occurred.
- f. All pictures taken by Windstream or any contractor of Windstream supporting the damage are provided at WIN8271.
- g. Copies of all damage tickets and explanation for lack of such ticket with respect to any incident is provided at WIN8613. Damage tickets are tickets reported to 811 by the person or entity, usually an excavator, that caused the damages. The lack of damage tickets indicates the CMN excavator did not call in a damage ticket to 811.
- h. Dates upon which Windstream or its contractor(s) performed locates are provided at WIN8687.
- i. All documents or other evidence that the Windstream facilities were properly located for the third-party construction/excavation are provided at WIN8779

Witness Responsible for Answer: Joyce Latham

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).

ANSWER:

- a. The OSP Engineering Manager and two OSP Engineers are located in Lexington, Kentucky. The Permitting Team and Invoicing Team are in Little Rock.
- b. The Permitting Team and Invoicing Team support all of Windstream Group.
- c. The OSP Engineering Team in Lexington has four total members. The salary range is \$62,500 to \$104,800. The Permitting Team has eight total members. The salary range is \$39,400 to \$93,800. The Invoicing Team has four total members. The salary range is \$47,500 to \$67,000.

- d. OSP Engineering has never hired any temporary employees. The Permitting Team hired one temporary employee in November 2016 to process CMN applications in Indiana. Windstream charges CMN through the make ready estimates for this employee. The Permitting Team hired eight temporary employees to process applications for the KIH Project. Seven of these employees were hired in November 2016. One was hired in December 2016. These employees were retained until May 21, 2017. KIH paid for these temporary employees.

Witness Responsible for Answer: Joyce Latham, Ashley Sanders

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.

ANSWER:

Windstream Group performs the “quality control” part of the make ready process in-house.

Witness Responsible for Answer: James Lloyd

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.

ANSWER:

As a condition of its approval of Charter Communication's ("Charter") merger with Time Warner Cable, the New York Public Service Commission ("NYPSC") required Charter to extend broadband services to approximately 150,000 households across rural New York state. This project has a completion deadline of December 31, 2020. Progress benchmarks were set to ensure Charter stayed on schedule. The project began in 2016, and by the middle of 2017 Charter had missed every benchmark. The NYPSC then inserted itself into the management of the project.

Shortly after the NYPSC became directly involved, it called a meeting with all New York Utility companies involved in the project. There are approximately a dozen companies involved, including Windstream New York, LLC. At the meeting, the NYPSC directed the utilities to allow Charter to temporarily attach to the utilities poles until the make ready construction could be completed. This would in Charter's and the NYPSC's opinion allow the project to move faster. Windstream, as a general policy, does not allow attachers to do temporary attachments. It creates safety hazards and additional make ready work, as the attacher now must touch each pole twice. After several weeks of negotiations and immense pressure from the NYPSC, an agreement regarding temporary attachments was reached.

This arrangement has not helped Charter meet its benchmarks. Earlier this year, Charter was fined \$2 million for failing to meet its benchmarks. The NYPSC has also moved to revoke its approval of the merger. The NYPSC did this for two reasons. First, the project was progressing to slowly. Second, in its haste to reach the benchmark goals, Charter took shortcuts which lead to safety violations and ultimately the death of a construction contractor in the Buffalo, New York area.

It is debatable whether a temporary attachment could be considered a Windstream Group Licensee performing Windstream's make ready work. To the extent a temporary attachment could

be considered make ready work, the Charter project is the only instance where an attacher has performed Windstream's make ready work on Windstream poles. Windstream did not allow Charter to do this willingly, but it was directed by the NYPSC to allow this procedure.

Witness Responsible for Answer: James Lloyd

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.

ANSWER:

- a. **Objection.** To the extent that CMN is attempting to utilize the procedure under CR 36 for asking for requests for admissions, these are not authorized by the PSC's August 7, 2018 order and, accordingly, Windstream is not required to answer these

questions in the fashion required by CR 36. Without waiving said objection, Windstream further states as follows:

The contract at WIN1473-1507 refers to the Wireless Attachment Poles Attachment License Agreement between Windstream Kentucky East, LLC and New Cingular Wireless PCS, LLC (the “New Cingular WAA”).

The New Cingular WAA is a wireless attachment agreement. A wireless attachment agreement is different from a traditional pole attachment agreement. Most notably, a wireless attachment is the attachment of equipment, usually a plastic box, to the top or toward the bottom of the pole. The attachment of the wireless equipment typically does not require make ready work, making it much easier and faster to navigate through the process. Since the wireless equipment is just that, wireless, there are no wire strands that must be strung from pole to pole. This also makes attaching faster, cheaper, and easier. For this reason, the arrangements in the New Cingular WAA are irrelevant to the instant proceeding.

The New Cingular WAA does not limit the number of poles that can be attached to in a thirty-day period. The New Cingular WAA also does not expressly allow the attachment of 1,500 poles in a thirty-day period.

- b. Objection. As the agreements between Windstream and all other attachers have already been provided in this litigation, it is not Windstream’s obligation to sort through these agreements for CMN.
- c. Windstream, nor any Windstream Group Affiliate, applies to attach to any Windstream-owned poles.

- d. Windstream has amended the 300-pole rule in one pole attachment agreement, the KIH Amendment. This agreement was attached to the Complaint in this matter and is therefore already in the possession of CMN. The KIH Amendment was signed in early July 2016. The ramp up period of 1,500 poles per month was from August 2016, until KIH provided notice on May 1, 2017 that it wished to return to 300 poles per month. During this period, KIH submitted 393 applications, which contained 8,597 poles.

Witness Responsible for Answer: James Lloyd

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.

ANSWER:

- a. Objection. To the extent that CMN is attempting to utilize the procedure under CR 36 for asking for requests for admissions, these are not authorized by the PSC's August 7, 2018 order and, accordingly, Windstream is not required to answer these questions in the fashion required by CR 36. Without waiving said objection, Windstream further states as follows:

Under the New Cingular WAA, within forty-five days of receipt of Licensee's application, Licensor shall inform Licensee of its estimated make-ready charges for Licensor's Make Ready work regarding its *wireless attachment*. The cost to attach a wireless attachment differs from that of a traditional attachment.

- b. Objection. As the agreements between Windstream and all other attachers have already been provided in this litigation, it is not Windstream's obligation to sort through these agreements for CMN.
- c. As previously noted, Windstream, nor any Windstream Affiliate, applies to attach to any Windstream-owned poles.

Witness Responsible for Answer: James Lloyd

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.

ANSWER:

- a. The New Cingular WAA provides New Cingular the right to utilize contractors to complete the *surveys*, if Windstream does not complete its survey work with forty-five days. It does not provide New Cingular the right to preform Windstream's make ready construction. The make ready survey for a wireless attachment is not as extensive as a

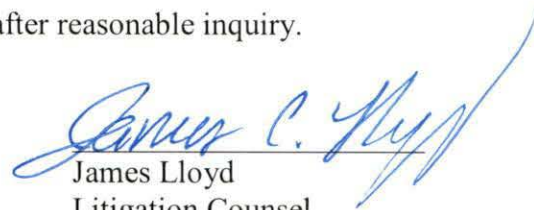
make ready survey for a traditional attachment. Typically, the lines that are already on the pole do not have to be moved. The wireless equipment can simply be attached. This means both the engineering survey and the actual construction are much simpler than that of the engineering survey and construction required for a traditional attachment.

- b. Objection. As the agreements between Windstream and all other attachers have already been provided in this litigation, it is not Windstream's obligation to sort through these agreements for CMN.
- c. As previously noted, Windstream, nor any Windstream Affiliate, applies to attach to any Windstream-owned poles.

Witness Responsible for Answer: James Lloyd

VERIFICATION

I, James Lloyd, hereby certify that I am the person who supervised the preparation of these responses on behalf of Windstream Kentucky East, Inc., and these responses are true and accurate to the best of my knowledge, information, and belief formed after reasonable inquiry.

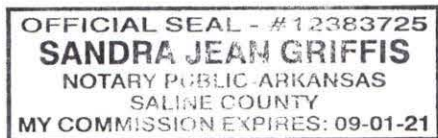

James Lloyd
Litigation Counsel
Windstream

STATE OF ARKANSAS)

COUNTY OF PULASKI)

Subscribed and sworn before me, this the 27th day of September, 2018.


NOTARY PUBLIC



EXPIRATION: 9-01-21

NOTARY ID: 12383725


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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing was served via hand delivery on October 1, 2018 upon the following:

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