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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

**REBUTTAL TESTIMONY OF JAMES LLOYD  
COUNSEL  
WINDSTREAM**

**Filed: October 12, 2018**

1 **Q. Please state your name, position, and business address.**

2 A. My name is James Lloyd. I am Litigation Counsel for Windstream.<sup>1</sup> My business address  
3 is 4001 Rodney Parham Rd., Little Rock, AR 72212.

4 **Q. Is there any merit to CMN-RUS, Inc.'s ("CMN") contention that Windstream**  
5 **Kentucky East is being difficult in this case and in the negotiations that led up to the**  
6 **filing of the case for anti-competitive purposes?**

7 A. No. There is no merit to that argument. Windstream Kentucky East knows that there will  
8 always be competition in any market. Windstream Kentucky East's concern is that it does  
9 not want to make an agreement calling for terms that are impossible for the company to  
10 keep, creating disagreements and further lawsuits. Windstream Kentucky East is also wary  
11 of extending credit of any kind to CMN when CMN has refused to pay some of the Duke  
12 invoices (at WIN3025-3051) for many months without taking any steps to get that issue  
13 fully and finally resolved.

14 In addition, Windstream Kentucky East is not preventing CMN from completing  
15 the LFUCG Project on time. If CMN attaches to 300 poles per month it can complete the  
16 project on time. If it had begun applying to Windstream Kentucky East for pole attachment  
17 in November 2017, when CMN began lobbying Windstream Kentucky East to attach to  
18 more than 300 poles per month, CMN would be in an even better position to finish its  
19 project on time. However, CMN did not submit its first application until \_\_\_\_\_.

20 **Q. Is the request by CMN to attach to 1,500 poles per month fundamentally different**  
21 **from the agreement reached with KIH?**

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<sup>1</sup> In this Testimony, "Windstream" refers collectively to all Windstream affiliates. When reference is made to only the Respondent in this case, it will be referred to as "Windstream Kentucky East."

1 A. Yes. First, the length of the agreement was different. The KIH agreement was for eight  
2 months. CMN project's that its project will last for over three years.

3 Next, there is the geographic scope. The KIH project was a state-wide project. The  
4 CMN project is limited to just Lexington. Windstream has more resources in throughout  
5 the state than it does in just Lexington. There is more than one Windstream affiliate in the  
6 state even.

7 Also, the KIH Project was for a government entity and not a private cable provider.  
8 There was a lot of pressure for Windstream Kentucky East and other Windstream affiliates  
9 to make the project move faster for that reason.

10 **Q. What about the New Cingular Wireless Attachment Agreement? Is that situation**  
11 **different from the proposal by CMN-RUS, Inc.?**

12 A. Yes, it is. All wireless attachment agreements are going to be fundamentally different from  
13 the type of agreement sought by CMN because wireless attachments are so much simpler  
14 than traditional pole attachments. Most notably, a wireless attachment is just the  
15 attachment of equipment, usually a plastic box, to the top or toward the bottom of the pole.  
16 The attachment of the wireless equipment typically does not require make ready work and  
17 there are no wire strands that must be strung from pole to pole, which makes attaching  
18 faster, cheaper, and easier. There is no or little engineering needed because of the lack of  
19 make ready and need for cables.

20 **Q. Why does Windstream Kentucky East keep bringing up the money owed to Duke**  
21 **Energy during this case and why did Windstream Kentucky East bring it up during**  
22 **the negotiations prior to this suit?**

1 A. The Duke outstanding invoice issue is a symptom of a larger problem having to do with  
2 the relationship between Windstream and CMN. CMN is asking Windstream to take a lot  
3 of action to increase its capabilities to allow CMN to attach to more than 300 poles per  
4 month while CMN refuses to make good on its prior debts. This shows a general  
5 unwillingness of CMN to try to do business in a fair and business-like manner. CMN  
6 should be making some step toward resolving the Duke situation and they are not. A few  
7 pieces of correspondence have been produced in this litigation and they show that all CMN  
8 is willing to do is demand that Duke produce more detailed invoices. As Duke has  
9 expressed that they will not produce the requested invoices and it is a basic industry  
10 standard that true-up is owed in most every case, this is not a substantial step toward fixing  
11 this problem. Notably, CMN has not tried to mediate the dispute or asserted that the  
12 company has taken any other step toward resolution other than to demand detailed invoices.  
13 CMN has stated that their strategy on this matter is to “let sleeping dogs lie” and that is  
14 unacceptable to Windstream as a general business practice.

15 Also, it is not as if CMN was forced to contract with Duke through Windstream.  
16 CMN could have contracted directly with Duke, but requested to attach through  
17 Windstream KDL’s contract with Duke presumably because CMN considered that to be a  
18 more advantageous position. Windstream KDL was under no obligation to allow this, but  
19 choose to do business with CMN in this instance. Now Duke is demanding payment from  
20 Windstream KDL for CMN’s debt.

21 **Q. Does Windstream “subsidize” one part of its business with another as that term is**  
22 **used in KRS § 278.2201?**

1 A. No. The word “subsidize” is defined in KRS 278.010(26) means the recovery of costs or  
2 the transfer of value from one class of customer, activity, or business unit that is attributable  
3 to another. Thus, the contention that Windstream Kentucky East has violated the statute is  
4 invalid based on the definition alone. This statute only applies when a transaction is present  
5 between two parties. In the case of Windstream Kentucky East, there is no transaction.  
6 Thus, Windstream East has not violated the statute.

7 Also, Windstream KDL and Windstream Kentucky East keep different accounts  
8 and allocate costs separately. Windstream KDL and Windstream Kentucky East are sister  
9 companies. Both are subsidiaries of Windstream Communications, LLC. The financial  
10 success of Windstream KDL has an effect on Windstream East and vice versa.

11 As for CMN’s allegation that the amounts charged for applications are proof of  
12 some sort of comingling, I can better explain those charges to dispute that claim. There  
13 are two \$4.03 charges in the breakdown provided to CMN. The first is for the Permitting  
14 Team to process the application. The second is for the Invoicing Team to process and send  
15 the make ready invoice. The remainder of the \$75.00 application fee is for engineering  
16 labor spent reviewing the application, pole data sheet, and maps. The review takes an hour  
17 on average. If anything, Windstream is likely losing money and should be charging more  
18 for its applications. For example, AT&T charges more than twice what Windstream  
19 charges for application fees.

20 **Q. What is “one-touch make ready”? Did CMN suggest using one-touch make ready**  
21 **during the negotiations for this project?**

22 A. One-touch make ready allows the attacher to privately contract for its own make ready  
23 without having to wait for the pole owner to complete this step. The attacher is required

1 to select its contractors from a list of contractors pre-approved by the pole owner and set  
2 up private payment arrangements with that contractor. CMN did not propose this prior to  
3 this litigation.

4 **Q. Does this conclude your testimony?**

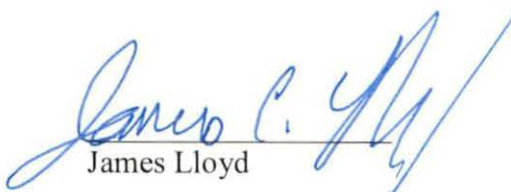
5 A. Yes.

**VERIFICATION**

STATE OF ARKANSAS )

COUNTY OF PULASKI )

The undersigned, James Lloyd, being duly sworn, deposes and says that he is Counsel for Windstream, and that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.

  
James Lloyd

Subscribed and sworn before me, this the 10th day of October, 2018.

  
NOTARY PUBLIC

EXPIRATION: 09-01-2021

NOTARY ID: 12383725

