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May 12, 2006

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**HAND DELIVERED**

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission of Kentucky  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602-0615

*Re: P.S.C. Case No. 2005-00534*

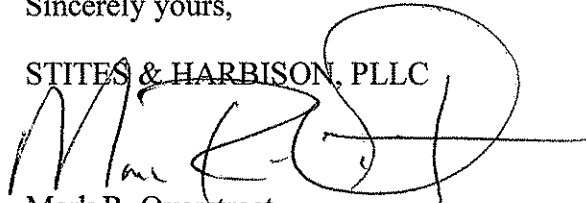
Dear Ms. O'Donnell:

I am filing with this letter both the public and a confidential versions of the Applicants' brief in this matter. The confidential version contains information previously granted confidential treatment by the Commission.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

STITES & HARBISON, PLLC



Mark R. Overstreet

Enclosures

cc: Service List

14107:1:FRANKFORT

**BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION**

**Application for Approval of the  
Transfer of Control of Alltel Kentucky,  
Inc. and Kentucky Alltel, Inc. and for  
Authorization To Guarantee  
Indebtedness**

**CASE NO. 2005-00534**

**RECEIVED**

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PUBLIC SERVICE  
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**POST HEARING BRIEF OF**

**KENTUCKY ALLTEL, INC., ALLTEL KENTUCKY, INC., ALLTEL  
COMMUNICATIONS, INC., ALLTEL HOLDING CORP., ALLTEL HOLDING  
CORPORATE SERVICES, INC., AND VALOR COMMUNICATIONS GROUP**

**PUBLIC VERSION**

Filed May 12, 2006

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## STATEMENT OF POINTS

### I. INTRODUCTION

### II. STATEMENT OF THE CASE

### III. PROCEDURAL BACKGROUND

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A. No determination by the Commission is needed pursuant to KRS 278.300 as Joint Applicants have removed the proposed operating company liens and guarantees, and the pledge of the Kentucky ILEC stock by the New Holding Company (Windstream Corporation) is a common commercial transaction that does not require Commission approval under KRS 278.020 or 278.300.

1. Removal of the Kentucky Operating Company Liens and Guarantees.
2. The Stock Pledge.
3. The Pledges Do Not Require Commission Approval Under KRS 278.300.
4. Windstream Corporation's Pledge of the Kentucky ILECs' Stock to Secure Its Loans Does Not Constitute Transfer of Control of the Kentucky ILECs.

B. Joint Applicants have satisfied all applicable criteria under KRS 278.020 with respect to the transfer of control of the Kentucky ILECs and the transfer of long distance customers.

1. Financial Ability to Provide Reasonable Service.
  - a. Financial Ability of the Kentucky ILECs.
  - b. Financial Ability of the New Holding Company/ Windstream Corporation.

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C. The proposed transfers are in the public interest and will be transparent to customers with the exception of a name change.

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## **I. INTRODUCTION**

The telecommunications industry has changed dramatically in last several years, and this change only will accelerate in the coming years. Intermodal competition, between wireline and wireless telecommunications services for example, is now widespread. As a result of such competition and rapidly changing fundamentals of the wireline business, wireline companies need to adapt their existing business models to more effectively compete. In particular, wireline businesses require enhanced strategic flexibility to bring new products and services to the marketplace faster and improve their existing overall customer service. The need to execute strategies faster in the future will require greater focus and access to adequate human and financial capital. With these goals in mind, Kentucky Alltel, Inc. and Alltel Kentucky, Inc. (collectively, the “Kentucky ILECs”) together with Alltel Communications, Inc., Alltel Holding Corp., Valor Communications Group, Inc. and Alltel Holding Corporate Services, Inc. (collectively, “Joint Applicants”) filed the applications that initiated this proceeding and seek approval of transactions that will allow them to better position the Kentucky ILECs for success in the competitive marketplace.

Joint Applicants’ are requesting herein that the Commission approve the transfer of control of the Kentucky ILECs and the transfer of long distance customers and previously had requested certain financing approval, although that request has been withdrawn. See, Application for Approval of Transfer filed herein on December 22, 2005 (“Transfer of Control Application”) and Amended and Restated Application for Approval of Transfer and Authorization to Guarantee Indebtedness filed on January 23, 2006 (“Financing Application”). Joint Applicants submit this Post-Hearing Brief and address satisfaction of the statutory criteria under KRS 278.020 needed for the Commission to grant the requested transfer of control approval. Specifically, the record in this matter unequivocally supports that the entity resulting from the separation of Alltel

Corporation's ("Alltel") wireline business from its wireless business and subsequent merger of the wireline business with Valor Communications Group, Inc. ("Valor") (resulting entity, "New Holding Company" or "Windstream Corporation") along with the Kentucky ILECs will possess the necessary financial, managerial, and technical abilities to continue providing reasonable service. Further, the proposed transactions will be in the public interest and virtually transparent to Kentucky ratepayers. Although Joint Applicants previously requested that the Commission also authorize certain operating company liens and guarantees, they subsequently withdrew the request such that the Commission's determination under KRS 278.300 is no longer necessary. Approval of the transfer transactions are supported by the record in this matter and necessary to better position the Kentucky ILECs to compete successfully in the changing marketplace to the benefit of Kentucky ratepayers.

## **II. STATEMENT OF THE CASE**

As a result of dramatic changes in the telecommunications industry and the increasing need for wireline companies to be more competitive, Alltel is separating its wireline and wireless businesses and merging the wireline business with Valor. The resulting New Holding Company will acquire control of the Kentucky ILECs and Alltel's existing resale long distance customers. In accordance with KRS 278.020, the New Holding Company along with the Kentucky ILECs will possess the financial, managerial, and technical abilities to provide reasonable service, and the transfers will be in the public interest. Joint Applicants previously requested additional approval pursuant to KRS 278.300 for certain operating company liens and guarantees. Joint Applicants subsequently withdrew that request such that no determination thereunder is necessary. Further, the pledge of the Kentucky ILEC stock by Windstream Corporation does not

give rise to any approval under KRS 278.300. The remaining transfer transactions are in the public interest and should be approved based on the extensive record in this proceeding.

### **III. PROCEDURAL BACKGROUND**

On December 22, 2005, Joint Applicants filed their Transfer of Control Application pursuant to KRS 278.020. Therein, Joint Applicants requested Commission approval of the transfer of control of the Kentucky ILECs from Alltel to the New Holding Company and the transfer of existing long-distance customers of Alltel Communications, Inc. Joint Applicants requested that the Commission, in approving the transfer of control of the Kentucky ILECs pursuant to KRS 278.020, find that the transfer is (i) made in accordance with law, for a proper purpose and is consistent with the public interest; and (b) made to a transferee that has the financial, managerial, and technical abilities to provide reasonable service. On January 9, 2006, the Commission determined the Transfer of Control Application to be non-deficient.

To carry out the separation of Alltel's wireline business, two new Alltel subsidiaries were created – Alltel Holding Corp. and Alltel Holding Corporate Services, Inc. See, Exhibit 1 to the Transfer of Control Application. First, Alltel will transfer ownership of the Kentucky ILECs and Alltel's other ILEC subsidiaries to Alltel Holding Corp. Similarly, Alltel Communications, Inc.'s existing resale long distance customers will be transferred to Alltel Holding Corporate Services, Inc., which will become a wholly-owned subsidiary of Alltel Holding Corp. Transfer of Control Application ¶3. Second, ownership of Alltel Holding Corp. will be transferred from Alltel to Alltel's shareholders, thereby establishing Alltel Holding Corp.(and its subsidiaries) as a stand-alone holding company. See, Exhibit 2 to the Transfer of Control Application. Third, Alltel Holding Corp. will merge into Valor, which is a holding company with local exchange companies operating approximately 530,000 access lines in Texas, New Mexico, Oklahoma, and

Arkansas. Transfer of Control Application ¶12 and Exhibit 3. The resulting New Holding Company will be named Windstream Corporation, which will provide long distance, internet, broadband, directory publishing, telecommunications equipment, and local communications services throughout sixteen states.

Following the merger, Alltel shareholders will own 85% of Windstream Corporation, and the Valor shareholders will own 15%. The principal Windstream Corporation officers will be certain current Alltel officers, and the company's headquarters will continue to be in Little Rock, Arkansas. Windstream end users will continue to receive the same rates and high quality service from the same dedicated local operations, and the transfers will appear merely as a name change to Kentucky ratepayers. Transfer of Control Application ¶4.

Following the initiation of this proceeding, the following parties intervened in this matter: Bluegrass Telephone Co., Inc., d/b/a Kentucky Telephone Company, NuVox Communications, Inc., Brandenburg Telephone Company, Inc., Lexington-Fayette Urban County Government ("LFUCG"), Touchstone d/b/a ALEC, Inc., SouthEast Telephone, Inc., Office of the Attorney General for the Commonwealth of Kentucky, and the Communications Workers of America ("CWA"). Various parties participated in a prehearing conference on January 4, 2006 and discussed that the transactions set forth in the Transfer of Control Application were relatively straight-forward. Joint Applicants' Response to Emergency Motions to Dismiss ¶6.

On January 23, 2006, Joint Applicants supplemented their Transfer of Control Application and filed the Financing Application requesting additional approval for authorization to guarantee evidences of indebtedness pursuant to KRS 278.300. The Financing Application sought Commission approval of proposed guarantees and liens on the assets of the Kentucky ILECs with respect to the New Holding Company's debt. In their Financing Application, Joint Applicants set forth that they satisfied the criteria under KRS 278.300 that the financing is (i) for

a lawful object within the corporate purpose of the Kentucky ILECs; (ii) necessary or appropriate for or consistent with the proper performance by the Kentucky ILECs of their service to the public and will not impair their ability to perform those services; and (iii) reasonably necessary and appropriate for such purpose.

In support of the Transfer of Control and Financing Applications, on February 16, 2006, Joint Applicants submitted prefiled direct testimony of Jeffery Gardner, President and Chief Executive Officer of the New Holding Company, and Daniel Powell, Area President of Wireline Services. Thereafter, on March 2, 2006, the Commission issued an order determining that the Financing Application was also non-deficient and establishing a procedural schedule. From March 3, 2006 to April 7, 2006, the parties engaged in extensive discovery exchanges. In fact, various intervenors served on Joint Applicants almost 500 data requests, all of which are on record in this matter and attest to the financial, managerial, and technical abilities of the New Holding Company and the Kentucky ILECs. Joint Applicants also offered to answer parties' additional questions about the transactions, but no party accepted, and one party declined the offers as unnecessary. *See*, Letter from the Attorney General dated March 16, 2006 previously served on Commission Staff and attached hereto as Exhibit A.

On January 31, 2006, Joint Applicants received the order from the Federal Communications Commission ("FCC") granting the "all-or-nothing" waiver request, which was the last remaining substantive action needed from the FCC in connection with the transaction. Alltel and Valor submitted filings required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") on December 21, 2005. The DOJ and FTC granted early termination of the waiting period requirements for these filings on January 3, 2006, thereby completing the DOJ's and FTC's review of the proposed transaction. Gardner Initial Testimony p4, lines 3-19.



On March 23, 2006, the International Brotherhood of Electric Workers (“IBEW”) filed for full intervention in the proceeding. On March 24, 2006, Joint Applicants requested denial of IBEW’s request on the basis that it was untimely. On March 31, 2006, the Attorney General requested that the Commission either grant IBEW’s motion to intervene or dismiss the entire proceeding, and Joint Applicants responded to such motion on April 11, 2006. By Order dated April 19, 2006, the Commission granted IBEW’s motion for intervention and denied the Attorney General’s motion to dismiss.

Through the course of the parties’ discovery and other communications, Joint Applicants became aware of some parties’ concern, specifically that of the Attorney General, with respect to the proposed liens and guarantees as requested in the Financing Application. The parties initially did not express concern with the approvals sought relative to the transfers of control of the Kentucky ILECs and long distance customers. In an effort to simplify and expedite the approval process, on April 12, 2006, Joint Applicants decided to forgo the liens and guarantees in states where financing approval was required – including Kentucky. Joint Applicants notified the parties of this development and advised that the prospective debt of the New Holding Company will continue to be secured by liens and guarantees of selected regulated and non-regulated entities in other states (approximately 26% of the New Holding Company’s total access lines) without any change in pricing or conditions. *See*, Letter from Joint Applicants dated April 18, 2006 and Revised Commitment Letter. Joint Applicants intended the removal of the liens and guarantees in states requiring approval such as Kentucky to alleviate concerns raised by various parties about the Financing Application and secure state approvals in order to bring certainty to the closing date and access the credit markets while conditions are favorable. Elimination of the operating company liens and guarantees in Kentucky alleviated the need for the Commission to

approve the Financing Application but did not change the evidence previously filed in the proceeding in support of the Transfer of Control Application. *Id.*

Nevertheless, on April 19, 2006, the Attorney General filed an Emergency Motion to Dismiss the entire proceeding asserting that the removal of the operating company liens and guarantees materially changed the record in this proceeding. On April 20, 2006, CWA and IBEW filed a motion echoing the Attorney General's request and LFUCG filed a motion seeking clarification of the remaining issues. In their response on April 21, 2006, Joint Applicants clarified that elimination of the need for financing approval under KRS 278.300 did not change the record in this matter or the fact that the transfer transactions continued to satisfy the criteria under KRS 278.020 and the public interest. At the hearing on these matters, Commission Staff noted that to the extent that Joint Applicants were presenting testimony subject to cross examination, if additional information arose and there was a substantial change, the Commission could address the motions to dismiss. Hearing Transcript pp20-21. No such substantial change in the record did arise as a result of the removal of the Kentucky operating company liens and guarantees.

On April 21, 2006, CWA, IBEW, ALEC<sup>1</sup>, and the Attorney General filed testimony, and final hearing was held before the Commission on April 25, 2006. The Transfer of Control Application, Joint Applicants' Direct Testimony, the extensive discovery, and Joint Applicants' live testimony on cross examination and rebuttal all support findings by this Commission that the requested transfer transactions should be approved expeditiously and without any unduly burdensome or unnecessary conditions.

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<sup>1</sup> Joint Applicants object to ALEC's testimony, which is unsubstantiated and merely seeks to adjudicate unrelated claims for Internet compensation pending before the Commission in Case No. 2005-00482 subject to a Motion to Dismiss. Hearing Transcript pp29-30.

On April 10, 2006, Joint Applicants announced publicly that the Merged Wireline Business will do business as Windstream Communications. Specifically, the New Holding Company will be Windstream Corporation.

Joint Applicants have received necessary approvals from state commissions in Georgia, North Carolina, Missouri, and Mississippi. Additionally, they have reached a stipulation with all but one of the parties in the Pennsylvania proceeding, and received a favorable staff recommendation in Florida. Joint Applicants' Response to Hearing Data Request No. 5.

## VI. LEGAL POSITIONS

As supported by the record in this proceeding and set forth in greater detail below, no determination by the Commission is needed pursuant to KRS 278.300, and Joint Applicants have satisfied all applicable criteria under KRS 278.020 with respect to the transfer of control of the Kentucky ILECs and the transfer of long distance customers.

- A. **No determination by the Commission is needed pursuant to KRS 278.300 as Joint Applicants have removed the proposed operating company liens and guarantees, and the pledge of the Kentucky ILEC stock by the New Holding Company (Windstream Corporation) is a common commercial transaction that does not require Commission approval under KRS 278.020 or 278.300.**

### 1. Removal of the Kentucky Operating Company Liens and Guarantees.

In the Financing Application on January 23, 2006, Joint Applicants requested Commission approval of operating company liens and guarantees under KRS 278.300, which provides as follows:

- (1) No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

(Emphasis supplied.) At that time, Joint Applicants believed that to secure the most optimum financing of the New Holding Company's transactions, the Kentucky ILECs would guarantee the New Holding Company debt and grant liens on their assets. Two of the world's largest banks, J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively, the "Lenders"), committed to provide senior secured credit facility borrowings of the New Holding Company, and a copy of the Lenders' Commitment Letter was attached to the Financing Application as Exhibit 7. Because this financing arrangement involved the assumption of indebtedness by the Kentucky ILECs, which are utilities under Kentucky law, Joint Applicants sought the Commission's approval under KRS 278.300.

On April 12, 2006, however, Joint Applicants decided to forgo the liens and guarantees in states where any approval (albeit transfer of control or financing approval) was required – including Kentucky. Mr. Gardner described the process leading up to the decision:

[We] had a very successful meeting, three very successful meetings, with the rating agencies that bolstered our confidence regarding the ultimate credit rating of the new company. Given all of this, we went back to the bankers and challenged them to remove the liens and guarantees in states where we needed approval and to develop a package that would keep us right on our original projections. That was the challenge; is there a way we can get this financing done without giving up any interest rate risk. The lenders came back to us. They confirmed that there will be no impact, as outlined in our Commitment Letter. Further, we believe the terms of the secured financing are a good proxy for the impact on our bonds. So the Commitment Letter that we filed with our initial Application for \$4.2 billion, you can see the second revised Commitment Letter – the terms are exactly the same.

Hearing Transcript pp54-55.<sup>2</sup> Consequently, the prospective debt of the New Holding Company will continue to be secured by liens and guarantees of selected regulated and non-regulated entities in other states (approximately 26% of the New Holding Company's total access lines). See, Letter from Joint Applicants dated April 18, 2006 and Revised Commitment Letter. Joint

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<sup>2</sup> With respect to interest rates, Windstream Corporation will hedge the debt so that it has minimal floating interest rate exposure or risk. Hearing Transcript p141, lines 19-22.

Applicants intended the removal of the liens and guarantees in states requiring approval such as Kentucky to alleviate concerns raised by various parties about the Financing Application and provide additional assurance that Joint Applicants could secure approvals and access the credit markets while conditions are favorable. In fact, the reduction of liens and guarantees achieved the desired effect, and Joint Applicants had received approvals in Mississippi, North Carolina, and Georgia as of the date of the hearing. Hearing Transcript p55, lines 17-24. On the day of the Kentucky hearing, Joint Applicants received approval in Missouri and subsequently received a favorable staff recommendation in Florida. Joint Applicants' Response to Hearing Data Request No. 5.

Elimination of the operating company liens and guarantees in Kentucky alleviated the need for the Commission to approve the Financing Application but did not change the evidence previously filed in this proceeding. Joint Applicants' Response to Emergency Motions to Dismiss ¶4. As set forth in Joint Applicants' letter to the Attorney General on April 18, 2006 and their Response to the Attorney General's Emergency Motion to Dismiss on April 21, 2006, the removal of the Kentucky operating company liens and guarantees resulted in no change in (a) the debt Facilities pricing originally set forth by Joint Applicants or (b) the financial ability of Joint Applicants to provide reasonable service. At the time that Joint Applicants prepared the Financing Application, they only could predict the future condition of the financial markets at the time of the anticipated transaction closing in May or June 2006. Those predictions of their financial advisors resulted in the decision to pursue the operating company liens and guarantees in order to secure what Joint Applicants believed at that time to be the lowest cost of financing. Joint Applicants' Response to Emergency Motions to Dismiss ¶9. However, as the transactions neared resolution several months later, Joint Applicants were better able to assess the credit markets and accomplish the revised financing without all of the prior requested liens and

guarantees. *Id.* Significantly, Joint Applicants were able to do so while retaining without change the existing pricing of the Facilities as set forth in Annex I (Interest Rates and Fees) of the original Commitment Letter attached as Exhibit 7 to the Financing Application. *Id.*

Commission approval of the Financing Application pursuant to KRS 278.300 is not necessary or within the scope of the instant proceeding as Joint Applicants no longer are requesting approval to place liens and guarantees on the assets of the Kentucky operating companies. Joint Applicants' Response to Emergency Motions to Dismiss ¶8. Nevertheless, should the Commission determine that it is required to issue a finding pursuant to KRS 278.300, which it is not, the evidentiary record in this case is extensive and supports satisfaction of the criteria thereunder.

## 2. The Stock Pledge.

The removal of the proposed Kentucky operating company liens and guarantees discussed above did not impact the original proposal that the New Holding Company would pledge the stock of all ILECs, including the Kentucky ILECs. See, Financing Application Exhibit 7. Such stock pledge by an unregulated utility does not give rise to the need for any determination pursuant to KRS 278.300. Specifically, the financing for Alltel's wireline separation and subsequent merger with Valor, like the wireline separation and merger themselves, will take place at the holding company level. The New Holding Company, or Windstream Corporation, is not and will not be a certificated public utility. Further, the Kentucky ILECs, which are certificated as utilities in Kentucky, will not issue any indebtedness, nor will they guarantee the New Holding Company's loans. Likewise, the Kentucky ILECs' property will remain unencumbered by liens or mortgages as a result of the transfer transactions.

Instead, the Windstream Corporation loans will be secured by: (1) guarantees and liens issued by Windstream Corporation's unregulated subsidiaries; (2) guarantees and liens issued by

regulated companies in states where approval is not required; and (3) the pledge by Windstream Corporation of the stock owned by it, including the stock of the Kentucky ILECs. Because the stock is the property of Windstream Corporation, a non-certificated entity, and because the pledge will not transfer ownership or control of the Kentucky ILECs to Windstream Corporation's lenders, the pledge does not require approval under either KRS 278.300 or KRS 278.020.

Pledges are customary and long standing statutory and common law means of securing an indebtedness. *See, In re Alabama Land and Mineral Corporation*, 292 F.3d 1319, 1325 (11<sup>th</sup> Cir. 2002) (applying Kentucky law). Defined as "a bailment, pawn or deposit of personal property to a creditor as security for some debt or engagement," *Black's Law Dictionary* 1153 (6<sup>th</sup> Ed. 1990), a pledge typically requires the delivery of the collateral to the creditor or its agent. *In re Alabama Land* at 1326; *Reliance Insurance Company of Pittsburg v. Curlin*, 115 S.W.2d 296, 297 (Ky. 1938) (delivery of insurance policy constituted a pledge).

In this instance, the Lenders will require delivery of the stock certificates and stock powers to the lenders or their agent along with other standard, commercially reasonable and common terms. Joint Applicants' Response to Hearing Data Request No. 6. These terms include the execution of a security agreement and filing of a financing statement with respect to the pledged stock as well as the right of the lender agent, upon an event of default, to exercise customary remedies including voting rights and selling the stock. *Id.* The documentation associated with the pledge will explicitly recognize that these remedies are available to the lenders and their agent "only after obtaining the necessary state commission or other applicable regulatory approvals." *Id.*

3. The Pledges Do Not Require Commission Approval Under KRS 278.300.

As noted previously, KRS 278.300(1) provides that “no utility” shall issue any securities or evidences of indebtedness or assume any obligation or liability without Commission approval. (Emphasis supplied). On its face, KRS 278.300 is limited to utilities. A utility, in turn, is defined as “any person ... who owns, controls or operates, or manages any facility used or to be used for or in connection with ... the transmission over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation ....” KRS 278.020(3)(e). Windstream Corporation, which will be only a holding company, is not a utility. Verified Transfer of Control Application ¶10; Verified Financing Application ¶10. Certainly, no party to this proceeding contends, nor could they reasonably contend, that Windstream Corporation is a utility within the meaning of KRS 278.020(3)(e). Windstream Corporation does not own, control, operate or manage any facilities used to provide telephone service in the Commonwealth. Likewise, it does not provide any telephone service in Kentucky. Therefore, the New Holding Company - Windstream Corporation - is not a utility, and KRS 278.300(1) is inapplicable to the pledge.

Windstream Corporation’s proposed ownership of all of the stock of the Kentucky ILECs does not change the calculus. “A corporation is generally recognized as an entity which is distinct from its shareholders, officers and directors.” *Hosclaw v. Kenilworth Insurance Company*, 644 S.W.2d 353, 355 (Ky. App. 1982). A shareholder, even a 100% shareholder, has no interest in the corporation’s property, including, in the case of the Kentucky ILECs, their facilities. *Laine v. Commonwealth*, 151 S.W.2d 1055, 1058 (1941) (“Even when one becomes the owner of all the stock of a corporation he does not in law become the legal owner of the corporation’s property, and cannot deal with its property as his own without action of the corporation.”) As a corporation separate and distinct from the Kentucky ILECs, Windstream Corporation does not own, control, operate or manage the two Kentucky ILECs’ facilities and hence it is not a utility subject to the requirements of KRS 278.300(1).



4. Windstream Corporation's Pledge of the Kentucky ILECs' Stock to Secure Its Loans Does Not Constitute Transfer of Control of the Kentucky ILECs.

KRS 278.020(5) and KRS 278.020(6) prohibit the transfer or acquisition of ownership or control of a utility without Commission approval. The proposed pledge is a means of perfecting the lenders' security interest in the securities and does not transfer control or ownership of the Kentucky ILECs to the Lenders. In fact, the operating company stock owned by Windstream Corporation is the property of Windstream Corporation and not that of the Kentucky ILECs. *See, Klein v. Jefferson County Board of Tax Supervisors*, 18 S.W.2d 1009, 1010 (Ky. 1929). As the *Klein* Court explained: "It is well settled by decisions of this court that the property of the shareholders in their shares, and the property of the corporation in its capital stock *are distinct property interests....*" *Id.* (Emphasis supplied). Thus, the shares of the Kentucky ILECs owned by Windstream Corporation are indistinguishable from the 50 shares of American Electric Power Company, Inc. or Wal-Mart stock owned by a retiree. The shares are the property of the owner, not the corporation that issued the shares. Consequently, Windstream Corporation, like the retiree, has discretion to maintain its own property as it sees fit.

It is the stock owned by Windstream Corporation – property separate and distinct from the Kentucky ILECs themselves – in which the Lenders propose to take a security interest to secure their loans. A security interest is "an interest in personal property or fixtures which secures payment or performance of an obligation." KRS 355.1-201(37). By taking and perfecting a security interest in the stock owned by Windstream Corporation, the Lenders establish the priority of their claim to the stock vis-à-vis other creditors. *See, Meade v. Richardson Fuel, Inc.*, 166 S.W.3d 55, 57 (Ky. App. 2005) (creditor who failed to perfect security interest relegated to the ranks of unsecured creditors).

A pledge is a means by which a lender may create and perfect a security interest in certain types of collateral by delivering the property to the lenders or their agent. KRS 355.9-203(2)(c)(3). Although a pledge of securities requires the physical delivery of the stock certificates, KRS 355.9-313(5), neither the delivery of the certificates nor the resulting security itself transfers ownership of the shares or of the underlying corporations. To the contrary:

By a pledge, ‘the pledgor retains the general title to himself, and parts with possession for a special purpose... A pledge differs from a mortgage of personal property in being a lien upon property, and not a legal title to it.’”

*Congress Talcott Corporation v. Gruber*, 993 F.2d 315, 319 (3<sup>rd</sup> Cir. 1993). Thus, even after the pledge, Windstream Corporation will continue to own the shares of the two Kentucky ILECs.

The fundamental principle that a pledge does not transfer ownership or control likewise finds expression in several provisions of Article 9 of the Uniform Commercial Code. For example, KRS 355.9-306(2) provides that “a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof...” Thus, Article 9 recognizes that the grant of a security interest is not tantamount to transfer of ownership. Similarly, KRS 355.9-207(1) imposes the duty to use reasonable care to preserve the collateral on creditors in possession of collateral because the borrower, not the lender, owns the collateral pledged. Indeed, KRS 9-202 recognizes that the provisions of Article 9 apply without regard to whether the borrower or the creditor has formal legal title to the collateral.

Notwithstanding the pledge by Windstream Corporation of the shares of stock issued by the Kentucky ILECs, Windstream Corporation will continue to own the shares and control the Kentucky ILECs. In the extremely unlikely event that Windstream Corporation were to default on its loans, an event that is unprecedented in Alltel’s and Valor’s history and likewise unintended for Windstream Corporation (Hearing Transcript at p62, lines 7-10), the pledge agreement provides that the Lenders and their agent may invoke any of the available remedies

only after obtaining all necessary state regulatory approvals. Joint Applicants' Response to Hearing Data Request No. 6. These actions by the Lenders would include seeking Commission approval before selling the shares or otherwise exercising control of the Kentucky ILECs. KRS 278.020(5); KRS 278.020(6). Thus, while allowing the Lenders to obtain priority with respect to the other creditors, the Lenders must comply with the same change of control and other regulatory requirements they would have faced if they had not taken the pledge.

Therefore, for all of the reasons set forth above, there is no determination needed by the Commission pursuant to KRS 278.300. Further, the stock pledge by Windstream Corporation does not constitute a change of control or ownership, and thus, KRS 278.020 is inapplicable.

**B. Joint Applicants have satisfied all applicable criteria under KRS 278.020 with respect to the transfer of control of the Kentucky ILECs and the transfer of long distance customers.**

In approving the Transfer of Control Application, the Commission must consider whether Joint Applicants have satisfied the criteria set forth in KRS 278.020, which provides in pertinent part as follows:

(5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. **The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.**

(6) No...entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility services in this state, without having first obtained the approval of the commission....Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. This commission shall approve any proposed acquisition when it finds that **the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.** The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this

subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate....

(Emphasis supplied.) KRS 278.020. Clearly, the evidence on record in this proceeding supports that the transfer of control of the Kentucky ILECs and transfer of long distance customers are (i) made in accordance with law, for a proper purpose and are consistent with the public interest; and (b) made to a transferee that has the financial, managerial, and technical abilities to provide reasonable service.

1. Financial Ability to Provide Reasonable Service.

Just as the Kentucky ILECs currently possess the requisite financial capability to provide reasonable service, they will continue to possess that capability after completion of the separation of the Alltel wireline and wireless businesses and the merger of the wireline business with Valor. Upon completion of the change of control of the Kentucky ILECs, the entities will possess the requisite financial capability to serve their present and prospective customers and will generate a sufficient level of cash flow to satisfy their existing obligations to their customers, employees and investors **[Begin Confidential Material]**

**[End Confidential Material]**. Confidential Hearing Transcript p42, lines8-22.

The transactions set forth in the Transfer of Control Application will produce significant benefits to the New Holding Company, which will accrue to all of the operating subsidiaries, including the Kentucky ILECs and their current and prospective customers. These benefits include a significantly larger wireline holding company when compared to other rural local exchange companies (“RLECs”) with the related benefits of increased scale and scope and perhaps most importantly, an improved support level of the centralized services by the New Holding Company. The transactions, therefore, will be in accordance with law, for a proper purpose, and consistent with the public interest.

**a. Financial Ability of the Kentucky ILECs**

The annual reports on file with the Commission on behalf of the Kentucky ILECs include the companies' balance sheets and income statements and illustrate the financial condition of the Regulated Entities. According to these statements, each Kentucky ILEC currently possesses the requisite financial ability, and there will be no material change to their financial statements as a result of the transactions.<sup>3</sup> Ownership of the Kentucky ILECs' stock will simply transfer from Alltel's balance sheet to Windstream Corporation's balance sheet as a result of the separation and merger. Local operations in Kentucky will continue to be managed and operated as before, except for an improved level of support received from the centralized services from the New Holding Company and singular focus on wireline.

**b. Financial Ability of the New Holding Company/Windstream Corporation**

Windstream Corporation's financial characteristics will provide the financial stability to position itself and its ILEC subsidiaries favorably when compared to its RLEC industry peers to pursue necessary strategies for the Kentucky ILECs to succeed. Specifically, Windstream Corporation will be 50 percent larger than CenturyTel and Citizens and will have 3.4 million customers across 16 states, \$3.4 billion of annual revenue, and \$1.7 billion in annual cash flows. Hearing Transcript p62, lines 18-21. Windstream Corporation will have total assets of approximately \$7.7 billion and a total enterprise value of over \$11.2 billion, which includes an equity value of \$5.7 billion and debt of \$5.5 billion. Gardner Testimony p12, lines 9-11. When studying the rural local exchange market, it is apparent that Windstream Corporation will have

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<sup>3</sup> Some of Alltel's shared assets will be transferred to Windstream Corporation, and some will remain with Alltel and its affiliates. These asset transfers and related transactions are not expected to have any substantial or long-term financial impact on Windstream Corporation or its ILEC subsidiaries. The Kentucky operations are currently and will continue to be supported principally by employees who reside in their service areas and by assets owned and operated by the Kentucky ILECs. The allocation of assets and provision of transitional services between Alltel and Windstream Corporation will not result in any change to the Kentucky ILECs' current financial conditions. Since the transfer of shared assets and the provision of transition services are being conducted at the holding company level, the Kentucky ILECs' financial statements are not directly affected. The Kentucky ILECs are not affected appreciably through allocations, because the allocations will not appreciably change. The use of shared assets and

the lowest cost structure, which is no coincidence given its size and ability to spread its costs across a larger customer base. Hearing Transcript pp62-63. These facts alone more than refute CWA's unsubstantiated contention that the New Holding Company will be a "highly leveraged, financially weak company" (CWA Testimony p2, lines 6-8) and the Attorney General's erroneous conclusions that the New Holding Company will not be financially viable. *See*, Brevitz Testimony.

The New Holding Company debt will be comprised of newly issued debt and assumed debt from the pre-merger Alltel and Valor and their subsidiaries. The issuance and assumption of the debt is part of the process of establishing an overall capital structure for the New Holding Company, which is intended to balance the cost of capital with the need to maintain ample financial flexibility. *Id.* Mr. Gardner explained Alltel's recapitalization of its wireline and wireless businesses,

When our Board contemplated the appropriate financial structures for these businesses, it was done with the purpose of setting both these businesses up for success, and so the capital structure was an important part of that. We did a great deal of research over a number of months, studying and understanding the capital structures of other players in this space. The Board of Alltel elected to go with 3.2 time leverage....It's very competitively positioned relative to other players in this space.

Hearing Transcript p134, lines 7-18. By comparison, CenturyTel (another RLEC) is half as large as Windstream Corporation and is less leveraged at 2.2 times cash flow. Citizens Communications ("Citizens") is about the same size as CenturyTel and is more leveraged than Windstream Corporation will be. *Id.* at lines 19-23. Although Windstream Corporation had the opportunity to be more leveraged as set forth in the Commitment Letter, the company determined that 3.2 times cash flow was the appropriate leverage to best position the company to invest in its operations and pay its obligations. Hearing Transcript pp134-135. Therefore,

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centralized services are already reflected on the books of the Kentucky ILECs because the costs are allocated today. Therefore, no additional expense allocation is expected to occur to the Kentucky ILECs. Gardner Testimony p22.

Windstream Corporation's proposed capital structure is reasonable and provides adequate resources for debt service, network modernization, maintaining access to capital markets, and payment of an attractive dividend to investors. *See*, Hearing Transcript p149, lines 9-14.

Windstream Corporation clearly will be a financially viable entity with the necessary resources to support the Kentucky ILECs' continued provision of reasonable service to the Commonwealth's ratepayers. Windstream Corporation will produce sufficient cash flow to attract capital for investment in its subsidiaries' local telephone company operations. It will have a debt balance of approximately \$5.5 billion and will be levered at 3.2 times cash flow, which is very competitive with other RLECs.<sup>4</sup> As discussed above, Windstream Corporation's proposed leverage of 3.2 times earnings before interest, taxes, depreciation and amortization ("EBITDA," or cash flow) is appropriate and will allow the company to be successful over a long period of time. Hearing Transcript at pp99-100. With an estimated annual operating cash flow of \$1.7 billion, Windstream Corporation will be able to provide the necessary funds to continue to invest in its business, pay its employees, pay its stakeholders, and grow the business over time. *See*, Hearing Transcript p98, lines 6-12. These investments will facilitate a focused local strategy, and the local telephone operations (including those of the Kentucky ILECs) will benefit from Windstream Corporation's continuing ability to deliver a full portfolio of services to meet the needs of current and prospective customers. Mr. Gardner emphasized that the focus of Windstream Corporation, which will be just outside the Fortune 500 as a \$3.4 billion entity, is "100 percent on landline," and with respect to making investments, management's primary

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<sup>4</sup> Windstream Corporation favorably will be comparable to existing similarly situated publicly traded RLECs and will have significantly more access lines, revenues and cash flow than the RLEC industry participants. *See*, Gardner Testimony Exhibit 3. The actual leverage of many similarly situated publicly traded RLECs serving markets comparable to those of Windstream Corporation ranges between 1.4 and 4.7 times, and most of these RLECs carry net debt comparable to that of Windstream Corporation. Thus, by comparison, the financial condition of Windstream Corporation will be comparable to its RLEC peer group, and its capital structure will allow it to continue to provide quality products and services, and invest appropriately in the future. *Id.*

concentration is on finding ways to modernize the network while continuing to earn sufficient cash flows. Hearing Transcript p146, lines 4-9.

The Lenders are comfortable with the cash generation capability of Windstream Corporation's assets. Hearing Transcript at p107, lines 15-16. To reiterate, in determining that Windstream Corporation's proposed capital structure and planned dividend are appropriate and financially sound, two of the nation's largest banks (the "Lenders") committed to fund its debt. Indeed, Windstream Corporation obtained commitments from the two banks only after it demonstrated that it would be sufficiently strong financially to service the proposed new debt and meet all of its obligations, including providing high quality service to its customers. Mr. Gardner confirmed,

Again, I think the question is do we feel confident that a 3.2 times leverage capital structure is sufficient for this company to invest in the business. I absolutely believe it is, **as do the banks and other sophisticated financial advisors that we've used in this process.**

(Emphasis supplied.) Hearing Transcript p157, lines 9-14.

Duff & Phelps, LLC ("Duff & Phelps") issued a solvency opinion and found the new entity to be financially viable. Duff & Phelps has provided solvency opinions for about 25 years and has extensive experience in providing these analyses for some of the largest and most recognized transactions. Hearing Transcript p220, lines 2-9. With respect to the instant transactions, Duff & Phelps addressed four tests of solvency including fair sale value, adequate capitalization, cash flow test, and surplus opinion. The tests are supported by extensive financial analysis. *Id.* at p221. As the witness for Duff & Phelps testified at the hearing, his company's extensive analyses and tests reveal (over the unsubstantiated and erroneous assertions by the Attorney General and CWA) that Windstream Corporation will be a financially viable entity capable of providing reasonable service, investing in its networks, and paying its obligations for



many years to come. In fact, Duff & Phelps's analyses reached such conclusion even when considering that, by definition, a solvency analysis and opinion are biased toward the pessimistic.

**[Begin Confidential Material]**

**[End Confidential Material]** *Id.* at p55, lines 10-14. To reiterate, although its job was not to and it did not in fact issue an opinion with respect to future stock price, Duff & Phelps did issue the requested solvency opinion which viewed favorably Windstream Corporation's proposed business model. To the extent that the Intervenors contend to the contrary their arguments should be granted little weight in determining the issues in this proceeding.

Because Windstream Corporation's proposed debt has not yet been issued, the proposed debt has not been rated by a rating agency. While there are many other factors that are used to determine a debt rating, recent rating comparisons suggest that the debt is likely to receive a debt rating somewhere between BB- and BB+, or slightly below investment grade. Gardner Testimony p13, lines 2-22. While some intervenors have expressed concern with this anticipated rating (*see, e.g.,* CWA Testimony pp13-14), these negative assumptions regarding the New Holding Company's investment grade status are misleading. The rating scales reflect a relatively

subjective continuum, along which the transition from investment grade to non-investment grade is not the precipitous down-turning event that some intervenors would represent. Ratings in the BB range of speculative grade merely reflect the presence of uncertainties or exposure to adverse business conditions but do not indicate vulnerability to default. *See, e.g.,* Fitch Ratings <http://www.fitchratings.com>. Such a characterization fairly reflects the climate of the wireline industry which faces continued regulatory oversight and the need to sustain its position in an increasingly competitive marketplace. Ratings are subjective and only one of many variables on which investors rely and do not predict necessarily whether a company will remain financially healthy or increase its risk of default.

To enhance its attractiveness to investors, Windstream Corporation plans to establish its dividend at \$1.00 per share, which is expected to approximate \$474 million annually. With expected annual operating cash flows of approximately \$1.7 billion as set forth above, Windstream Corporation's remaining cash flows are more than sufficient to fund capital expenditures, pay targeted dividends, and service debt requirements. CWA/IBEW misquote a Morgan Stanley report introduced by Joint Applicants at the hearing to refute industry reports referenced in the Attorney General's direct testimony, and contend erroneously that "Morgan Stanley believes that Windstream will be forced to cut its dividends after only three to five years 'given the declining nature' of its business, making the stock price unattractive." In reality, the Morgan Stanley report states that the comparisons of the RLEC stocks assumes that the dividends will not be cut over the next three to five years. In the same paragraph, Morgan Stanley states, "The companies Windstream, Fairpoint, Iowa Telecom and Citizens either have enough of a payout cushion currently that the added burden of cash taxes will not force them to reduce their dividend, as we estimate will be the case with Citizens and Windstream." *See*, Morgan Stanley Report p14. Again, CWA/IBEW's erroneous assertions should be given no

consideration. Morgan Stanley clearly believed that Windstream would enjoy a sufficient payout cushion so that dividends will not be reduced in three to five years.

The company's targeted dividend policy is comparable to that of existing similarly situated publicly traded RLECs, and when considering the other RLECs, Windstream is in the best position to sustain the dividend for a long period of time. Hearing Transcript p192, lines 3-6. For example, Windstream Corporation expects to distribute between 65% to 70% of its annual free cash flow back to its shareholders, while on average, similarly situated publicly traded RLECs distribute approximately 63% of their free cash flow to their shareholders in the form of dividends. Gardner Testimony p10, line 6. Windstream Corporation's planned dividend and its capital structure mentioned above will make its stock attractive to investors which will allow the company to raise the necessary capital to fund the future investment needs of its subsidiaries, including the Kentucky ILECs. *Id.*

Joint Applicants also identified approximately \$40 million of possible net synergy savings (*e.g.*, reduction of duplicate corporate functions) associated with the Alltel wireline separation and Valor merger. Gardner Testimony p10, line 16. All cost reductions giving rise to the synergy savings are expected to occur at the holding company and service company level and not at the state operating company level. *Id.* Were Alltel's wireline business to separate as a stand-alone business, it would incur approximately \$12 million in additional expenses. However, by merging the separated wireline business with Valor, the new company achieves approximately \$52 million in synergies. The net result is \$40 million synergies and a stronger company with greater scale and scope. The synergies are significant considering that they are not a one-time savings and have a net present value of nearly \$350 million. Hearing Transcript p140, lines 14-25.

The record in this matter overwhelmingly demonstrates that Windstream Corporation will be a financially viable and successful entity. Serving approximately 3.4 million customers in 16 states, Windstream Corporation will possess the financial wherewithal and scale and scope to successfully enhance the network, related products, and services of its wireline subsidiaries, including the Kentucky ILECs. It will generate sufficient cash flows to pay its operating expenses, fund technology investments through capital expenditures, service its debt and distribute an attractive dividend to its shareholders. The expected level of annual revenues and cash flows will be more than adequate to properly position Windstream Corporation to attract the necessary capital for all of its subsidiaries, including the Kentucky ILECs.

## 2. Managerial Ability to Provide Reasonable Service.

Windstream Corporation will continue to employ personnel experienced and dedicated to the provision of high quality communications services. The customer service, network and operations functions that are critical to the success of Alltel's wireline businesses today will persist, and the New Holding Company will be structured and staffed to ensure that continuity. Indeed, Alltel has been acquiring, managing, and operating telecommunications companies for many years, and its ILEC subsidiaries are the result of over 250 acquisitions and mergers spanning over 60 years. Powell Testimony p12, lines 12-14. Windstream Corporation will be managed by many of these same very capable, experienced executives and employees, who are transferring from Alltel to the new company. Transfer of Control Application Exhibit 5. For example, Jeffery Gardner was Alltel's Chief Financial Officer for the previous seven years, has been in the telecommunications business since he graduated from college in 1984, and is Windstream Corporation's President and Chief Executive Officer. Hearing Transcript p37, lines 22-25. Mr. Gardner will lead Windstream Corporation's new management team that is 100 percent focused on landline investments and strategies. *Id.* at p47, lines 20-21.

Mr. Gardner identified the greatest benefit resulting from the proposed transactions:

[I]f you think about our business, we have 8,000 employees who have been a part of a large wireless company, **a non-strategic part of a large wireless company, for the last several years, almost ten years. These 8,000 employees are now going to have a CEO, CFO, strategy, marketing plan, engineering plan that are 100 percent focused on wireline. That's why we believe this business is going to be more successful.** We can look at strategic opportunities in the landline space that we couldn't before, because Alltel's strategic initiative was to grow the wireless business. So there are a lot of new opportunities for this new business, and that was the rationale for the separation.

(Emphasis supplied.) Hearing Transcript pp49-50. Thus, the same local operations will continue serving customers in the Commonwealth, but now those operations will be part of one of the largest RLECs in the country that is focused exclusively on landline strategies and opportunities. The resulting benefits, although they cannot be quantified numerically at this time, are enormous. Hearing Transcript p108, lines 8-12.

The Kentucky ILECs will continue to receive certain centralized management services from their parent company. Presently, such services include marketing, human resources, tax, legal, and network planning. Transfer of Control Application ¶21. Any changes in the costs of these support services as a result of the transition from Alltel to Windstream Corporation are expected to be minimal. In fact, the effectiveness of the centralized services received from Windstream Corporation is expected to improve. For instance, while the Kentucky ILECs have received the financial benefits that accrue from a converged holding company (wireless and wireline), these benefits have been tempered by the constant need to balance the focus of the various corporate support groups between the two robust businesses they support. Subsequent to the wireline separation, the sole focus of the corporate support services provided by Windstream Corporation will be the wireline marketplace. This concentration of effort will yield significant benefits in the development of strategies and execution of tactics designed to better serve and retain customers. Gardner Testimony p23.

The record in this matter more than supports – and is largely uncontested with respect to the fact that – Joint Applicants have demonstrated that they will continue to possess the necessary managerial ability to provide reasonable service.

### 3. Technical Ability to Provide Reasonable Service.

Similar to the discussion above pertaining to Joint Applicants' managerial ability, Joint Applicants have also demonstrated, and no party has challenged, the fact that they will continue to possess the necessary technical ability to provide reasonable service. For instance, 100 percent of Windstream Corporation's focus will be on the landline business, and it will no longer compete with the wireless business for investment dollars. In fact, all cash flows will be made available to the New Holding Company to the benefit of its subsidiaries. Hearing Transcript p87, lines 6-12. Such investment is critical considering that the challenge facing the landline business today is the need to transform from a voice model only into a broadband model, which requires continued investment in the networks. Therefore, network modernization is paramount to Windstream and its Kentucky ILECs and includes pushing fiber deeper into the network, making broadband available to more customers in rural America, and offering satellite services. Hearing Transcript pp87-88.

However, instead of merely concentrating on just the amount of dollars invested, Mr. Gardner cautioned:

[A] better way to look at it is, every year do we expect to increase our broadband penetration, which incidentally we're one of the leading companies in the country with regard to broadband penetration today. In the state of Kentucky, we reach 70 percent of our customers.

P89, lines 14-20. In order to make the most of the capital dollars, Gardner states that Windstream Corporation will manage aggressively its capital by taking advantage of opportunities to buy smarter and invest in products that are focused on modernization. Hearing Transcript pp89-90.

Additionally, Windstream Corporation will dedicate marketing resources to landline opportunities and the prospects of selling additional services into its existing customer base. Hearing Transcript p112, lines 10 and 15. Specifically, Windstream Corporation and its ILEC subsidiaries will not spend marketing dollars on items like national racing sponsorships but will focus on local activities and promotions that resonate more with the local communities in which they compete. *See*, Hearing Transcript pp142-143. As Mr. Gardner summarized, Windstream Corporation (including its Kentucky ILECs) will “be able to continue to modernize the network, offer new services, provide great opportunities for our employees, and be a viable competitor in this space.” Hearing Transcript, p135, lines 15-18. Clearly, Joint Applicants have satisfactorily demonstrated that they possess the necessary technical ability to provide reasonable service.

**C. The proposed transfers are in the public interest and will be transparent to customers with the exception of a name change.**

As discussed above in greater detail, Windstream Corporation’s ILEC subsidiaries will operate in an industry that has been and continues to be subject to rapid technological advances, evolving consumer preferences, and dynamic change. These factors, combined with regulatory developments, create an environment in which the interests of the wireline business are best served by the separation from Alltel’s wireless business.

The establishment of the wireline business as part of an independent, stand-alone wireline-centric corporation serves the public interest by allowing Alltel’s separated ILECs, including the Kentucky ILECs, to focus squarely on building their local wireline operations to provide a full range of high quality services to local residential and business customers.

Windstream Corporation’s President and Chief Executive Officer remarked as follows:

We’ve got a very strong management team that has people that have participated both in the competitive wireless business as well as the landline business, and, from a technical side, we have all the capabilities to continue to modernize our network. So we believe the public interest is served.

Hearing Transcript, p113, lines 14-19. Mr. Gardner then affirmed that the proposed transfer of control transactions will not impair the ability of the Kentucky ILECs to provision service to the public. *Id.*

The Commission itself has recognized that such a benefit satisfies the public interest standard. In *The Joint Application for Approval of the Acquisition by Philadelphia Suburban Corporation of the Stock of Aquasource Utility, Inc.* (Case No. 2002-00384), the Commission approved the requested transfer under KRS 278.020. The Commission noted that the evidentiary record reflected that the company had operated as a utility since 1886, possessed significant total assets, provided service to more than 600,000 customers, and intended to retain the current management and staffing levels of its Kentucky operations. *Id.* at p5. Specifically on the issue of public interest, the Commission found as follows:

The Commission finds that the proposed transfer of control is generally in the public interest. **Philadelphia has retained AquaSource Utility's present management and will retain current staffing levels for its Kentucky operations. The proposed transaction, therefore, will not result in any diminution or reduction in the quality of service and will not result in any immediate increase in rates for wastewater service.** Moreover, the certain characteristics of Philadelphia's operations are likely to result in greater efficiencies and improvement of service quality. Unlike DQE and AquaSource, Philadelphia has **focused its corporate efforts solely** on the water and wastewater sector. Philadelphia has been involved in water and wastewater operations for a significantly longer period of time and has greater experience in the operation of such utilities. Philadelphia's size will allow AquaSource Utility to **benefit from increased economies of scale and enhanced purchasing power through lower purchasing costs and reduction of administrative costs.**

(Emphasis supplied.) *Id.* at pp5-6. The facts of the Philadelphia case are virtually identical to the instant proceeding where Joint Applicants have demonstrated that there will be no change in the Kentucky local operations, no diminution in service quality, increased economies of scale, and a concentrated focus on wireline strategies and opportunities. The Commission imposed on Philadelphia the requirement that costs associated with the proposed transaction not be borne by



Kentucky ratepayers (*Id.*), and Joint Applicants have repeatedly stated throughout their applications, testimony, and discovery responses that they will seek no rate increases as a result of the proposed transactions. Like its order in the Philadelphia case, the Commission should approve the instant transaction as Joint Applicants have satisfied the statutory criteria set forth in KRS 278.020.

Additionally, the transfers will not affect the Kentucky ILECs' existing price regulation plans, service quality obligations, or tariffs, and any subsequent end user rate changes will continue to be governed by the same rules and procedures. Although the transfers will not result in substantive tariff changes, the Kentucky ILECs will amend applicable tariffs to reflect their new names. Customers will continue to call existing numbers to order new service, report service problems, and inquire about billing or other customer care issues. Further, the terms and prices for existing wholesale services under applicable access tariffs will remain unchanged as a result of this transfer. Finally, the transfers will not impact the terms of any existing interconnection agreements or obligations under state and federal laws regarding interconnection.<sup>5</sup> Powell Testimony p 13, lines 13-21. Mr. Gardner describes the immediate transparency to customers:

Well, essentially, as a result of this transaction, we're going to have the very same employees with the same assets and the same infrastructure and technical skills and managerial skills to provide the same high level quality of customer service and dial-tone and broadband to existing customers today. So, in essence, there will be very little that they will see in the short term besides the name change and the new logo....

Hearing Transcript p206, lines 18-23.

Given the rapidly changing competitive environment in which the Kentucky ILECs operate, it is in the public interest that the proposed transfer of control transactions be approved as expeditiously as practical and without any undue or unnecessary conditions that may only

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<sup>5</sup> Despite questions from one intervenor that implied otherwise, new telecommunications legislation in Kentucky has no impact on this proceeding or wholesale interconnection relationships. Hearing Transcript at p210.

serve to impede the Kentucky ILECs' ability to effectively serve their customers, respond to the competitive marketplace, and support their operations. To this end, when asked, Mr. Gardner testified at the hearing with respect to several conditions that Windstream Corporation would consider.<sup>6</sup> However, Mr. Gardner expressed his concern with the imposition of certain conditions that would unduly affect the ability of the Kentucky ILECs to do business in the future or impact the viability of the entire transaction (*e.g.*, any condition seeking to alter the existing capital structure of Windstream Corporation; not permitting Windstream Corporation to pay Alltel for the wireline assets or requiring any proceeds from the debt to be retained by Windstream Corporation; limiting the company's ability to offer competitive salaries and bonuses to its employees; restricting the ability of the Kentucky ILECs to pay dividends to their parent company; imposing an arbitrary minimum amount of required capital expenditures; or subjecting the Kentucky ILECs to an overly broad "most favored nations" provision that may require adoption of conditions imposed in other states without regard to the dissimilarities between the Kentucky ILECs and the distinct companies operating in those other states under different rate plans and market conditions). *See*, Hearing Transcript beginning at p123. Moreover, all conditions that seek to restructure the transaction are unworkable, unacceptable and cannot be achieved because as Mr. Gardner explained this is a multi-party transaction that has been in the public market for months and has been received very favorably. Very simply, to restructure the transaction in any way would require renegotiation by all parties and beginning again the approval process in the applicable states. Such a restructuring is not in the best interest of any party to this proceeding, including ratepayers. Similarly, a condition seeking to arbitrarily impose a required annual capital expenditure threshold misses the mark. It is not a dollar amount

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<sup>6</sup> Despite attempts by various intervenors to propose conditions directly on the New Holding Company / Windstream Corporation, any conditions resulting from this matter should be properly directed to the Kentucky operating companies and not any other applicants which are not regulated utilities in the Commonwealth and outside the Commission's jurisdiction.

that should concern the Commission but rather whether the Kentucky ILECs are providing reasonable service and investing in and modernizing their networks. A condition that merely orders the Kentucky ILECs to spend, for instance, \$80 million could result in the companies having to spend unnecessary funds if equipment prices decrease so that the companies could have accomplished the same investment with only \$70 million. Hearing Transcript p162. Clearly, imposition of such burdensome and unacceptable conditions is not in the public interest.

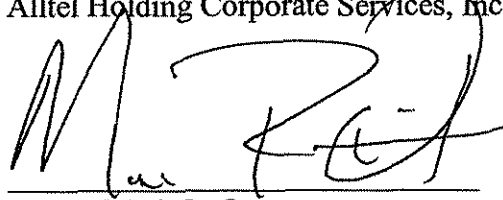
## V. CONCLUSION

The record in this matter supports overwhelmingly the finding that Joint Applicants have satisfied all applicable statutory criteria in KRS 278.020 and that the Transfer of Control Application should be approved. While Joint Applicants have explained the reasons why a finding is no longer necessary under KRS 278.300, the record also supports any applicable criteria thereunder to the extent the Commission determines otherwise. Windstream Corporation will be the new parent company of the Kentucky ILECs, and all will have solid financial capabilities similar to that currently possessed by Alltel and favorably comparable to other RLECs. In particular, the Kentucky ILECs will continue to possess the same financial abilities they possess today and will not be impacted in any material way by the transfer of control transactions. Windstream Corporation will generate more than sufficient revenues to pay all expenses, develop its networks, and retain employees and for its subsidiaries to continue providing high quality service. The New Holding Company's capital structure and planned dividend policy are reasonable and will allow the new company to raise capital, service its debt, and make strategic investments. These facts are best evidenced by the Lenders' commitment to finance Windstream Corporation as well as the extensive solvency analyses performed by Duff & Phelps. Undoubtedly, Windstream will be a financially viable entity with the undisputed managerial and technical abilities to support the Kentucky ILECs in their provision of reasonable service to customers in the Commonwealth. The greatest benefit resulting from the proposed transactions is that the resulting company will be entirely focused on and dedicated to wireline strategies and opportunities. The Transfer of Control Application is in the public interest, and should be approved without unduly burdensome conditions that would impede Windstream Corporation's ILECs from competing in the competitive marketplace in a meaningful way.

Respectfully submitted,

Alltel Kentucky, Inc.,  
Kentucky Alltel, Inc.,  
Alltel Communications, Inc.,  
Alltel Holding Corp.,  
Valor Communications Group, and  
Alltel Holding Corporate Services, Inc.

BY:



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing brief was served first class mail, postage prepaid and by electronic transmission except as otherwise noted upon the persons listed below. Those parties with an asterisk received only the public, non-confidential version of the brief:

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on this the 12<sup>th</sup> day of May, 2006.



Mark R. Overstreet



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March 16, 2006

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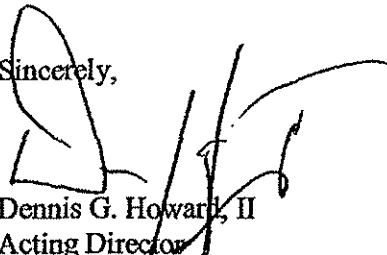
Re: Your letter dated March 16, 2006 offering a meeting to facilitate discovery  
Case No. 2005-00534

Dear Mark:

Thank you for the invitation for a meeting to pursue discovery in this case. I must decline in that the current protocol in place for discovery should suffice. If at a later point in time, however, a meeting looks fruitful, then we will so advise.

On a different note concerning discovery, it is my understanding that all the materials were to be provided in electronic format. Unless I am mistaken, I have not received an electronic copy of the majority of the various attachments. As a consequence, I have had staff spend the past two days scanning the large volume of materials which we received. Please be advised that this has complicated our review of the material and may ultimately force us to request a deviation from the procedural schedule for an extension of time in which to continue.

Sincerely,

  
Dennis G. Howard, II  
Acting Director  
Office of Rate Intervention

DGH/lfr

CC: Parties of Record, Case 2005-00534  
Amy E. Daugherty, PSC

AN EQUAL OPPORTUNITY EMPLOYER M/F/D

