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November 26, 2014

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Jeff Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
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Re: *Application of Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (1) for a Declaratory Ruling that Approval is Not Required for the Transfer of a Portion of their Assets; (2) Alternatively for Approval of the Transfer of Assets; (3) for a Declaratory Ruling that Communications Sales and Leasing, Inc. is Not Subject to KRS 278.020(1); and (4) for All Other Required Approvals and Relief*
Case No. 2014-00283.

Dear Mr. Derouen:

Enclosed for filing please find the original transcript of the November 13, 2014 hearing in this matter.

Sincerely,

R. Benjamin Crittenden

RBC

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE APPLICATION OF WINDSTREAM KENTUCKY EAST, LLC AND WINDSTREAM KENTUCKY WEST, LLC FOR A DECLARATORY RULING THAT APPROVAL IS NOT REQUIRED FOR THE TRANSFER OF A PORTION OF THEIR ASSETS; (2) ALTERNATIVELY FOR APPROVAL OF THE TRANSFER OF ASSETS; (3) FOR A DECLARATORY RULING THAT COMMUNICATIONS SALES AND LEASING, INC. IS NOT SUBJECT TO KRS 278.020(1); AND (4) FOR ALL OTHER REQUIRED APPROVALS AND RELIEF	CASE NO. 2014-00283

ORIGINAL

* * *

Transcript of November 13, 2014, hearing before David L. Armstrong, Chairman; James W. Gardner, Vice-Chairman; and Linda Breathitt, Commissioner, at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615.

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ALSO PRESENT:
Mr. Jim Stevens
Mr. Kyle Willard

* * *

(Hearing commenced at 9:53 a.m.)

VICE-CHAIRMAN GARDNER: Good morning, everyone, and welcome. I'm going to go on the record now. My name is Jim Gardner, and I'll be chairing this meeting, although I'm the Vice-Chair. On my left, your right, is our Chairman, Dave Armstrong. On my right is Commissioner Linda Breathitt.

This is case number 2014-00283. It's the application of Windstream Kentucky Companies to -- for a declaratory judgment and other relief.

If I could have appearance of counsel at this point, please.

MR. OVERSTREET: Mr. Vice-Chairman, my name is Mark Overstreet. I'm with the law firm of Stites & Harbison, 421 West Main Street, Frankfort, Kentucky, 40601. Appearing with me here today is Ben Crittenden of the same address.

VICE-CHAIRMAN GARDNER: Thank you.

MR. BRENT: Good morning, Vice-Chairman Gardner. Doug Brent from Stoll Keenon Ogden, 500 West Jefferson, Louisville, Kentucky, and appearing with me is Gardner Gillespie from Washington, DC. We've filed and obtained approval from the Kentucky Bar Association, and I request permission for him to appear before the Commission today.

VICE-CHAIRMAN GARDNER: Okay.

MR. MEADE: My turn. Well, good morning, members of the Commission, particularly Chairman Armstrong, whom I haven't seen in a long time. Good morning. Good morning, members of the staff.

My name is Don Meade. I'm with the law firm of Priddy, Cutler, Naake & Meade in Louisville, Kentucky. I'm representing the Communication Workers of America, the proud workers that serve Windstream and the Commonwealth.

I'd like to acknowledge that we have leadership from two locals of the CWA with us at the hearing in the morning. They won't be participating. I also see Bill Londrigan there, head of the Kentucky State AFL-CIO that have an interest. And I'll allow my out-of-state cocounsel to present himself.

MR. RUBIN: Good morning, Mr. Vice-Chairman. My name is Scott Rubin, R-U-B-I-N. I'm an attorney licensed in Pennsylvania and New York. We've filed the appropriate paperwork with the Kentucky Bar Association, and Mr. Meade filed a motion, I believe, yesterday to allow me to appear in the case. Thank you.

VICE-CHAIRMAN GARDNER: Are there any objections to the pro hac motions?

MR. OVERSTREET: Not from Windstream, Your Honor.

VICE-CHAIRMAN GARDNER: Okay. So we will sustain the motions for Mr. Rubin and for Mr. Gillespie.

Commission counsel, please.

MR. PINNEY: Good morning, Your Honor. J.E.B. Pinney with the Office of General Counsel for the Public Service Commission. I'm accompanied today by Nancy Vinsel, one of our staff attorneys, and also Jim Gardner of the Division of Financial -- Jim Stevens, sorry. Jim Stevens with the Division of Financial Analysis, and Kyle Willard, Director of Engineering.

VICE-CHAIRMAN GARDNER: Thank you. And I understand Windstream filed a motion yesterday seeking permission for a court reporter?

MR. OVERSTREET: That's correct, Your Honor.

VICE-CHAIRMAN GARDNER: Is there any objection to that?

MR. BRENT: No objection.

VICE-CHAIRMAN GARDNER: We'll go ahead and sustain that.

MR. OVERSTREET: Thank you, Mr. Vice-Chairman.

VICE-CHAIRMAN GARDNER: Are there any other motions?

MR. OVERSTREET: The only other motion we have is a motion for confidential treatment, and I think yesterday you indicated that would remain pending.

VICE-CHAIRMAN GARDNER: Go ahead and take that under advisement.

And I see, as Mr. Meade indicated, there are some members from the union here, and in general what we do is if anyone from the public is interested in speaking separately from -- from their counsel or otherwise, they're allowed to come forward at this time and make a public comment, if you would like.

MR. MEADE: I believe our representatives are here as observers this morning.

VICE-CHAIRMAN GARDNER: Okay. Thank you.

So we will proceed, and Mr. Overstreet.

MR. OVERSTREET: Thank you, Mr. Vice-Chairman. Our first witness today is Robert E. Gunderman.

VICE-CHAIRMAN GARDNER: Would you raise your right hand, Mr. Gunderman?

* * * *

ROBERT E. GUNDERMAN, called by Windstream having been first duly sworn, testified as follows:

VICE-CHAIRMAN GARDNER: Please have a seat and state your name, please.

THE WITNESS: My name is Robert Edward Gunderman.

VICE-CHAIRMAN GARDNER: And with whom are you employed?

THE WITNESS: Windstream Holdings.

VICE-CHAIRMAN GARDNER: What is your position with Windstream Holdings?

THE WITNESS: I'm the interim CFO and treasurer of Windstream.

VICE-CHAIRMAN GARDNER: You may ask.

MR. OVERSTREET: Thank you, Mr. Vice-Chairman.

DIRECT EXAMINATION

By Mr. Overstreet:

Q. Mr. Gunderman, have you filed testimony and rebuttal testimony in this proceeding?

A. Yes.

Q. And have you also filed responses to certain data requests?

A. Yes.

Q. And do you have any corrections or changes to those -- those filings?

A. No.

Q. And if you were asked those same questions here this morning, would your answers be the same?

A. Yes.

MR. OVERSTREET: The witness is available for cross-examination.

VICE-CHAIRMAN GARDNER: Do you-all have an agreement as to who goes next?

MR. RUBIN: I believe I'm going first, and then counsel for the Cable Association.

VICE-CHAIRMAN GARDNER: Okay. Proceed.

MR. RUBIN: Thank you.

CROSS EXAMINATION

By Mr. Rubin:

Q. Good morning, Mr. Gunderman.

A. Morning.

Q. My name is Scott Rubin. I represent the Communication Workers of America.

I'd like to start with some questions about the proposed transaction from the corporate level, and then we'll discuss how that relates to Kentucky.

Does that seem okay with you?
A. Yes.
Q. Am I correct that at the corporate level, Windstream Holdings is proposing to transfer certain types of assets to a new subsidiary called Communications Sales & Leasing?
A. Yes.
Q. And is it all right if I refer to that company as CSL --
A. Yes.
Q. -- just to make life a little easier for the court reporter and the rest of us?
Now, those assets include poles, copper and fiber optic cable, conduits, land, buildings, and some other types of facilities attached to poles, correct.
A. Correct.
Q. At essentially the same time this transfer of assets to CSL occurs, CSL will transfer to another Windstream subsidiary about $2.2 billion worth of notes and about $1 billion in cash; is that correct?
A. Well, the structure of the transaction will be that CSL will raise approximately $3 1/2 billion of new debt. The proceeds of that new debt will be used to do a debt-for-debt exchange of certain

existing debt, to still be identified in specific detail, of Windstream today.

And the remaining portion of that 3.5 billion, about a billion two, will be a cash dividend back to Windstream, which will be used to retire additional debt for Windstream.

The balance between the $3 1/2 billion estimated to be raised and the $3.2 billion that will end up being repaid in terms of Windstream debt, the balance will be premiums and debt retirement and fees for the transaction.

Q. So in essence, without, you know, getting too far into all the legal details, Windstream is transferring a lot of assets to CSL, physical assets, and CSL is giving Windstream a combination of cash and debt reduction, correct?

A. That is correct. We are transferring a relatively low percentage of our total assets, so fewer than 25 percent of our total assets will go over, but your characterization of the transaction in terms of transfer of assets, sale of assets, and then a leaseback and then reduction of debt is -- is correct.

Q. Now, immediately after these transfers occur, CSL will be spun off from Windstream and will become

a separate publicly-traded company, correct?
A. Correct.
Q. Now, initially the shareholders of the two companies will be the same; is that right?
A. Correct.
Q. But over time, as people buy and sell stock and so on, then the shareholders may no longer be the same in the future.
A. Correct.
Q. Now, another important part of the transaction is that Windstream will lease back from CSL the exclusive right to use the assets for a period of 15 years with the right to extend the lease for an additional 20 years, correct?
A. Correct.
Q. And the initial lease payment is estimated to be $650 million per year?
A. Yes, it is.
Q. And then beginning in year four, which I guess would be, what, 2018? Is that right? Trying not to count on my fingers here, but --
A. '19.
Q. '19. The lease payment will increase by half a percent per year, right?
A. Correct.

Q. So in practice, even though we're talking about transfers and spinoffs and all of that, the transaction is very similar to a sale-leaseback transaction, isn't it?
A. That's correct.
Q. So assets are being transferred to what will be an unaffiliated company, the transfer is for consideration, and then there will be a leaseback for the right to use those assets for a period of years.
A. Correct.
Q. Okay. Now, on October 24th, CSL filed a preliminary registration statement with the Securities & Exchange Commission. Are you familiar with that?
A. Yes.
Q. And that preliminary filing still has a lot of missing information, doesn't it?
A. We have yet to finalize all the final accounting pro forma disclosures. I would characterize the disclosure as very substantive, very detailed in terms of the disclosure of the transaction.
The mechanics of the transaction, the pro forma capital structure impacts the transaction on

both companies. So I think the disclosure -- the disclosures were robust and detailed, and we are just working through the finalization of all the accounting for the remaining adjustments, which will come within probably the next couple of months.

Q. Okay. That was my next question, which is how long until we have a final registration statement?

A. There's no definitive date. We will -- we will obviously respond to any comments that come from the SEC, but our expectation is that it's reasonable to conclude that that could be accomplished within a couple, two or three-month period.

Q. Okay. Now, that preliminary filing with the Securities & Exchange Commission did not include copies of the -- I'll call them the basic documents for the transaction itself.

A. Right. The material documents of the transaction will ultimately be filed. You've been privy to some of the lease summaries, but the full lease eventually will be filed as a material document, as will certain of the other material agreements.

The one document, as we mentioned today, that we are still asking for confidentiality on at this point is the private letter ruling for the IRS, and we consider that to be a proprietary document that gives us first-mover advantage in a transaction like this, that we believe at this point we'd like to withhold that for public distribution.

Q. Okay. Now, the IRS itself will make that document public in January, correct?

A. That is our -- that is our expectation.

Q. Now, would I be correct that the -- the primary document for the transaction is the separation and distribution agreement?

A. That's correct.

Q. And actually, the master lease and some of the other documents are really, in a sense, attachments to that separation and distribution agreement, right?

A. Those are the material agreements. The distribution agreement obviously will describe the transaction, what assets will be distributed, and maybe I'll defer to our general counsel for any more details on all those legal agreements, but the substance of the transaction would be identified within those material agreements.

Q. Okay. Now, if I understand your application in this case, you're -- first you're asking for a declaratory ruling from the Commission about jurisdiction, and we'll pursue that with Mr. Fletcher, but if the Commission doesn't grant the declaratory ruling, then you're asking for a ruling approving the transfer of assets, correct?

A. Correct.

Q. And the separation and distribution agreement is the document that explains in detail what that transfer of assets will look like, isn't it?

A. It is.

Q. And why haven't you provided us with a copy of that separation and distribution agreement? Why isn't that part of your application here?

A. At this point I'm not clear that it's been requested, but if it has, we can certainly take that under consideration. The document in and of itself is still being finalized, but the sub -- the substantive parts of it are known.

The details of the transaction, as we described I think in our prepared testimony, of how we will take certain assets out of the operating companies, Kentucky included, and make those part of the CSL and enter into a sale-leaseback, those are the substantive terms of the transaction, and I feel like we've accurately described the most material points of what will happen.

Q. Now, you said a few moments ago that Windstream intends to use the entire consideration it receives from CSL, that roughly $3.2 billion, to reduce debt. Is that correct?

A. Yes.

Q. Approximately how much will Windstream's annual interest payments decline as a result of that debt reduction?

A. So as I said earlier, we haven't finally selected the debt instruments that will be -- we will use the money to repay, but if you observe Windstream's cost of debt today of around 6 percent on, you know, $3.2 billion, that's, you know, between 150 and $200 million on a gross basis. And so that's a -- I think a fair range of expectation for the annual reductions in cash interest payments that Windstream would no longer have to pay from the transaction, after the transaction.

Q. How did you determine that $3.2 billion was appropriate consideration for the assets being transferred?

A. So the transaction, the valuation of the assets and -- and the goal of the transaction at the end of the day was we wanted to make sure that all the strategic objectives of the transaction were accomplished, and so maybe if I could just, you know, pause for a second and talk about that.

Windstream's in a competitive industry. The -- the competition in our space is significant both from cable operators and competitive providers. There are a number of transactions pending where those competitors will get bigger and potentially stronger, and the strategic rationale for this transaction for Windstream was that we wanted to make sure that we were a more nimble competitor and one that could bring more investment to bear in terms of capital expenditures for providing better services to our customers, and obviously being a better competitor, more stable competitor over time.

At the same time we wanted to make sure that we could lower our debt burden on Windstream so that we could provide for more of our cash flow to be directed towards these investments. That, in combination with a dividend reduction, gives us more ability to do that.

So when we thought about the structure of how much -- you know, how many of our assets today would go over, how that would be valued, and how much debt reduction we would try to accomplish, we had that in mind.

At the same time, we also had in mind for the stability of CSL as a standalone company -- as a standalone company positioned as a triple net REIT provider carrying, you know, roughly five and a half times leverage, which is very consistent with their peer group, that there was enough stable cash flow within that company to be operating well for a very, very long time.

So the balance of the transaction in terms of where we set the lease payment relative to the assets transferred, that became very important in terms of the health of each of the businesses going forward.

In addition to the debt that came over, that's how we looked at the transaction. We felt like the right balance was struck between accomplishing all the goals for both companies, so that the relationship between each of the companies on a long-term basis would ensure that there was stability in both companies and the ability to continue to provide great service for our customers in the future.

Q. Okay. Let me try to get a little more specific then. According to that, you know, preliminary filing with the SEC, the assets being transferred have a book value of about $2.7 billion; is that correct?

A. Right, that's correct.

Q. So for those assets, again, on your books at 2.7 billion, how did you determine that $3.2 billion was appropriate consideration?

A. So the -- so the book value of the assets that are being transferred are dissimilar than the fair value, and so we -- I don't know that we've disclosed the fair value of the assets yet, but we engaged a Big Four accounting firm to do a valuation of these assets both -- various approaches: Income approach, replacement asset approach, you know, typical valuation of the like assets. That analysis was done to determine what the fair value of those assets was.

And then in determination of, you know, the lease payment, we looked at what a comparable capitalization rate for similarly situated REITs would look like and derived the lease payment based upon that comp universe.

And in terms of, you know, the debt repayment that comes with the transaction, you know, really the mechanics of the transfer of leverage, you know, from the existing Windstream Holdings to what the new entity, CS&L, could support with its existing -- its new cash flows, we felt like that was the right leverage level for each of the companies to operate and be successful going forward.

So the determination of the debt reduction was more driven by our view of each of the companies' abilities to support the debt that they would have pro forma with the cash flows that they would have going forward, so they were interrelated in terms of those types of mechanics.

Q. Okay. And you said something that I think I caught, but I want to go back to for a second. I think in that answer, which was asking about how the $3.2 billion, I'll call it a purchase price, though I know that's not exactly right, was -- how that amount was determined, you said that there was a valuation done, a fair value analysis of the assets, and that was used to support the $650 million lease payment. Did I hear that correctly?

A. That's correct.

Q. Okay. Is that analysis finalized? Do we know that that $650 million is the final number?

A. We have a preliminary analysis from our Big

Four accounting firm. It's not final. It won't be final until we finalize all the assets, and obviously, you know, similar to hearings like today, the finalization of the assets that will go over will be dependent upon the outcome of our regulatory approval process, so -- but we think that is -- there's a high probability that that will be the final result.

Q. Okay. Now, if my math is correct, over the initial 15-year term of the lease, Windstream will make lease payments to CSL totaling about $10 billion for these assets; is that correct?

A. I can do the math in my head, but that's roughly, I guess, the number, yeah.

Q. I mean, 650 million a year for ten years with some escalation?

A. Escalation of half a percent, you know, in year four, yeah.

Q. Okay. So how did Windstream determine that it was appropriate to commit itself to pay $10 billion over a 15-year period for these assets that it currently owns with a book value of $2.7 billion?

A. Well, the value I would say is not -- the fair value is not 2.7. That's the book value. As we -- as we, I think, all understand, book value is based upon historically, you know, historically purchased assets that have been depreciated over time. Certain of those have obviously been reinvested in. You know, the fair value is much higher, closer to, I think, the $8 billion that we talked about earlier.

But we believe that the value of the transaction, given the long-term exclusive use of those assets, in combination with the debt reduction and the free cash flow characteristics of each of the transaction outcomes here for each company, was fair in terms of the cap rate that is typically gained on assets like this for similarly, you know, valued transactions.

And so the analysis of -- of our accounting firm on, you know, this type of, you know, set of assets, we felt like this was a fair valuation for the types of assets that were being transferred over to CS&L.

Q. And, you know, I guess I'm having a little trouble. You just threw out an $8 billion figure. I don't -- I don't know what that referred to, but you're receiving $3.2 billion for the assets.

A. Yeah.

Q. And then over the next 15 years you're going to make payments totaling about $10 billion, right?
A. Yeah. But Windstream obviously still has the exclusive use of the assets in support of our customers, and we would have the requirement, you know, to continue to reinvest in those.
So at the end of the day, we view that the residual income stream of these -- the residual value of these assets over time is not limited in value to, you know, a defined period. We expect to enjoy the benefits of them for a very long time in support of our customers and the cash flows from the customers that we get.
Q. Okay. But if there is residual value to the assets after the lease is finished, that value belongs to CSL, doesn't it, not to Windstream?
A. It does. Thirty-five years out, most likely.
Q. Okay. Let's move now to a discussion of how your Kentucky operations fit into all of this.
A. Yes.
Q. You have two ILECs in Kentucky, correct?
A. Yes, we do.
Q. And will both of those companies contribute assets to the deal?
A. That is our expectation, yes.

Q. And they will do that through a subsidiary of CSL to be known as CSL Kentucky System; is that correct?
A. I think that's correct, but I'll defer to our general counsel for the detailed legal entity there.
Q. Okay. I'm just going by information you provided in response to the -- the Cable Association's --
A. Yes.
Q. -- interrogatory. You had an organization chart, and I just picked the name off the chart.
A. Yes. Got it. I'm sure that's correct.
Q. And believe me, that's all I know is the name on the chart. So, now, will there be an agreement between the Kentucky ILECs and that CSL Kentucky subsidiary?
A. The agreement will be between CS&L at the corporate entity level as well as Windstream Holdings, Inc., and it's just for administrative ease in terms of transacting -- transacting the lease between the entities --
Q. Okay. I --
A. -- for the benefit -- for the benefit of the operating subsidiaries of Windstream to include Kentucky East and West.

Q. Okay. Now, as I understand the summary of the lease that you've provided to us, it talks about there being a number of -- it uses the term "facilities" under the lease, and it sounds like each facility will basically be a separate state?

A. Yeah. I think we referred to them as pods. It's just, you know, for -- as we think about renewal opportunities and options, you know, some 15-plus years down the road, we wanted to have the flexibility to think about each of those separately if something changed within the 15-year period.

But the most likely scenario is that when the first renewal period comes to pass in 15 years, or sometime even before that, that the -- the vast majority or all of those would be renewed at the existing, you know, structure.

Q. Okay. But you would have the ability to renew some of them and not renew others?

A. We would.

Q. Okay.

VICE-CHAIRMAN GARDNER: Excuse me.

MR. RUBIN: Oh, sure.

VICE-CHAIRMAN GARDNER: Could I ask one clarifying question, and that is, did I understand you to say that the assets that the Kentucky -- the two Windstream ILECs in Kentucky will have, whatever those assets are, will be transferred to Kentucky CSL; is that correct?

THE WITNESS: Yeah, I'll have to defer to our general counsel on the details of that legal entity structure, but I'll defer to John for the detailed legal transaction steps.

VICE-CHAIRMAN GARDNER: Okay. Sorry. Thank you.

MR. RUBIN: No, thank you, Mr. Vice-Chairman. And just so -- you know, to put my question in context, I was relying on a chart that was attached to the Cable Association Interrogatory Number 1, it's Exhibit A, and that shows a name, CSL Kentucky System, LLC. And, you know, obviously we can -- yeah, I think Mr. Fletcher might be able to give us some more information about that.

VICE-CHAIRMAN GARDNER: Thank you.

Q. (By Mr. Rubin) Mr. Gunderman, are the assets in Kentucky today owned by the Kentucky ILECs?

A. Yes.

Q. So they appear on the Kentucky ILEC's books?

A. Yes.

Q. And Kentucky ILEC -- or the Kentucky ILECs will be transferring those assets to, you know, some

entity within CSL, right?
A. Yes.
Q. And then CSL will be, you know, providing assets back to Windstream, the notes and cash that we talked about earlier, right?
A. Yeah. The proceeds from the transaction that will be the result of the capitalization of CSL will ultimately result in the $3.2 billion of debt reduction for Windstream through the exchange of debt and the cash dividend that comes back to -- the basis dividend that comes back to Windstream from CSL to repay that, so that's correct.
Q. Okay. So let's start with the cash. Does any of that cash go to the Kentucky ILECs?
A. Windstream manages our free cash flow in the aggregate for the benefit of our operating subsidiaries, to include, you know, Kentucky -- Kentucky's ILECs. So, for example, most of our -- almost all of our existing debt today, not everything, but most of it sits at the Windstream Corporation level, which is kind of a one-tier level down below Windstream Holdings.
And so the free cash flows that are generated from our operating companies, to include Kentucky, are typically divvied up into our services corp and

into Holdings to either repay debt, you know, in the prior capital structure, existing capital structure before the transaction to dividend to shareholders, or whatever the case may be. In the future, this cash for this transaction will be used to repay debt at the Windstream, you know, Corporation level, and the Kentucky operating companies will benefit from having a lower debt burden on the aggregate corporation in the sense that, as we said earlier, cash interest will be much lower and providing for the opportunity for us to invest more in Kentucky and the rest of our states.

Q. Let me just, again, try to keep the focus on Kentucky for a minute.

A. Sure.

Q. The Kentucky ILECs are transferring out assets worth, I'm assuming, millions of dollars; is that fair?

A. Yes.

Q. And, in fact, again, according to your SEC filing, the Kentucky assets are about 13 percent of the total assets --

A. Right.

Q. -- being transferred, correct?

A. Yes.

Q. So if we take 13 percent of $3 billion, just for round numbers, we're talking maybe $400 million worth of assets being transferred out of the Kentucky companies, right? Yes?
A. That -- that seems right.
Q. Very round numbers.
A. Yeah, round numbers.
Q. And I'm trying to figure out what the Kentucky companies get back for that.
A. Yeah, the Kentucky companies just will get back a sizeable increase in investment. So as we said on our public record, today Windstream invests roughly 11 to 13 percent capital expenditures as a percent of revenue back into our business today for enhanced services for our customers and the maintenance of our existing network.
In the future we expect to start to expend between 13 and 15 percent capital expenditures as a percentage of revenue. And Kentucky will be -- you know, being one of our largest states and one of our most important states, with over 300,000 customers of our total, will be absolutely a beneficiary, if I could use that word, of the incremental investment dollars that will come back into -- you know, that Windstream will have available to invest in support

of the existing customers. So that's the -- that's one of the most substantial benefits of the transaction, is to provide for enhanced investment.
Q. Okay. You're jumping ahead of me a little bit, but that's fine.
A. Yeah.
Q. We would have gotten there. What I was trying to focus on for the moment is just a straight, if you will, accounting of the transaction.
A. Uh-huh.
Q. That Kentucky companies lose $400 million worth of assets, they transfer them to another company, and it sounds like they're getting back nothing in terms of consideration for that. The consideration is at some other subsidiary, Windstream Corporation, I think you said.
A. I wouldn't characterize it as getting nothing. I would characterize it as, just as the rest of our operating subsidiaries, they will enjoy the benefits of a much stronger corporate entity with a much lower debt load with the ability to be invested in at a higher level of capital expenditure intensity than without.
Q. Okay. Does -- do the Windstream ILECs in

Kentucky have any debt on their books today?
A. No.
Q. Okay. So any debt reduction benefits belong somewhere else within the Windstream company. They're not going to be specific to the Kentucky ILECs, right?
A. That's correct, but our ability to invest in Kentucky is directly, you know, correlated to our ability as a company to manage the debt load and requirements of our debt burden for the entire company.
Q. And will the Windstream ILECs in Kentucky have an obligation to make lease payments to CSL for the assets that will be used in Kentucky?
A. It's our expectation that just as we do today with Kentucky and other states, that we will continue to manage the cash flows of the operations with dividends of results of operations from Kentucky and other operating companies to the Holding companies in the aggregate to satisfy both the lease obligation and our other corporate, you know, investment, cash flows and other things.
Q. Well, what I'm trying to get at here, and maybe my question didn't do it very well, within CSL there's going to be -- I didn't count them -- 20

some subsidiaries, what you called pods?
A. Uh-huh.
Q. And they basically correspond to each of the states from which ILEC assets are being transferred, correct?
A. Yes.
Q. Okay. And what I'm trying to understand is if there's a transaction between the Kentucky ILECs and this CSL Kentucky subsidiary so that the CSL Kentucky subsidiary gets the assets, is there going to be a lease obligation on the Kentucky ILECs to pay for the use of those assets?
A. The lease obligation will be between Windstream Holdings and the CSL entity. The cash flows that go in support of satisfying the obligation between Windstream Holdings and CSL for the benefit of the operating companies will operate very much as it does today. Our cash flows are aggregated in support of all of our corporate obligations and our ability to reinvest in each of our operating companies.
Q. Okay. So you're saying that the Windstream Kentucky ILECs will not have a specific lease obligation that has to be met?
A. The lease obligation will -- will be between

Windstream Holdings, Inc.

Q. Well, okay. I understand that's where the master lease is, but when I see that term "master lease," it implies that there are other leases that are then subject to the terms of the master lease, and from the summary you've provided, that's the impression I got.

A. Yeah.

Q. That each state would have its own lease that would basically adopt the terms of the master lease.

A. The obligor of the lease will be Windstream Holdings.

Q. Okay. So the Kentucky ILECs will have no obligation to make any lease payment to any CSL subsidiary?

A. The Kentucky companies will not be an obligor or a -- or a party to the lease, but the cash flows that come from Kentucky, you know, as -- as we do today, we -- we use the cash flows from Kentucky to, you know, reinvest in Kentucky and, you know, pay down debt and, you know, administer corporate, you know, obligations and working capital needs. I mean, that is -- that is what happens today. The transaction, I guess in that sense, will not change what is currently already happening.

Q. If that's the case, then why does the summary of the lease that you provided talk in terms of the potential for a default on one particular pod, if you will, what they call facilities?
A. Yeah.
Q. How is that possible if everything is just being handled at the Windstream corporate level?
A. I mean, the lease today is a single indivisible lease. That's how it's structured. You know, there's the mechanism for, you know, defaulting on a lease through nonpayment and other terms, which are summarized, I think, in the lease summary.
I'm not sure I understand your question, but, I mean, there's always a possibility of default. We think it's very remote, and if there was a default instance, you know, there's -- there's obviously, you know, impacts to Kentucky and others, but we think it's a very remote instance.
Q. Well, do you have a copy of the lease summary with you?
A. I do.
Q. And I'm looking at the one dated October 31st. If you're looking at a different one, just let me know, and I'll get that one in front of

me.

And, I'm sorry, just for the record, this was Exhibit D to the Cable Association's -- or excuse me, the response to the Cable Association's data request.

A. I have it in front of me.

Q. On page 5 of that summary under Events of Default, the last bullet says, "An Event of Default as to any Facility is an Event of Default as to all Facilities."

MR. CRITTENDEN: I'm sorry, what was the number of the response to that?

MR. RUBIN: It's Number 23.

Q. On page 5, "An Event of Default as to any Facility is an Event of Default as to all Facilities."

And "facility" is described as these pods, to use the term that you used, the individual state pieces of -- of the lease.

So if that's -- if it's possible to have a default as to one facility, one state, I don't understand how that's consistent with what you just said about this just being one lease and one obligation from Windstream Holdings to CSL.

A. Uh-huh. The obligation -- I'll just

restate. The obligation is between Windstream Holdings, Inc., and CSL, and it will be administered for the benefits of the operating subsidiaries for the facilities that have been contributed, and it's accurate to characterize, you know, the events of default as being an impact on the way you described, but I guess as I consider the possibilities, the transaction outcome and our ability to, you know, manage, you know, the payment of the lease and meet the obligations of the lease, we're very comfortable that the cash flows of Windstream, you know, in the future will be substantive and very able to meet the obligations of the lease.

Q. Now, you've provided us with two summaries of the lease with your application. There was a summary dated, I think it was July 28th, and then we were just talking about the summary dated October 31st.

A. Uh-huh.

Q. Would you agree with me that there were some changes between those two summaries? And believe me, I'm not going to ask you for details about the changes, just not everything is identical between those two documents.

A. But I did not reconcile those before this hearing. I'll defer that to our general counsel who had primary ownership of the negotiation and construction of the lease, but I'm happy to entertain any business questions around that, if you'd like.
Q. All right. Have you seen a full draft of the master lease?
A. Yes, I have.
Q. About how big is it?
A. Very big. Several hundred pages.
Q. Okay. And we have a -- whatever it is, a seven or eight-page summary of it.
A. And I would say to you that the summary is extensive and informative as to the major terms of the lease.
Q. Okay. Did -- did you attempt to verify that the summary we have is an accurate summary?
A. Yes, we absolutely did. We've had multiple sessions internally where we've, you know, walked through the summary of this lease before we prepared this lease summary for submission.
We absolutely had those discussions, and while the lease is not final and was not final on the 28th and was not final on the 20 -- in late

October, the material terms of the lease as illustrated within the outline are -- are intact.
Q. Do you know when the lease is expected to be finalized?
A. Close to the transaction time frame.
Q. And do you know when the separation and distribution agreement is expected to be finalized?
A. I'll defer that to our general counsel who has ownership of that work flow.
Q. Now, if my reading is accurate from the summary we have, it appears that if there is a default on the lease, CSL would have the right to find a new tenant for the assets, correct?
A. Correct.
Q. So essentially if Windstream defaults on the lease, they're out of business, right?
A. The way that the lease actually is written, there's a concept called successor tenant, and as I'm sure you read the lease -- or the lease summary, I should say, there's an orderly process that will happen under the remote chance that that would ever occur such that CSL would require Windstream to continue to operate the assets so that they maintain value and the business is maintained.
And to the extent that Windstream could not

continue to meet its obligations as a communications provider, which obviously adds value to the lease for CSL, then CSL has the ability to attract a successor tenant.

Q. Okay. And you refer to that term "successor tenant." That -- that's capitalized in the summary we have?

A. Yes.

Q. Does that mean that's a defined term within the agreement?

A. It is.

Q. And do we have the definition of that term within the summary that you provided? I didn't see it. It's not a trick question.

A. No, no. I don't think the full definitions were provided within this lease summary, but in business terms what I can tell you is, without detailed recollection of what's there, is that it is to provide for a -- a competent telecommunications provider with, you know, adequate financial abilities to step into the shoes of Windstream as a successor tenant so that the value of the services being provided are maintained and that the customers and regulatory obligations that Windstream, under this remote scenario, if they couldn't provide them,

someone else could.
Q. Okay. And, in fact, if that happens, Windstream would have an obligation to transfer to the new tenant electronics, customer relationships, and even employees, right?
A. Yes.
Q. And including employees covered by collective bargaining agreements, my clients.
A. I would say yes.
Q. Okay. And again, all I can go by is what we have in the summary.
A. Right.
Q. And that's what it says.
A. Right.
Q. Now, am I correct -- sorry, I already asked you that one. That's what happens when you --
A. That's okay. We covered a lot of ground.
Q. -- get out of order, but that's good. That means we're moving forward.
On page 5 of, again, that October 31st lease summary, excuse me, under Events of Default again, the next to last bullet says landlord --
MR. PINNEY: Excuse me. Are you still -- I apologize for interrupting, but are you still responding to the response to the data requests?

MR. RUBIN: Yeah.

MR. PINNEY: Okay. Thank you.

MR. RUBIN: No, I think the same provision is in both.

MR. PINNEY: Okay.

MR. RUBIN: So this is -- whichever one is easier to look at.

Q. Under Events of Default, the next to last bullet says, "Landlord," which is CSL, "may exercise self-help rights if Tenant," Windstream, "defaults under the Master Lease."

Do you see that?

A. Yes.

Q. Do you know what self-help rights are?

A. I'll defer to general counsel on the legal definition of that, but the substantive business terms of -- under the relationship under Events of Default is the landlord would obviously be able to exercise its rights to ensure that the asset values are maintained and, you know, that the substantive, you know, relationship and values that they entered into that could take, you know, liberties to make sure that those are protected the best -- the best as possible.

Q. Okay.

A. So that's my business understanding of it, and I'll defer to John for detailed legal descriptions.
Q. That's fine. I won't ask you to play lawyer, and I'll try not to play business person, which I know very little about.
So -- so from a business sense, do you understand that those self-help rights would -- or may give CSL the right to seize control of certain assets or to operate certain assets.
A. That would be my understanding.
Q. And do you know if those rights are different in different states?
A. I do not.
Q. Okay. And -- well, this is probably getting more into a legal question --
A. I will say yes.
Q. -- and if it is, you can defer it, that's fine, but do you know if the Kentucky assets will be governed by Kentucky law under the lease, or will they be governed by some choice-of-law provision that appears in the lease that --
A. I'll defer to John on the legal interpretations.
Q. Okay. Now, I'd like to spend a few minutes

talking about a letter that your attorneys submitted to the Public Utilities Commission of Ohio.

A. Uh-huh.

Q. That was attached to Mr. Barber's testimony for CWA. I assume you're familiar with it because you discuss it in your rebuttal testimony.

A. Yes.

Q. And again, for the record, that's attached to Mr. Barber's testimony as Schedule RB-3.

And, I'm sorry, I can't tell from here, do you have a copy of that letter in front of you.

A. I do.

Q. Okay. The letter discusses some of the accounting for the proposed transaction under Generally Accepted Accounting Principles; is that right?

A. Right, yes.

Q. And are you okay if I refer to Generally Accepted Accounting Principles as GAAP?

A. Yes, I am.

Q. That makes life much easier. Will the transaction be recognized as a sale under GAAP accounting?

A. The -- the accounting for this transaction we believe will ultimately be accounted for as what's called a failed sale-leaseback, which from the standpoint of a legal outcome, we are selling assets and we are leasing them back, you know, via Windstream Holdings for the benefit of a subsidiary.

So but because under GAAP there is a determination that there is a substantive continued involvement of Windstream in the management and, you know, use of these assets, that the GAAP accounting answer is a failed sale-leaseback, and that's -- that's the most -- most -- that's the accounting determination of the transaction, which is -- I would say to you is not -- not exactly in line with what I would call the legal substance of the transaction.

Q. Okay. Will the transaction be recognized as a lease under GAAP accounting?

A. It is -- it will be -- yes, it will be -- the lease obligation will be placed upon the balance sheet of Windstream. It will be a long-term lease obligation between Windstream Holdings and CSL.

Q. Okay. But I think the Ohio letter says it's not being treated as either an operating lease or a capital lease.

A. That's right.

Q. So is -- and this is maybe my ignorance of

accounting. I thought those were the only two types of leases. You're saying there's a third kind now?
A. There is.
Q. And what is it?
A. It is a failed sale-leaseback accounting outcome.
Q. Okay.
A. So that's the third one as described in this.
Q. And is one of the differences that the failed sale-leaseback results in a write-off being taken of the discounted present value of the future lease payments?
A. Uh-huh. The -- the final accounting of the transaction will most likely be that the present value of the lease obligation will be placed upon Windstream's balance sheet, and then over the period of the lease, we will obviously make payments and relieve that obligation over time.
Q. Okay. How much equity is on Windstream's balance sheet today? Again round numbers.
A. Under half a billion.
Q. Okay. And we said earlier that the lease payments over the next 15 years would total about $10 billion. Do you have a sense for what the present value of those payments would be?

A. Not in front of me, but I understand where you're going. You're talking about a book instance versus a fair value instance, but I'll wait for your question.
Q. Well, that was my question. If we're talking about a series of payments totaling $10 billion over 15 years, that has a present value of, what, at least 3 or $4 billion, doesn't it?
A. It depends on various assumptions, but I'll take you at your math.
Q. Okay. So will that result in Windstream having negative equity on its books?
A. It could.
Q. And does that have any consequences for the way in which Windstream will operate its business?
A. It will not.
Q. Okay. Will this accounting have an effect on the books of the Kentucky ILECs?
A. It will.
Q. And will it be the same, but obviously smaller numbers --
A. Yes.
Q. -- as the effect on the parent?
A. Yes.
Q. Okay. So is it possible that the Kentucky

ILECs will have negative equity on their books as a result of the transaction?
A. I don't have it in front of me today, but it's possible. When we finalize the finalized accounting, it's possible.
Q. Okay. Is it likely?
A. It's possible.
Q. That's as far as you can go?
A. It's possible.
Q. Okay.
A. I haven't finalized the analysis. I would go on to say that it will have no bearing on our ability to raise debt or equity or meet any of our obligations. I mean, it's a book instance that will have no capital markets out -- outcomes or negative consequences and, you know, that's a well-established, you know, historical trend with many other companies who have negative equity with access to capital markets.
Q. Okay. If the Kentucky ILECs have negative equity on their books, will that affect their ability to distribute cash back up to the parent?
A. No.
Q. And, sorry, is that based on a discussion with your lawyers, or is that your business sense

or --
A. That's my business sense. I mean, it's a -- it's the difference between a book equity outcome and a cash flow result, which, you know, are all obviously related in terms of accounting, but, you know, one is a cash flow item, the other is the residual equity result.
Q. Now, if I understand some of the complexities here, and I'm not sure I capture -- I get them all yet, let's give a -- sort of more concrete example. This Commission sets pole attachment rates for the Kentucky ILECs, right?
A. Yes.
Q. When those rates are set, is there some element of the -- the determination that includes the cost of those assets?
A. You know, I don't have the detail buildup of the rate case in front of me, but -- so I don't have the recall in front of me now as to the details of how that is done. But, you know, it's not -- it would not be unusual to assume, and I think it would be correct to say that the costs that go in providing, you know, support for that would factor into the detailed rates. So I don't have the detailed buildup of that in front of me, but I think

that is the -- that is the analysis.

Q. Okay. So if -- and if I understand the transaction, the Kentucky ILECs will no longer own the poles, right?

A. Right.

Q. But with this Ohio letter, which describes some of the accounting involved, it also sounds like the lease isn't being treated as a capital lease or an operating lease.

So for purposes of setting the pole attachment rates, will the Kentucky ILECs be treated as if they still own the poles, or will they be treated as if they lease the poles.

A. The assets will still be on the books, as you probably observed through the failed sale-leaseback accounting. The result is that the assets will remain on Windstream's books.

Q. Okay. Does Windstream get to depreciate them?

A. We do for book purposes but not for tax purposes.

Q. What about for rate-making purposes?

A. I don't know the answer to that today.

Q. Now, part of the transaction is the -- I'll call it paying off $3.2 billion in debt. I know that's not technically the right term, but, you know, $3 billion less debt at the parent company level. Will that affect the capital structure of the Kentucky ILECs?

A. There's no debt at the Kentucky ILECs today, so that -- that particular part of the transaction will not.

Q. When it comes time to, you know, reset pole attachment rates, or if this Commission gets involved in any other type of rate making for the ILECs, do you know if they will rely on GAAP accounting or tax accounting or something else?

A. Uh-huh. I don't want to speak for -- for the Commission.

Q. Okay. Now, let's talk about what the Kentucky ILECs will have to do on their books. You will have one set of books that is consistent with GAAP accounting, correct?

A. Yes.

Q. Okay. And will you also have a set of -- I'll call it a separate set of books, it may be a series of adjustments or whatever, that reconcile GAAP to tax accounting?

A. Uh-huh. We obviously have, you know, different outcomes for tax accounting. They're not always exactly in line with books. You're correct on that.

Q. Right. Because for tax -- or for federal income tax purposes, you have that ruling from the IRS that says this is a transfer and this is a lease, correct?

A. Correct.

Q. It's just that for GAAP accounting purposes, it's not recognized that way.

A. Correct.

Q. Okay. And I'm wondering if you know or have an opinion about how the transaction should be viewed by this Commission for regulatory purposes?

A. From a tax standpoint, I'll answer that one first. I mean, you know, the lease that we'll have will be a -- it will be a deductible lease that will, you know, lower our taxable income for that.

And in terms of the reported financial outcome for Kentucky, you know, the cash flows of -- or the financial outcome of Kentucky in terms of the push-down accounting of this transaction will be in proportion to the assignment of the aggregate transaction based upon the amount of assets that Kentucky contributed.

So we will have that outcome, and that will be a book outcome, and the cash -- the cash flow implications, if you will, to Kentucky, given that it doesn't have debt and no, you know, debt obligations, those are -- I think about those more in the aggregate at the total company level because, you know, the transaction and the capital structure changes that are happening as part of this transaction and the debt relief happen above the Kentucky operating company level.

So in terms of the regulatory financials that we will continue to report, obviously, for Kentucky, I think that the one result that you would expect is that the push-down accounting impact of failed sale-leaseback of the lease obligation would impact Kentucky as it would all the rest of our operating companies.

That -- that is the -- it's really only a change that I would anticipate at this point on -- on the accounting for Kentucky, and it's simply a reflection of I think what will likely be a push-down impact of the failed sale-leaseback accounting onto the operating companies who benefit from the master lease that sits up at the Holdings company level.

Q. And just when you talk about the benefit, you're talking about the combination of a reduction in debt and a new lease payment and a reduction in the dividend you pay to common stockholders.

A. Absolutely. Those are the three largest, you know, outcomes of the transaction. Debt gets reduced by 3.2 billion, which is significant. We talked about the cash flow benefits that come with that.

The capital expenditures that can be -- the capital expenditure increases that can be provided for for Kentucky will go up, and that is a direct result of the lower debt burden and the cash interest implications there, as well as the change in dividend policy.

So Windstream, before the transaction, it pays an annual dividend of $1, 600 million a year. After the transaction, we've announced that it will be 10 cents, so we're talking about a $540 million reduction in dividend payments.

And what we're -- what we're essentially doing is we're reallocating the cash flow from operations of all of our operating companies, Kentucky included, and instead of, you know, having a -- a higher dividend payout and paying more cash interest, we have less of both, and we're going to reallocate those monies towards more investment into the business so that we can become a stronger competitor, serve our customers better, and grow faster over time.

Q. Okay. Let me break that into a couple of pieces. The first is the kind of cash flow piece of that --

A. Yes.

Q. You said that you're going to save $540 million a year in cash dividend payments?

A. Yes.

Q. But you're -- and you're going to save about, what, 230 -- or $200 million a year, I think you said earlier, in interest payments?

A. A little bit higher than that on cash interest, yes.

Q. And but you're also going to assume a lease obligation --

A. Correct.

Q. -- of 650 million that offsets that.

A. It does partially. Keep in mind that the lease obligation is tax deductible, so the payment is tax deductible. It lowers our taxable income, and so the net result of the lease payment, you'll have, you know, roughly 240 or 50 million dollars of tax benefit from the lower taxable income that comes from paying the lease payment.

So the net of the 650 and the 250 roughly, you know, kind of closer to the, you know, the 400 kind of net impact of the lease payment, and so --

Q. Okay. Sorry. Let me stop you there because you refer to that in your rebuttal testimony, and I want to make sure --

A. Yes.

Q. -- we get, you know, at least some of the basic facts --

A. Sure.

Q. -- down here.

A. Yeah.

Q. On page 3 of your rebuttal, it sounds like you're criticizing Mr. Barber or saying that he made a mistake somehow in not considering the tax deductibility of the lease payment. Is that what you meant?

A. Well, I wasn't criticizing, but I was highlighting that the schedule that Mr. Barber referenced in our publicly disclosed investor relations document on the announcement of this transaction -- which I forget the exhibit number, but it's -- you guys have referenced it.

Q. Sure. It's -- sorry, it's Schedule RB-1.
A. Yes.
Q. And if you could turn to that.
A. Yeah.
Q. And I think it's important, you know, that we understand what we're looking at here.
A. Yeah. Give me one second.
Q. Now, in RB-1, the figures that Mr. Barber referred to and that you're referring to on page 3 of your rebuttal --
A. Right.
Q. -- is the line called Fiscal Year '14, Estimate Adjusted Free Cash Flow.
A. Correct.
Q. And it's $830 million currently, and under the proposed transaction, it would be 508 million --
A. Correct.
Q. Correct?
Now, you don't disagree with those two numbers, do you.
A. No. We prepared these numbers.
Q. Right.
A. Obviously.
Q. And next to that line there are two footnotes, Footnotes 2 and 3.

A. Right.

Q. And footnote 3 says -- you know, talks about the interest rates being assumed, and then tax effected at 38 percent.

A. Right.

Q. So does that mean that these adjusted free cash flow figures are -- already take the tax effect into account?

A. They do, but most importantly, which we tried to clarify in our rebuttal testimony, is Windstream, as I think most every other telecommunications company, and a lot of other companies, has benefited recently from bonus depreciation.

And so Windstream, because of that accelerated depreciation deduction that we've taken on bonus depreciation in a capital intensive industry, we have lowered our cash taxable income because of the accelerated depreciation, and because -- because of that, for 2014 our cash taxes paid will be, I think, somewhere in the range of $10 million.

So as we tried to -- as we illustrated with this kind of illustrative transaction slide, if you will, what is notably different for 2014 versus kind of forward-looking years is that the cash tax benefit that will be realized as part of the lease payment of this transaction has minimal impact in '14 because of bonus depreciation caused our taxable income to be very low this year anyway.

Q. Okay. But this document that you prepared, the Schedule RB-1, says that -- and this is an estimate for 2014. It says that you're doing the tax effect at 38 percent --

A. Right.

Q. -- not at your actual effective tax rate.

A. No, the 38 percent is correct. It's just a reflection of that because your taxable income is much lower, you have less tax to pay for the bonus depreciation benefited years. I mean, it's a rate -- you know, you apply a rate against the taxable income, and you get a lower result.

What I'm simply saying, sir, is in the forward-looking years Windstream will have higher taxable income, and that is because -- well, you could argue what's going to happen with bonus depreciation, but if bonus depreciation were not present, we obviously will continue to invest in the business at a high rate, we'll continue to generate, you know, depreciation, but we will not, without the benefit of bonus depreciation, be able to accelerate the deductions of that depreciation to lower taxable income.

So what we were representing in our rebuttal testimony was is that you can't ignore, in the future years when Windstream becomes a full cash taxpayer without the benefit of bonus depreciation, that the benefits of the transaction are substantial in regards to lowering our taxable income as it relates to the lease payment.

So that's all we were trying to indicate is if you're measuring free cash flow, the free cash flow benefits of the transaction, you can't ignore the fact that the 650 million will have a tax deduction benefit so that the net impact on our cash flows is much less.

Q. Right. And all I'm trying to understand is in this Schedule RB-1 where you show before and after the transaction, you know, reduction in free cash flow of, you know, $322 million, that already takes the tax effect into account.

A. Well, it does not. Again, I'll try to -- I'll try to answer it again. What we were stating in the document was is that we assumed a 38 percent, you know, tax rate, which is correct, but, in fact, our taxable income in 2014 was actually quite low.

I don't remember the exact number, but it was quite low. And the reason why it was quite low was because we had the benefits of accelerated bonus depreciation deductions.

When bonus depreciation deductions are not available, Windstream's taxable income will be much higher, and under a -- if I could say normalized non-bonus depreciation year, the benefits of the transaction are much greater in that, then the full lease payment would act as, you know, a large deduction that we would realize the benefits of the tax -- the lower taxes.

Does that -- does that make sense.

Q. Well, I think what you're telling me, and obviously correct me if I'm wrong, is that the numbers we see here are accurate for 2014 based on what you know now?

A. Correct.

Q. But in future years, the benefit could be different from that?

A. Better, greater.

Q. Okay. Depending on what happens with the tax code and whatever.

A. Well, I guess what I'm saying to you, if the tax -- okay. Well, if the tax code is -- if bonus depreciation is made permanent -- I mean, I'll play maybe along with your line of -- if bonus depreciation is made permanent, then the -- the deduction of the lease payment would be less impactful to our -- to our taxes because we would have less taxable income to apply against. You can only go to zero. And we're effectively close to that today because of the bonus depreciation deductions.

But in a normalized year, which we've had many of prior to the last couple, two or three, Windstream's cash taxes were much higher, and we would expect them to be higher in the future. Then the lease payment deduction would be more substantial, and you can't ignore that as a benefit for this transaction when you think about the cash flow in the aggregate.

I mean, I think what we were trying to illustrate with this rebuttal and this testimony today was you can't just take, you know, the reduction, you know, for 2014 and assume that's all there is that will ever happen on the netting.

Q. Sure.

A. Yeah.

Q. Okay. There's been a lot of discussion today, I think understandably, of cash flow benefits and so on, and as you said a few minutes ago, there's really three major cash flow components to the transaction.

A. Uh-huh.

Q. There's a reduction in interest payments, there's the new lease payment, and then there's a reduction in the dividend payment.

A. Yes.

Q. If we can set that dividend payment aside for a second, we have a reduction in interest payments of $200 million, give -- let's say between 200 and 250 million.

A. Maybe a little less than that. I don't want to misstate. It's probably between 150 and 200.

Q. Okay. And you have the new lease payment that's 650 million, so the net cash flow effect of that piece of the transaction is to reduce your free cash flow, correct?

A. Well, you have -- you have the lease payment on an after-tax basis. Let's call it roughly 400. All right. We talked about --

Q. That's fine.

A. We talked about the mechanics of that. And then the interest reductions, again, call it 150, 180, something in there, so you're correct in terms if you stopped right there, you know, that's not free cash flow accreted, but we're reallocating a sizeable portion of what will -- what is today our dividend.

Free cash flow obviously is, you know, freely available, free cash flow, of 600 million. We're reallocating a substantial portion of that to where it's reinvesting in the business.

Q. Right. And wouldn't you achieve a very similar result if Windstream simply cut its dividend from a dollar a share to 70 cents a share?

A. Well, we serve multiple constituents, one of which is equity holders, and dividend cuts can be destructive in terms of that, and we believe strongly that this transaction, because of the way -- this transaction due to the creation of two companies, one which is a real estate investment trust that will manage and maintain, you know, passive distribution assets, which is a yield-focused company, can support a large dividend payment.

They'll -- they'll -- a like-for-like comparison, 60 cents of the dividend for Windstream shareholders, which I'm sure you can appreciate when we're spinning out this company it's going to the same shareholders, as you said earlier, you're correct. So those shareholders care about what's the result from a dividend versus, you know, equity appreciation.

So in determining what was the right outcome for all of our constituents, equity holders, debt holders, customers, you know, regulators, we had to balance all constituents, and one of them was the equity holders. And we thought it would be value destructing to simply cut our dividend without providing for the ability to create value in another way.

And so in this transaction, we believe there's a substantial portion of the dividend that is maintained to the existing shareholders that's just transferred into the new CSL company.

Windstream, the remaining operating company, will carry much lower dividend burden and will start to reinvest in itself for the benefit of growth and serving of customers, but a simple dividend cut, dependent upon what you view that as being in terms of percentages, could have been value destructing to our equity holders without the benefits of any increases in terms of the transaction structure that we have.

So those -- those were the considerations as we judged various options, strategic alteratives, and that's why we think this is the structure that makes the most sense for all constituents.

Q. Okay. But again, just in terms of the cash flow effect of the transaction, almost all of that effect is a result of reducing your dividend and transferring some of that dividend obligation to the new company, correct?

A. If you're just isolating out Windstream, I think that's correct to say. If you look at the complete transaction, which I don't think we're here to talk about that today, but I'm happy to. If you look at both sides of the transaction there's obviously other significant benefits that are accreted from the transaction.

There's the ability to attract higher multiples on CSL for the dividend payment -- sorry, the dividend paying company that it is relative to its peers, they trade at a higher multiple, which helps equity holders. And then Windstream, as a lower dividend paying company in the future, with the ability to reinvest in itself and grow, we think also has good prospects for creating excess share appreciation.

So the combination of all of that together, we believe, was the right outcome for our shareholders, our bond holders, our regulators, and customers. And so that's the balance we struck and feel like that this transaction met all of the key considerations from each of those relevant parties.

Q. Just to kind of put this in some perspective, have there been other telecom companies that have reduced their common stock dividends so they could invest more in their network?

A. Absolutely.

Q. Okay. And have there been other telecom companies that have established this kind of real estate investment trust --

A. Yes.

Q. -- structure?

A. Yes. The wireless industry, it's actually not uncommon. So American Tower with -- you know, with some of the wireless partners, so the large carriers on the wireless side -- you know their names -- they have, for some number of years, contributed a very substantial part of their core network.

You can't operate a wireless

telecommunications network without towers. They contributed those towers to different companies who became REITs, and they leased them back for long-term exclusive use.

Q. Okay. But as far as you know, you're the first wired telecom company to try this?

A. As far as I know.

MR. RUBIN: Thank you. That's all we have for the witness, Mr. Vice-Chairman. Thank you.

VICE-CHAIRMAN GARDNER: Thank you.

Mr. Brent or Mr. Gillespie.

MR. GILLESPIE: Thank you, Mr. Vice-Chairman.

CROSS EXAMINATION

By Mr. Gillespie:

Q. Good morning, Mr. Gunderman.

A. Good morning.

Q. I'm Gardner Gillespie representing the Kentucky Cable Telecommunications Association.

A. Good morning.

Q. And you understand that our interest is somewhat more parochial than the issues you've been discussing. Our interests have to do with the Commission's regulation of Windstream's pole attachment rates and rates for conduit and use of rights-of-way. Do you understand that?

A. Yes.
Q. And I'm going to be trying to explore various commitments that I believe the company -- the operating companies have made. And in connection with that, I just want to understand that your testimony -- any commitments that are made in connection with your testimony would be binding on the operating companies?
A. Yes. I mean --
Q. And the commitments and representations made in connection with the companies' responses to data requests are considered to be binding on the operating companies; is that right?
A. Yes.
Q. Okay. And the data responses the company has -- has made, are they accurate?
A. Yes.
Q. And there -- I believe you already had the opportunity to correct them, and you determined that there were no corrections necessary, correct?
A. That's correct.
Q. And those responses are binding on the operating companies and also on CSL, correct?
A. Yes. CSL does not exist yet, but yeah, I mean --

Q. But you're here speaking for --
A. We're here speaking for both companies, yes.
Q. So assume, if you would, with these series of questions that the transaction has occurred.
A. Okay.
Q. Do the operating companies and CSL agree that the Public Service Commission of Kentucky will continue to exercise the same pole attachment jurisdiction over the operating companies that it has historically exercised?
A. Yes.
Q. And will the operating companies submit to that jurisdiction?
A. Yes.
Q. Now, as I understand the transaction, CSL will own most of the poles, but the operating companies will have ultimate and full control over the use of those poles; is that right?
A. Yes.
Q. And the operating companies will allow the members of the Kentucky Cable Telecommunications Association, which I'll refer to as KCTA, to attach to those poles at reasonable rates, terms, and conditions as regulated by the Commission; is that right?

A. Yes.
Q. Is it the operating companies' intention that the Public Service Commission will retain full jurisdiction over the operating companies' rates, terms, and conditions for use of poles, conduits, and rights-of-way?
A. Yes.
Q. Will the operating companies request Public Service Commission to state in any order related to this matter that it will retain full jurisdiction over the operating companies' provision of pole attachments, conduits, and rights-of-way after the transaction closes?
A. That is our testimony today.
Q. So you are here today requesting that the Commission do that?
A. Well, I may have misunderstood your question, but we are -- we are -- the operating company, if you're talking about Windstream, will -- we do not expect any -- any changes as it relates to the pole attachment, you know, rates as a result of this transaction. So maybe if you could restate the question.
Q. Well, my question was a little bit more specific and a little different than that. What I'm

asking is whether the operating companies will request that the jurisdiction -- that the Commission state in any order that it has jurisdiction over the poles, pole attachment and conduit and rights-of-way rates that will relate to Windstream after the transaction in which the ownership of the poles and conduits will be moving to CSL, but the responsibility in connection with the operation of those poles and conduits will remain with Windstream?

A. No. I'll defer that to our general counsel for the question there.

Q. Now, the operating companies have stated in response to KCTA Data Request Number 11 that they will continue to maintain their books and records for poles as they have done to date; is --

A. Yes.

Q. Is that correct?

A. Yes.

Q. And will there be any changes in the cost of poles on the books of the companies as a result of this transaction?

A. We have no expectation of any rate changes.

Q. That's not my question. My question --

A. No.

Q. Let me go back.
A. Okay.
Q. My question is whether there will be any changes in the costs of poles on the books of the companies, the operating companies, as a result of this transaction?
A. No.
Q. Let me give a little more background for this.
Do you understand that the pole rate -- the regulation of the Commission of pole attachments has historically been as set forth in Administrative Case 251, and that methodology for reviewing rates takes the embedded cost of certain size poles, and it depreciates those costs.
A. Yes.
Q. To get a net average pole cost, and then it multiplies it by a carrying charge to determine what the annual cost of owning and maintaining those poles is for a year.
A. Uh-huh.
Q. And then it allocates to the cable companies a portion of those costs. You understand that?
A. Yes.
Q. So you understand that a fundamental element

of that methodology involves the embedded cost of the poles.

A. Yes.

Q. So my question is whether or not the -- Windstream or the operating companies would -- there would be any change in the embedded costs of the poles on the companies' books as a result of the transaction?

A. Windstream -- Windstream maintains all the operating costs post-transaction that it has today, so we don't have any expectation that the cost would change in support of those in the future.

We, as a tenant, as part of a triple net lease, maintain all obligations to operate and maintain, you know, the network, and obviously will continue to do that and don't have an expectation of changes.

Q. Well, I'd like to try to break this down a little bit more than perhaps you want to. So my question right now just has to do with the embedded costs of the pole, which are a fundamental element of the pole rate.

A. Uh-huh.

Q. As a result of this transaction, will there be any changes on the books of Windstream to the

embedded cost of the utility poles?
A. No. Our operating costs are the same, and as we testified earlier, given the transaction outcome where the assets stay on the books of Windstream, under GAAP accounting the resulting, you know, costs, you know, aren't changing.
Q. The resulting costs are not changing, did you say?
A. They're not changing.
Q. Well, will there be any changes in the operating companies' depreciation practices --
A. That's what I'm talking about.
Q. -- as a result of the transaction?
A. That's what I was referring to. Because of the failed sale-leaseback accounting outcome that we spoke about earlier, that we're required to maintain the assets and the depreciation costs on the books of Windstream given our continuing involvement over the term of the lease for this transaction.
Q. No, I understood you to say in response to a question earlier this morning that you don't know what impact for rate-making purposes the depreciation practices of the company would have.
A. Your question was is do I expect any cost changes for the companies, and my answer is no.

Q. No, my question is whether there's going to be any change in the depreciation practices of the company.
A. And my expectation today is no, given that --
Q. Well, is that an expectation, or is that a commitment?
A. The asset that -- the accounting expectation that we expect for this transaction is, you know, the failed sale-leaseback accounting, which would provide for us to maintain the assets on the books of the operating companies and maintain the depreciation for book purposes, and so that is -- that is -- that is not a change.
Q. So there -- so you, on behalf of the company here, are making a representation that the pole depreciation practices that Windstream has will not change as a result of the transaction.
A. Yes.
Q. Okay. One of the elements of the pole attachment methodology is the rate of return.
A. Uh-huh.
Q. And the company under the methodology is entitled to a reasonable rate of return on the pole investment, and cable companies pay their portion of that through their allocation of the costs of the

pole.

A. Uh-huh.

Q. Is there anything in the -- will there be any changes in the operating company's rate of return as a result of this transaction?

A. As we represented in our testimony, our operating companies have elected alt reg. Regulation are not subject to rate of return regulation.

Q. Okay. I understood that -- that Windstream is not currently subject to rate of return regulation by this Commission, but one of the elements of the pole attachment formula is a rate of return or a cost of money element.

A. Uh-huh.

Q. And will there be any change to the rate of return or the cost of money element of that rate formula as a result of this transaction?

A. No.

Q. Now, I understood you to talk earlier about the potential of negative equity. Will that cause any change in the rate of return or cost of money element of the pole attachment rate formula?

A. Not our expectation.

Q. Is that a commitment or --

A. My committing, that's not our expectation anything would change. I mean --
Q. Well, you understand that I'm -- I'm here trying to understand what the effect of this will be on pole attachment rates.
A. I understand.
Q. And expectation to me is not nearly as comforting as a commitment.
A. I -- I understand that, and --
Q. Can you make a commitment?
A. Not today.
Q. We also talked about push-down accounting. What effect, if any, would that have on the rate of return or cost of money element of the pole attachment rates?
A. We would not expect any material changes that would be a result of that. You know, our -- the resulting outcome of that accounting is, you know, the allocation of, you know, the payment stream, if you will, from the new lease, you know, based upon the percentages of assets contributed. And that has not been finalized, but we would not expect a change as a result of that.
Q. Well, again, you're stating an expectation. You're not stating a commitment. Is that right?

A. Yes, that's correct.
Q. Now, there was a lot of discussion earlier about different accounting methods for different purposes.
A. All right.
Q. Will the accounting that the companies maintain with respect to costs related to pole attachments, will those be independent of other accountings or wholly independent of the other accounting structures used by the -- by the companies?
A. We would expect to maintain all the existing accounting requirements for -- in support of the pole attachment rate determinations.
Q. Yeah, but are those accounting systems that you're going to be keeping in place for pole attachments, are they going to be used for any other purpose?
A. No.
Q. So what discipline is there for the accounting that this Commission would be relying on for pole attachments if there is no other purpose other than using it for regulation of the poles?
A. We have an obligation to report that today, and we'll have an obligation to report that tomorrow

after the transaction, and we don't expect to be relieved of any of those obligations. So I guess I'm not understanding your question.

Q. Does the -- does the company -- do the companies today, in maintaining the accounting necessary for pole attachment regulation, do the companies also rely on that accounting for any other purpose?

A. Our regulatory accounting obligations, do we use those books -- our regulatory accounting ledgers, do we use those books for managing the day-to-day business? I mean, they're prepared for a specific purpose, and that is to be responsive to all of our obligations within -- within our regulatory areas, and that's what we do today, and that's what we'll continue to do tomorrow.

I guess we have multiple, you know, outputs of financial views, and they're all for the intended purpose of -- of either regulatory or, you know, SEC reporting. I don't know how else to answer your question.

I mean, those don't change as part of this transaction, and they've been very consistent pretransaction, and they'll be consistent post-transaction. I don't know how to answer your

question any differently than that.
Q. How does -- how do the companies today determine what the rate of return or cost of money element is for purposes of pole attachment regulation?
A. I don't have that detail with me today, but we'd be happy to respond to the data request.
Q. In the KCTA's Data Request Number 12, you listed various elements that are necessary for the Commission's pole attachment regulation. Do you recognize those elements as being the elements or some of the elements used in Administrative Case 251?
A. Was there a question?
Q. Yeah. My question was whether you recognized these as being the elements that are relied on by the Commission in pole attachment regulation under its Administrative Case 251?
A. That is recognized, yes.
Q. Okay. Now, do the operating companies keep the information that is requested in this interrogatory -- this interrogatory today?
A. Yes.
Q. Will the operating companies keep the information as requested in this data request after

the transaction closes?
A. Yes.
Q. Will the operating companies provide the information requested in Data Request 12 to KCTA before this transaction?
A. I'm not finding Data Request 12, but it could just be it's not in front of me here. Could you state the request?
MR. OVERSTREET: Before you answer, Mr. Gunderson.
THE WITNESS: Gunderman.
MR. OVERSTREET: Your Honor, we don't believe that that information is relevant to the issues before the Commission.
Mr. Gillespie's client is trying to interject a pole attachment rate case into this proceeding. We objected to it, and we responded to the data request. And we simply don't believe that it's appropriate to interject a rate case into this proceeding.
If Mr. Gillespie or his clients think that our rates are incorrect or too high, there's a procedure called a complaint that they can file, and that can be hashed out and given full discovery and whatnot, but this case should not be an opportunity

for Mr. Gillespie and his clients to get something that they're not otherwise entitled to.

MR. GILLESPIE: Mr. Vice-Chairman, let me -- let me ask a couple follow-up questions, and we'll come back to this.

Q. (By Mr. Gillespie) A different question. Do you think it's reasonable for KCTA to want a baseline for regulation and the costs relied on by the companies prior to the transaction so that KCTA can be assured that the representations that are being made this morning regarding the way that the companies are going to continue to maintain their accounting records are fulfilled?

A. I don't think it's an unrealistic expectation to require that the same reporting requirements that Windstream operates under today in support of rate making around pole attachment would continue tomorrow, and we have every expectation to do that.

Q. Do you think it's unreasonable for us to want a baseline based on the current accounting of the companies prior to the transaction so that we can be sure that the commitments and representations that are made by the operating companies for post-transaction, in fact, will be met?

A. Well, as we said in our direct testimony from today, the operating companies made it clear in the application and the responses request for information that transaction will not result in any rate changes.

Q. We'll get to that in a minute.

MR. GILLESPIE: But Mr. Vice-Chairman, the witness has said that the companies will have same accounting systems, but he was not clear, at least to me, regarding how they would determine what the cost of money was, and I think that in order for us to be sure and the Commission to be sure that the accounting systems are the same, we need a baseline, and let me ask another follow-up question.

Q. (By Mr. Gillespie) The current tariff that -- the pole attachment rates of the operating companies are set in Kentucky according to tariff; is that right?

A. Yes.

Q. When was the last time that those tariff rates were changed by the operating companies, do you know?

A. I don't know.

Q. More than ten years ago?

A. I don't know the answer to that.
Q. Is there anybody here that knows on behalf of the company?
A. You can ask John Fletcher, but I don't know if he knows either off the top of his head.
MR. GILLESPIE: Well, I'll come back to the question that is before the Commission regarding this issue. We believe that we are entitled to and need a baseline, so that if the transaction occurs, either as approved by the Commission, or regardless, that this is important that we have a baseline and that we can then track it going forward to be sure that the transaction, in fact, does not change the pattern of pole attachment regulations.
MR. OVERSTREET: Your Honor, may I address that?
VICE-CHAIRMAN GARDNER: Yeah. The question that you -- and the data request was number 14; is that right?
MR. OVERSTREET: I believe that's the number.
VICE-CHAIRMAN GARDNER: Is there any other one related to this, or was it just that one?
MR. OVERSTREET: It's 14.
MR. CRITTENDEN: It's 14, and the information is set out in 12, right.

VICE-CHAIRMAN GARDNER: Okay. Go ahead.

MR. OVERSTREET: Thank you. Your Honor, as Mr. Gunderson has testified, the company is going to continue to maintain its records in connection with -- and we're just talking about pole attachments, which remain fully regulated by this Commission, in the same manner that it did today -- that it does today it will do after the transaction closes.

But for this transaction, Mr. Gillespie would have no right to get a baseline. And what he's trying to do is leverage this transaction to get -- to get information that he's not otherwise required. If, after the transaction closes, the companies' rates -- pole attachment rates become a matter properly before this Commission --

VICE-CHAIRMAN GARDNER: In other words, a change?

MR. OVERSTREET: The Commission has the full ability --

VICE-CHAIRMAN GARDNER: Is that what you mean, a change?

MR. OVERSTREET: Yeah, it's a rate change. He files a complaint saying the rates are too high, we file an application saying the rates need to go up, full opportunity for discovery about what those costs were based upon the records as they exist today, but this is an unnecessary complication and an effort to leverage the proceeding of an aspect of this proceeding that they have no right to.

VICE-CHAIRMAN GARDNER: I understand the issue.

Can my colleagues come here for just a second.

COMMISSIONER BREATHITT: Did you want to rule after lunch?

VICE-CHAIRMAN GARDNER: We're going to take a break until about -- short break now until about five after 12:00, and then we'll rule on that question at that time.

MR. OVERSTREET: Thank you.

MR. GILLESPIE: Thank you.

VICE-CHAIRMAN GARDNER: We're off the record.

(Recess from 11:54 a.m. to 12:08 p.m.)

VICE-CHAIRMAN GARDNER: Okay. We're back on the record.

And, Mr. Gunderman, you're still under oath. Let me ask you just a couple questions to make sure that I understand your testimony from the floor so I know how to -- to make sure how to rule on this issue.

EXAMINATION

By Vice-Chairman Gardner:

Q. You-all made commitments that the -- that the Commission would still have jurisdiction or authority to decide pole attachment rates.

A. Yes.

Q. Okay. And you also made a commitment that you would not -- you would not change the methodology for computing pole attachment rates as a result of this transaction.

A. Yes.

Q. And that -- okay. And what that means to me is that if there were a dispute after the fact on that issue, that it would certainly be relevant how the pole attachment rate was computed that established the tariff in the first place, as well as methodology that you're using on an ongoing basis internally to compute those rates in order that -- in order that KCTA would be able to determine if those were accurate or not.

A. If it's the Commission's determination that we need to provide under data requests the current calculation, then we could do that.

Q. We're not. I don't -- I don't believe it's relevant in this -- we don't believe it's relevant in this proceeding, so we're not going to order that you provide that in this proceeding.

But we're -- under those two -- basically three conditions, which is that we retain and we -- make sure I'm -- that we would retain jurisdiction over pole attachment rates, that there would be no change in the methodology of how -- of how you compute the different elements that are in the require -- in the regulation, and that they would be -- it would be relevant to them to ask in a future proceeding how you are computing it originally, how you're computing it today, and how you're computing it at the time.

A. Yes.

VICE-CHAIRMAN GARDNER: Okay. Then we're -- then for purposes of this hearing we're going to rule that it's not relevant.

MR. OVERSTREET: May I make one further statement?

VICE-CHAIRMAN GARDNER: Sure.

MR. OVERSTREET: Thank you for your ruling, but in -- just in the interest of complete disclosure, I've just been informed by in-house counsel for Windstream that actually Windstream did not set these rates. Of course, the rates and the methodology are prescribed by the Commission, not --

VICE-CHAIRMAN GARDNER: Because Windstream didn't exist at the time.

MR. OVERSTREET: Windstream didn't exist at the time. They bought the assets or received the assets from Verizon, but certainly our records -- you know, we are an open book and would be an open book in any future proceeding.

VICE-CHAIRMAN GARDNER: Okay. That's fair.

MR. GILLESPIE: Thank you, Mr. Vice-Chairman.

FURTHER CROSS-EXAMINATION

By Mr. Gillespie:

Q. Mr. Gunderman, then if I understand the comments by your counsel, then you don't know how the rate that is in the tariff was calculated?

A. I don't have that information in front of me today, but we obviously reviewed those rates and those calculations, and we maintain those on a consistent basis in accordance with, you know, the rules of the Commission.

Q. So you do have those calculations that form the basis of the current tariff rates? I understood your counsel to say you did not. Did I misunderstand?

MR. OVERSTREET: Well, what I said was is that this is -- we're in Frankfort on November 13th. The Verizon transaction took place when?

MR. FLETCHER: 2002.

MR. OVERSTREET: 2002, so that's 12 years ago. As Mr. Gunderman says, he doesn't have that information in front of him. Whatever we have with respect to that, you know, if it becomes relevant in a future proceeding, we're more than happy to make it available.

But we can't -- you know, without looking at what we have, we can't -- you know, we'll provide the Commission and, you know, and other parties when it becomes relevant what we have. It's not a matter of not knowing. It's just not knowing what we have today.

VICE-CHAIRMAN GARDNER: Okay.

Q. (By Mr. Gillespie) Well, let me switch gears a little bit. So in response to Staff Data Request Number 8, companies have indicated that there are approximately 3,305 poles that the operating companies will not be distributing ownership of to CSL because they -- in connection with some government monies received in connection with those; is that right?

A. Yes.
Q. And so those 3,305 poles approximately will continue to be owned by the operating companies, right?
A. Yes.
Q. Will the investment in those poles for accounting purposes be treated the same way as the poles that are to be owned by CSL?
A. Those will not have a financial outcome that is consistent with the ones transferred to CSL because the accounting methodology as it relates to the accounting treatment of failed sale-leaseback accounting would not apply to the retained -- to the retained towers.
Q. Let me ask you this way. Those 3,305 poles, which of the operating companies own those poles?
A. I don't have that in front of me today, but I would imagine that they are largely dispersed across the largest entity.
Q. So you believe that they would be -- that they are owned by, in part, by each of the two operating companies?
A. I would say yes, but I don't have that in front of me today, but there's no -- you know, the grant was, you know, provided across multiple areas.

Q. Okay. So you don't know.
A. Not in front of me, no.
Q. Will the accounting records for these poles, and to the extent that they're relevant to the pole attachment rate methodology, will they be kept in the same way as the accounting records for the poles that are to be distributed to CSL?
A. They're separate. We have a separate reporting system for the RUS assets.
Q. Does that mean that those poles will have a different -- do or will have a different pole attachment rate?
A. That they will be calculated -- the rates will be calculated under the current guidelines as established by the Commission, and that will not change as part of the transaction.
Q. Yeah, but will the -- will they be combined --
A. No.
Q. -- with the poles that go to CSL for purposes of determining pole attachment rates?
A. No. We have separate reporting for -- for those poles today.
Q. So the pole attachment rate may be different for those poles than the pole attachment rates for

the two major operating companies.

A. I can't tell you if they are or they aren't. I'm just telling you that we maintain separate reporting on the assets and calculate the pole attachment rates in accordance with existing, you know, rules.

Q. Does Windstream charge the tariffed pole attachment rates for those poles?

A. Yes.

Q. When were those poles acquired? Were they acquired after 2002?

A. Yes.

Q. Has Windstream performed any calculations for those poles to determine what the pole attachment rate should be for those poles based on Administrative Case 251?

A. We calculate the -- we would calculate them in accordance with the rules that were in place when the last rate case was made.

Q. So Windstream has made calculations as to what the pole attachment rates would be for those 3,300 poles based on Administrative Case 251, is that what you're saying?

A. They're in accordance with the rules as provided by the tariff.

Q. I'm not asking you whether they're in accordance with any rules. I'm asking you whether Windstream has done the calculations.

MR. OVERSTREET: Your Honor, I'm going to object again. We're getting into calculation of tariffed rates. It has nothing to do with the transfer.

VICE-CHAIRMAN GARDNER: I'll let him ask the general question. So he can ask the general question that he just asked.

MR. GILLESPIE: Okay. Mr. Vice-Chairman, what I'm trying to understand is how these 300 -- these 3,300 poles are to be regulated.

Q. Will -- so as I understand your testimony, those 3,300 poles, the rates will be calculated by the operating companies differently, maybe by the same methodology, but differently than the poles that are going -- the hundreds of thousands of poles that are going to CSL?

A. I didn't say that. What I said was that we maintain separate records for those poles, and the calculations for those, as required under, you know, the tariff, are -- are maintained and reported on, and if there's -- I can't tell you today what the differences are in the two calculations, but I can tell you that they're in accordance with the tariffs.

Q. Okay. Well, what I'm trying to understand is there are thousands of poles that are being distributed from Windstream East to CSL, and I understood your testimony earlier that there's a commitment that -- that the rate, pole attachment rate for those poles will be calculated according to the Commission's methodology and in the same way that Windstream has been calculating the pole attachment rates for those poles, correct?

A. Yes.

Q. Now, let's consider these 3,300 poles. Will they be -- they would be part of the same calculation, or will their pole attachment rates be calculated separately based on their costs?

A. They would be calculated based upon the requirements, and I would expect that, you know, those would be calculated with very similar costs under similar methodology, but they will be tracked separately and reported on as such.

Q. Okay. So they're tracked separately, so their costs may be different, so their pole attachment rate may be different than the rates for those poles that are going to CSL; is that right?

A. I can't tell you today that they're different or the same. I can tell you that they're calculated in accordance with the tariff.
Q. Well, let's understand something. The tariff has rates. I don't believe the tariff has calculations. So, I mean, are you saying that they will be calculated according to the Commission's methodology in Case 251?
A. Yes.
Q. Okay. But they may be different. So in terms of going forward, there would be a pole attachment rate calculated for Windstream East and a different pole attachment rate calculated for Windstream West, correct?
A. Under the same methodology as required.
Q. And the -- of the 3,300 poles that Windstream is going to continue to own, some will be owned by Windstream East and some will be owned by Windstream West, correct?
A. I don't have the breakdown in front of me, but --
Q. That's what you testified to, right?
A. No, I didn't. What I said earlier was that I didn't have the breakdown between East and West of the broadband stimulus poles.

Q. But you understood and assumed that there were some of those poles were owned by Windstream East, and some of the poles were owned by Windstream West, correct?

A. What I said was I didn't --

MR. OVERSTREET: Your Honor, he just answered the question.

A. -- have the breakout of it. That's what I said.

VICE-CHAIRMAN GARDNER: I'm sorry, say what you said.

Q. I'm sorry, I didn't hear your answer.

A. I said I didn't have the breakout of those on my recall.

Q. All right. But what you're telling us is that whether they're all owned by one of those operating companies, or whether they're owned by both, they will be subject to a -- their own calculations, which may be different from the calculations for those poles that are owned by CSL.

A. What I said was is that they would be calculated in conformance -- in conformity with 251.

Q. Yeah, but that wasn't my question. My question was --

A. Our requirements for calculating the rates are to calculate them, you know, in accordance with the law, and that's what we -- that's what we are doing, and that's what we will continue to do.

Q. And the costs of those poles may be different on the average than the costs of the poles that are going to CSL, correct?

A. I don't know the answer to that today.

Q. You don't know whether they're different or not?

A. I don't have that with me, no.

Q. Do you have any reason to believe that they're the same?

A. I don't have that with me. I don't know.

COMMISSIONER BREATHITT: Mr. Gillespie, may I ask a question?

MR. GILLESPIE: Of course.

COMMISSIONER BREATHITT: How does the company decide which poles go to CSL and which stay with the Windstream?

THE WITNESS: The poles that he's referring to, madam, are related to poles that were as part of the construction effort for a broadband stimulus grant for the RUS.

COMMISSIONER BREATHITT: Oh, that's right, yes.

THE WITNESS: And those are assets that we --

COMMISSIONER BREATHITT: Yes.

THE WITNESS: -- elected to retain.

COMMISSIONER BREATHITT: I remember being briefed on that and am recalling that now. So that's the distinction?

THE WITNESS: Yes.

COMMISSIONER BREATHITT: The ones that will be with Windstream or the ones that were part of the federal --

THE WITNESS: They're a part of the RUS stimulus.

COMMISSIONER BREATHITT: Yes.

THE WITNESS: Yes.

COMMISSIONER BREATHITT: Okay. I just wanted that little clarification. Thank you for letting me interrupt you.

MR. GILLESPIE: Of course.

VICE-CHAIRMAN GARDNER: I think we've about exhausted this particular area.

MR. GILLESPIE: Fair enough.

Q. (By Mr. Gillespie) The master lease, which was -- or the summary of the master lease, which was included as Exhibit D to the responses to KCTA's data request. Page 1, it states that the leased property will include the easements and pole agreements?

Do you see that under Leased Property.

A. Yes.

Q. Okay. And on page 3 it states, under the second bullet there, that CSA -- CSL may require Windstream and the operating companies to convey legal title to CSL for any of the easements, permits, and pole agreements.

Do you see that.

A. Yes.

Q. Now, in Data Response Number 4 of the staff, the --

MR. CRITTENDEN: Is that the first or second set of the staff requests?

MR. GILLESPIE: It is the first set of October 1st. I'm sorry, I'm referring to Response Number 3.

MR. OVERSTREET: Number 3?

Q. And this says, quote, "Applicants will retain title to all easements and rights-of-way."

So explain for me what -- what appears to be, to me to be a discrepancy between these statements.

A. I'm going to defer that question to our general counsel, who has a better understanding of the retained title issue.

Q. Okay. Do you know what company owned the assets, the distribution assets of -- that are currently owned by Windstream West in 2002?

A. I don't recall that, no.

Q. Is it Alltel?

A. Oh, Alltel -- Alltel purchased the assets from Verizon/GTE at that time, and later Windstream obviously spun out of Alltel, so yes. I didn't know if you have a different company -- company name you're after there. But yes, that was the parent company transaction structure.

MR. GILLESPIE: I have no further questions at this time.

MR. PINNEY: Sorry, I'm going to get situated here.

CROSS-EXAMINATION

By Mr. Pinney:

Q. I guess it's afternoon now, so good afternoon. I've misplaced my questions with all this shuffling around, but as a start, I know for these transactions that the virtues of the transaction have been extolled for rate payers and shareholders alike. "Extolled" is probably perhaps a strong word, but it's been touted as beneficial for everybody.

And in my experience, nature abhors a vacuum. There's always going to be some sort of loser in a transaction as, you know, proposed. So if there's going to be somebody who does not benefit, or an entity that does not benefit from this transaction, who or what would it be.

A. I firmly believe that all of our constituents are benefiting. Our equity holders enjoyed the benefits of having a free cash flow accretion in the aggregate transaction, both within CSL and Windstream, of which they own -- they will own -- they own one company today, they'll own two tomorrow. So they benefit from that transaction.

It was, I think, an outcome or will be an outcome for them that maintains and grows value for equity holders. I think bond holders and secured debt holders of Windstream will look at this transaction as, you know, a delevering event for Windstream, which they would be obviously advantaged by, by having a lighter levered operating company who could, you know, be better able to support its debt burden over time.

Our customers absolutely will benefit from this transaction in the form of incremental capital investment.

From the standpoint of redirecting a dividend from our equity holders to our customers, you might say, well, doesn't that hurt our equity holders? And the answer to that is if -- if only for that outcome I would say yes, except that for the transaction the way we structured it, the ability for a sizeable portion of our dividend to be maintained for the benefit of the equity holders through CSL and the opportunity to have a higher trading multiple for a triple net REIT that typically commands a higher trading multiple than an integrated, you know, voice and data and an ILEC provider, they typically trade at different levels. That has offset, we believe -- or we believe it will offset the changes around the dividend change for Windstream.

The cash flow that comes from the redirection of that dividend change would be used to invest more aggressively in Windstream for the benefit of our customers, which we think serves the public, the public good, as well as our customers. And obviously I would think that that would serve the interests of this Commission.

Q. Okay.
A. And last thing I would say, just for the record, is our employees. I think they'll have a chance to work for a stronger company and one that has a chance to be in a better position to have opportunities for growth and retirement.
Q. And so those benefits that you just listed, would they inure to Kentucky as well, not just overall, to all the things --
A. Absolutely.
Q. -- but you think the benefits would inure to the Commission, the CWA employees, Windstream customers in Kentucky?
A. Yes.
Q. Okay. All right. And I think you testified earlier in response to a question from Mr. Rubin about a -- is it a filing that was made to the Securities & Exchange Commission recently?
A. Form 10, yes.
Q. Form 10. And was it your testimony that it was -- the form was not complete?
A. It was a preliminary Form 10.
Q. Okay. And that's for -- the form is for CSL?
A. Registering equity securities for CSL.
Q. Okay. But CSL doesn't exist right now.

A. That's correct.
Q. Okay. All right.
A. CSL as a -- as a legal entity has been established in Maryland, but there's no public company with operations yet. Let me say that.
Q. It doesn't own anything.
A. No.
Q. No -- okay. All right.
MR. PINNEY: Mr. Overstreet and Mr. Crittenden, I think the first post-hearing data requests the Commission would like would be that filing.
MR. OVERSTREET: The Form 10?
MR. PINNEY: The Form 10. I know it's publicly available, but we'd like it officially in the record.
MR. OVERSTREET: No problem.
MR. PINNEY: Thank you.
Q. And I'm somewhat unclear about this transaction. It has been most of the time referred to as a transfer of assets to CSL, yet there is going to be reduction of debt for Windstream Holdings, correct?
A. Windstream Corporation under --
Q. Windstream Corp -- well, the Windstream

portion --
A. Yes.
Q. -- side of the transaction, there will be a debt reduction.
A. Yes.
Q. So it's a transfer but not a sale?
A. The transaction is a spin of existing assets to existing shareholders, and so the ultimate owners of both companies are the existing holders of Windstream today. So on day one, the holders of Windstream today will own basically CSL and Windstream. What happens after that, you know, public markets will dictate, right? But --
Q. Let me stop you right there. What do you mean "public markets will dictate"?
A. Meaning they will choose at that point whether or not they want to maintain investment in CSL and Windstream or sell their investment or go, you know, or increase their investment. There's -- there's that public market trading dynamic that happens with any public company.
Q. And I'm getting a little bit of feeling -- sorry to interrupt you, but I have the attention of a gnat, so I want to ask this question right now.
The way that I saw the transaction proposed

in the graphs that you sent is that ultimately Windstream and CSL, will they have separate ownership at some point.

A. Yes.

Q. And that's what you're saying the market might dictate?

A. Well, no, there will absolutely be separate ownership.

Q. Okay.

A. You know, there will be two separate publicly traded companies.

Q. Okay. That was my question. Now, I'm sorry, continue with the original response.

A. Well, I forget what the other question was, so I'm sorry.

Q. Yeah, I think I forgot too. Well, I think the question was you said it was going to be a spinoff, and so --

A. Yes.

Q. So I asked you if it was going to be a sale, and you said no, it's going to be a spinoff and talked about how it's going to --

A. Well, there is a spinoff. Assets will be transferred, sold from our operating companies to CSL, and CSL will be spun off as a -- as a separate public company, and then there will be a -- at the same time, you know, consistent with that time frame, there will be a lease entered into between CSL and Windstream Holdings where the operating subsidiaries of Windstream Holdings will benefit from the long-term exclusive use of those assets through this master lease. That's the structure of the transaction.

Q. Now, and the money for the sale or the transfer of cash from CSL to Windstream, that cash, am I correct in saying that that cash comes from the issued debt?

A. There will be a -- a -- a new capitalization of CSL in the public markets, you know, through new debt.

Q. Okay.

A. And so, you know, we estimate that today to be roughly $3 1/2 billion. And the use of those proceeds to the capitalization of CSL will be to exchange and extinguish for Windstream, you know, $2.2 billion of existing notes or secured loans -- we'll determine that closer to the transaction date, but 2.2 in debt-for-debt exchange.

And then the remaining proceeds will come in the form of debt reduction to Windstream from a distribution of the basis from CSL back to Windstream.

So the sum total of that is -- is roughly the 3.4 billion, and then Windstream will use a portion of that 3.4 billion to satisfy transaction fees and premium payments on debt extinguishment. So that's how you take a $3 1/2 billion gross aggregate for CSL and net it down to $3.2 billion in debt relief from Windstream.

Q. And once the transaction is -- I mean, and assuming it's approved everywhere that needs approval, how quickly or by when do you think that $3.2 billion in debt would be retired?

A. We -- coterminous with the transaction date, so our current expectation for this transaction is first quarter. It's obviously dependent upon our regulatory process and the progress of our finalization of Form 10. That's our current estimate.

Obviously that estimate can change based upon the progress of either of those work flows, but the debt pay-down and the establishment of the new capital structure for CSL would occur at the -- at the transaction date.

Q. And is there any direct impact? I know that

we talked about indirect impacts and benefits to consumers, but is there any direct impact of the payment -- of the financing -- financial arrangements on Kentucky customers?
A. I would say it's a benefit because Windstream, as the operator and a company with the obligation to continue to fulfill all regulatory obligations for the benefit of those customers, will be a stronger company in the sense that it has less debt, less of an obligation, and will have more of an ability, through its reallocation of its free cash flow, to invest in itself for the benefit of those customers.
Q. And the Kentucky companies -- and I'm going to -- I'm going to use probably a few terms, you know, Windstream Kentucky or the Kentucky companies, but for the purpose of this, it's going to be Windstream East and Windstream West of Kentucky.
A. Yes.
Q. They're not going to be required to guarantee any indebtedness in connection with this agreement?
A. No.
Q. Or anything like that. Do you know what the value of the assets are for Windstream East and West?

A. Not in front of me, I do not.
Q. Okay.
MR. PINNEY: Second post-hearing data request, Mr. Overstreet, please, I would like the book and fair value estimates of the assets in Kentucky of Windstream East and West, perhaps broken down to indicate what's been transferred to CSL as also what's remaining that was paid for by the ARA funds.
MR. OVERSTREET: Let me -- let me write that down. Just a second.
MR. PINNEY: Okay.
MR. OVERSTREET: I got it. Thank you, Mr. Pinney.
MR. PINNEY: Thank you. I'm sorry, after a few hours of cross, I tend to speak very quickly.
Q. And this is a hypothetical, so don't get worried, but what would occur to this transaction if the Kentucky Commission did not -- found that, A, it had to approve this transaction, and B, did not approve the transaction?
A. Yeah. Well, Kentucky is obviously a very substantial portion of our operations. It's one of our largest states of operation, over 300,000 customers served. Very important state in terms of

this transaction.

We continue to believe that the benefits for Kentucky customers are compelling, and so I'll just say that. I think it definitely is in the public interest for the transaction to be allowed.

Having said that, if for some reason the Commission judged that to not be the case, we would reexamine the set of our assets today that were not part of the initial determination for contribution as part of this transaction and decide with our board whether or not there was still enough compelling financial benefits to proceed.

My sense is that, you know, the financial benefits of this transaction, we hope that we've demonstrated today would be compelling enough to get the approval, but we'd have to reassess based upon what -- what the answer would be out of this proceeding.

Q. Did you testify earlier that the assets for East and West comprised about -- is it 13 percent, or was it a higher --

A. What I said earlier, I think, was that in the aggregate -- I apologize for just not having the recall --

Q. That's okay.

A. -- in front of me, but 25 percent of all of our assets, company-wide, not Kentucky, but company-wide, less the 25 percent would be part of this transaction. So, you know, I don't have the breakout for Kentucky in front of me, but it's -- on a relative basis, it would be the same percentage, you know.

Q. I just was questioning, in terms of the assets that are being transferred, what percentage is assigned for Kentucky, I guess is -- I think you testified to that earlier. I can't remember. I think it's somewhere around 11 or 13 percent.

Subject to check, does that sound about right.

A. I'm happy to, you know, as a supplemental request --

Q. Well, you've answered it. It was just subject to check.

So Windstream -- I think this transaction is being proposed in 37 states. Does that sound accurate, subject to check.

A. I think that's right.

Q. I think it was the subject -- I cannot remember which witness responded to that question.

Do you know or -- anytime I ask you a

question that's better answered by the other witness, please --

A. Thank you.

Q. -- please direct me towards it.

Do you know in any other states if regulatory approval is required.

A. I'll defer that to our general counsel.

Q. Okay.

A. I think he would be better to explain the regulatory approval requirements.

Q. On page -- pages 5 to 6 of your rebuttal testimony, you state that Windstream Corporation's indentures do not require any consents to effect the transaction.

So my question to you would be, are there covenants in any of Windstream's debt agreements that would limit Windstream's operations, businesses, or financial positions company-wide.

A. As part of this transaction, we have no concerns with any covenants within our indentures or our existing credit agreement.

I will tell you that our indentures do have covenants that govern, you know, our ability to contribute assets and the level of that. And there's a covenant around -- that limits the ability to contribute, you know, substantially all without a consent.

And in this instance, with a very low percentage of our aggregate assets being contributed as part of this transaction, and a very small percentage of the income and results of operations, you know, for the -- for what's going to be contributed, we are very comfortable that we did not run afoul of that covenant.

Q. And are there any of those that would apply to Windstream Kentucky's that --

A. No.

Q. This might be a better question for general counsel, but they always say the stupid questions are the ones you don't ask.

If the Commission were to deem that CSL was a utility, would that affect this transaction in any manner.

A. I will -- I will defer that to our general counsel.

Q. Or affect it as corporation status -- CSL's status as a real estate investment trust?

A. I would ask you to defer that to John, please.

Q. Okay. And in response to the Commission's first data request, Item 8, you state that the -- this transfer involves a total of 184,252 poles and 4.7 million feet of conduit. Does that number represent the total number of poles for the Kentucky companies or for the transaction overall?

A. I'm getting to that question here. If I'm following you on the question --

Q. Maybe I wrote down the wrong --

A. -- the facilities of the applicants that will not be transferred to CSL include --

Q. Wait a minute. Well, I may have referenced the wrong thing, but in your response you state that there's going to be a total of 184,252 poles transferred and 4.7 million feet of conduit.

MR. CRITTENDEN: I think that's KCTA.

MR. PINNEY: Oh, is that the response to KCTA? I apologize.

MR. CRITTENDEN: I think KCTA Number 8.

MR. PINNEY: Number 8. Thank you, Mr. Crittenden.

MR. CRITTENDEN: No problem.

MR. PINNEY: You're right.

MR. OVERSTREET: I can show it to the witness.

MR. PINNEY: Yeah, if you'd like to show it to the witness.

A. I found it. Thank you.

Q. I apologize for that.

A. That's the aggregate total company, total Windstream.

Q. That's just total Windstream in Kentucky?

A. Yes.

Q. Okay. That being said, would it be possible on a post-hearing data request to break that down per Kentucky company?

A. Yes.

MR. PINNEY: All right. Thank you.

MR. OVERSTREET: Yes, that's certainly the case.

MR. PINNEY: All right. Thank you.

Q. Where will CSL be headquartered?

A. That has not been finally decided yet. I think it's likely that a substantial presence will be maintained in Little Rock given that their largest tenant, Windstream, will be located there.

I also think that there could be offices potentially in New York in order to just be closer to the REIT investment community, but those have not been finally decided yet.

Q. And besides the assets that are proposed to

be transferred, which are poles and conduit, what other assets will CSL own?
A. You know, poles, fiber, copper, central office buildings and land. You know, that's largely the substantial value that comes, but most of the value is comprised of the fiber and copper transmission lines. I forget the response, but somewhere in here we actually have detail of that.
Q. But my question is going to what else could it own. Could it own things that were not transferred from this transaction?
A. No. The reason that we contributed what I call the passive distribution system of the fiber and copper lines and the real estate of central offices and land is that that is REIT-able property as defined by the IRS.
And the electronics and the switching and, you know, the other things that are still very critical to the network and what makes it a network that is functional in service of our customers, that is not REIT-able property. And so that was a determination, quite frankly, in how we thought about, you know, what got contributed and to some extent and what did not.
Q. All right. I guess my question goes towards

is there other noncurrent Windstream assets, real estate, other assets that CSL could purchase that it could receive income from, you know, in the form of rent, still maintain a real estate investment trust, that are not assets subject to this transaction? I mean, outside, you know, they could go out and buy a vacant building over here and turn it into apartment buildings and --

A. If I understand your question, CSL is not prohibited as a, you know, new public company from diversifying away from Windstream and improving its --

Q. That was my question.

A. They can do that. Now, importantly, CSL cannot use the assets that Windstream has distributed to them for any other use except to serve Windstream. So it's a long-term exclusive lease for the benefit of Windstream to serve our customers.

Q. Okay. And I know we're probably getting down in the weeds when I ask this question, but in response to one of the data requests, Windstream did provide a list of the poles, or a list of parties from whom they currently lease poles.

A. Uh-huh.

Q. Are you -- do you know how the rates that are paid for leasing of those poles are going to -- are going to compare to the rent that Windstream and Windstream Kentucky will pay per pole to CSL?

And I understand that Windstream is not cutting a check directly. Windstream East and West are not cutting a check directly to CSL, but it wouldn't be too far-fetched to figure an aggregate lease cost -- you know, cost for the -- for the rent.

A. No, I mean, our -- our post-transaction lease, pole rent lease arrangements, that will be maintained by Windstream, and we will, you know, transact those in accordance with, you know, all requirements under the Commission rules in terms of how those are set.

And that doesn't change as part of this transaction, and it's not, I guess, commingled with the leasing -- the lease payment between Holdings and CSL. They're -- Windstream, as the operator today and tomorrow of all of those assets and the Company that will maintain, you know, those poles for its use of its customers, will continue to administer, you know, those agreements in accordance with the regulatory obligations that we have today.

Q. And in response to some questions from Mr. Rubin, I think you stated that this transaction would allow Windstream to increase its capital expenditures?

A. Yes.

Q. You said that they currently are around 13 percent? 11 to 13 percent?

A. Today -- and we state it in this fashion, sir. Our capital expenditures as a percentage of our revenues --

Q. Right.

A. -- has been historically running at a range of 11 to 13 percent of revenues. Post-transaction, we believe through all the mechanics of this and free cash flow, as we've talked a lot about today, that we will then have the ability to spend between 13 and 15 percent capital expenditures as a percentage of revenue.

Q. And so even though the percentage of the capital expenditure of revenue is going up, what is -- is the amount of revenue expected to increase, decrease, or stay the same --

A. Over time we expect to be stabilizing and increasing revenue. If you look at our sort of year-to-date results, we are getting closer to that.

We're still declining on a year-to-year basis.

But not to go into all the results of our operations, but we do think over time as the legacy kind of declining revenue streams start to become a much lesser portion of our revenue base, and then the growing portions of broadband and enterprise services and so many other consumer services that we have today, we think that becomes a greater percentage and ultimately will cause us to grow revenues.

And quite frankly, sir, the capital expenditures that we want -- that we want to bring to bear as part of this transaction or after this transaction we think will accelerate our ability to do that.

Q. And post-transaction -- this might be a better question for your general counsel, but I, nonetheless, will ask.

If the transaction goes through as proposed, subsequent to the transaction, if the Windstreams in Kentucky build their own poles and string their own line and connect with the assets that were transferred to CSL, does ownership of that stay with the Windstreams, or does it transfer to CSL.

A. The answer is it depends. If -- if

Windstream came in and replaced the original assets -- so if we had distributed a pole as part of the transaction that was CSL at the transaction, and we came in and replaced that for the benefit of our customers, it's a replacement asset that is maintained by CSL, so that we are improving the distributed asset.

But if Windstream decided to create what I call an extension -- and that's how we describe it in our master lease -- where we would extend off of the existing network, and, you know, we will continue to do that in certain markets. I can't tell you to what extent today, but we do extend our network routinely. And if Windstream expends the CAPEX to do that, that is an asset of Windstream and not CSL.

Q. All right. And I'm going to ask a question about everybody's favorite subject, pole attachment rates, but I want to clarify something, and I think that the concern is valid, is that it is my understanding -- and I understand that there's not been a pole attachment rate increase for -- now as Windstream, probably since the GTE days predating Verizon, in maybe the late '80s. You know, some of us were in high school, but nonetheless, one of the components that is used to calculate pole attachment rates is the bare cost of a pole.

A. Yes.

Q. And then these poles, the majority of them are going to be transferred to CSL; is that correct?

A. Yes, a large percentage.

Q. They're the assets that are being transferred, I think that's clear. But is it your testimony that the way that the Windstream Kentucky East and Windstream Kentucky West and all the other incumbents that own poles -- the Windstream incumbents that own poles, the poles will still appear on their books as the same value as they were pretransaction?

A. Yeah, because of the GAAP accounting outcome, the failed sale-leaseback accounting, which means we have substantial continuing interest in the assets, we will be required, through GAAP accounting, to record those on our books today. And that's our -- that is the -- that is the accounting outcome that's required for this type of transaction.

Q. Okay. I just wanted to clarify that point.

And then are you aware of the methodology in the Administrative Case 251.

A. I am generally aware of it. I don't have the intimate details of how we calculated it for our current rates in front of me.

Q. Well, and in calculating the cost to repair a pole for the purposes of that, is it your impression that the Commission would look at the average cost of a pole across the system rather than the individual cost of each pole?

A. The average cost across the system, you know, again, I'd have to go back and review the methodology.

Q. All right. I'll withdraw the question. I just wanted to know if you're aware.

Is there any commitment or guarantee that the additional investment of which you spoke earlier will come to Kentucky.

A. We hadn't planned to make a commitment today, but I can tell you that Kentucky is a -- a very substantial part of our operations. We have invested heavily in Kentucky. We intend to continue to do so.

For those of you who are, you know, in and around the Lexington area, you would know that Windstream has been very aggressive in investing recently in Kentucky to improve our -- in Lexington to improve our speeds. We've done similar things in

the more rural areas.
As we think about Kentucky for the future, since it is such a substantial portion of our operations, we consider it to be critical for our success in terms of being competitive, and we believe that there's a direct correlation between investments that we have made and will make that will drive, you know, good returns for -- good results and experiences and customer service for our customers, that would also generate, you know, excess returns for our shareholders.
Q. And you say Kentucky is a large component of Windstream's incumbent, I guess --
A. Yes.
Q. -- system. How is the state-by-state investment determined from Windstream Corporation or Holdings?
A. Well, for example, in a -- in a sort of broadband -- in a consumer broadband investment, you know, kind of description, we look at market by market the competitive dynamics around, you know, speed availability, density of customers, you know, the ability for us to deploy, you know, capital -- capital projects to advance our speeds to enough customers that would generate returns that, you

know, would make sense to do from an -- from an investment profile. But we look at that, you know, really market by market. I guess it's not necessarily state by state. It's more market by market.

But if you think about the characteristics of Kentucky, we have a, you know, sort of different outcomes. We have a very competitive Lexington market, which is critical to us, of some size and scale of the 300 plus thousand customers that we have in Kentucky. Then we have rural markets that the capital expenditure, you know, analysis that goes into each of those is very similar, but the outcomes could be different.

For example, if you have, you know, one customer at the end of a five-mile, you know, road, it would be hard to make a justification to put in the fastest, you know, Internet possible for one customer.

But in the density of a Lexington or the outer fringes of Lexington, or even, you know, kind of smaller towns that have lots of customers, you can make the case much more easily. And that's, in fact, what we have done, you know, recently to Lexington with, I would say, good success.

I mean, I think we have -- we have -- even though it's an absolute reality that wire and telecommunications providers like ourselves have experienced some wireline access line losses through the wireless substitution and other things, and through cable competition, the investments that we've made in certain of these markets have made a difference, and they have, you know, slowed the decline and have given us a chance to win back, you know, customers and make for a stronger franchise.

So we have confidence based upon past experience that if you bring investment to bear and you make your services offerings more reliable, you know, and, you know, and higher speeds, that you have a much better chance to compete with the competition.

And so that's why we -- as we observe the telecommunications landscape and the combination of two very large cable competitors and some other, you know, competitive access providers and CLECs, it's clear to us that more investment is required in certain of our markets to maintain our competitiveness and improve it. And in doing this transaction, we think it's the best way for us to provide for that capital investment in the future.

Q. And you may have answered this question in another form. I know that from time to time Congress has made some noise about revisiting laws governing REITs. In the event that the laws are revised, and somehow CSL was no longer considered a real estate investment trust, would you be able to guess or know what would happen to the assets at that point?

A. Uh-huh. You know, it's hard to speculate on those types of things. I can tell you we're highly confident based upon the private letter ruling that we have from the IRS that these are REIT-able assets, and we obviously considered that a significant event in the transaction timeline when that determination was made.

Had that not occurred, I think obviously we would not have been as comfortable, but as it did, we were very comfortable that this is REIT-able property and has many, you know, comparable, you know, characteristics to other REIT-able assets in telecom like towers.

And so I guess my opinion of it is that you can never predict with absolute certainty, you know, what Congress or other lawmaking bodies would do, but it would be very destructive to disallow and invalidate REIT status for companies that have been granted it.

And so, you know, it's a -- it's an important part of this transaction. It actually -- it obviously adds value to the transaction that would not be present were it not to occur. But our view is that there's a very high probability that everything is exactly as we've described, and there will be no change in the law in terms of this being REIT-able assets.

Q. And you mentioned in there, though -- you've mentioned before the establishment of REITs for the purposes of, say, American Towers building cellular -- wireless telecommunications towers --

A. Yes.

Q. -- where the tower itself is owned by a real estate investment trust, but I guess the communication apparatus on it is owned by a utility.

A. That's correct.

Q. Would you agree with me, though, that there's a fundamental difference between wireless telecommunication and wireline telecommunication?

A. There are differences, but we're all serving communication --

Q. Would you agree with me that a fundamental difference is that it is very easy to put up a tower next to one tower to duplicate services, but it's much more difficult to string up additional poles and wirelines and duplicate a wireline network?

A. Well, I mean, we as a provider of backhaul services to the wireless providers know what it costs to deploy fiber to complete their networks, and, you know, they're substantial. There's substantial costs that go into that.

The tower, you know, construction is one cost. The fiber backhaul trenching to the MTSO and other, you know, network elements of wireless is, I would argue, very similar to what a company like Windstream does today back to our central offices. So in that sense I think they're very similar.

I think the economics, obviously, depend upon, you know, length of the build and the presence of where you're trying to get to, but I think there's very -- very many similarities to them.

Q. Let me ask you this: Are they similar in respect that wireline facilities are oftentimes known as the bottleneck facilities, but wireless facilities are not? Notwithstanding the backhaul.

A. Yeah. Well, I don't know how you could separate it, sir. I mean, the wireless towers and the ability for wireless companies to provide wireless service, it's an integrated network, and towers are part of the integrated network.

Q. And so then there could be separate towers by separate providers in an area, but the backhaul was probably provided by an incumbent in that area?

A. Typically, but more and more it's cable companies and other companies as well. It's not necessarily just the incumbent.

Q. And with this proposed transaction, if it is approved, will it have any impact on Windstream's carrier of last resort obligations?

A. No.

MR. PINNEY: No further questions from staff.

COMMISSIONER BREATHITT: I have a few. I have a few that haven't already been asked and answered.

EXAMINATION

By Commissioner Breathitt:

Q. You mentioned in answering a question earlier that the private letter ruling would not be made public by the company until it's made public by the IRS, and that gave you first-mover advantage. Why do you need first-mover advantage?

A. Well, I mean,I think we -- this transaction, we believe, will give Windstream a differentiated structure in terms of the company, how we operate in the future. The reason why we -- we plan to consummate this transaction is to make ourselves more competitive to the much larger competitors that are in our space.

And there are other companies out there, either peers of ours that are not direct competitors in certain markets, or other telecommunication companies who are direct competitors of ours, who we believe could do the same thing.

And having, you know, spent a fair amount of intellectual capital and time and effort to analyze this transaction and get it to a point where we believe we will execute it very well, we know that that is not an easy thing to acquire.

And so by making that private letter ruling, you know, public -- and it will be public at some point, we know that -- I think it just gives someone who might be a competitor of ours the ability to, you know, start that -- you know, start that execution on that play, if they wanted to call that -- sooner, and that's why we want to withhold that from the public view as long as we can.

Q. You stated also in response to a question

that CSL will be a triple net provider, correct?
A. That the lease between -- yes, the lease between Windstream Holdings and CSL is a triple net lease, and that is exactly right.
Q. So a triple net provider, describe what a triple net provider is.
A. Yes. So what we mean by saying triple net, a triple net lease just means that the operator, Windstream, will have responsibility for maintaining and -- maintaining the network and all, you know, all services around that network.
So as opposed to, you know, a landlord who is maintaining their own assets. Windstream will continue to have the obligation, just as we do today, for maintaining through maintenance capital expenditures all -- all portions of the network that get distributed to CSL.
Q. So Windstream East and Windstream West -- so triple net provider doesn't mean phone, cable, and Internet?
A. No, no.
Q. That's triple play.
A. Yes, ma'am.
Q. So Windstream East and Windstream West won't change in the services that they offer?

A. No. In fact, I would argue that their services will be -- I will say that their services will be enhanced because we're going to bring more investment to the markets and ensure that those are --

Q. Well, you talked to Mr. Pinney about that investment going to 13 to 15 percent. How do customers, regulators, the business community, public policy officials, governors, mayors, how do they know that that investment is being made?

A. Well, hopefully you can observe it through -- you know, in and around your communities with Windstream making investments in your area.

Lexington, I keep coming back to, is certainly one that we've made a lot of investment in in terms of the speed and availability of our network. We are consistently advertising more speeds there as a result of that effort.

I would also submit that the service levels through the reduction of complaints from our customers, we would hope that that's evidence as to the continuing investment, that the network is having an impact, and we think it is.

Outside of that, I mean, it's -- that's the two most common ways that we can show you, you know, evidence of we are putting money to work in Kentucky for the benefit of our customers.

Q. So is there a difference between general maintenance in this 13 to 15 percent, or now 11 to 13 percent, reinvestment back into the structure?

A. So the 11 to 13 percent, the 13 to 15 percent is all inclusive, so it includes all of our CAPEX, right? So what we consistently see in our business, and have communicated publicly for some time, is that roughly 60 percent of our CAPEX today is what we call success based, meaning we will spend the money to, you know, connect to a new customer or, you know, provide more speeds that we know will lead to more customers.

And the remaining 40 percent -- and it fluctuates between quarters, but the remaining 40 percent is around just making sure everything is working well. If you have a break fix, you know, cable is cut or, you know, something has to be replaced because it's faulty, those are things that just have to be done.

And obviously the other place that consumes a decent amount of our capital budget is through the increasing demands of the consumers, both business and residential, their increasing consumption needs cause us to need to continue to invest in what I call our core network to make sure all of our backhaul capabilities to the core of our network are at a level that all that increased consumption can kind of flow through without any interruption.

So those are the things that just become what we call maintenance CAPEX. It's a part of running a large nationwide telecommunications network, but the incremental investment comes in the way of I want to put more -- you know, I want to shorten my, you know, loop links or put more fiber into an area that brings more speed, you know, to a consumer or a business, or I want to extend the reach of our IP network in a way that I can serve our customers more effectively. Those are the places I think we'll get more investment.

Q. Thank you. Your lease agreement talks about, and Mr. Pinney also talked about, that the 13 ILECs and the 24 CLECs in the service territory. Have any jurisdictions -- do you know if any jurisdictions have approved this already?

A. Alabama and North Carolina and Arizona. Three of -- three have been approved to this point.

Q. And not all have to.

A. Two of those three did. Actually, all three

of those did, but not all --
Q. But not all --
A. -- ILECs have to, yes.
Q. Yes.
A. I'm sorry.
Q. And what -- and you mentioned Kentucky as one of your larger service territories. What are your next couple largest service territories?
A. Georgia, Nebraska. Texas is large. Those are probably our largest.
Q. How does Kentucky stack with those three?
A. Very close. Georgia is probably the largest. Kentucky is right up there as probably two or three.
COMMISSIONER BREATHITT: I think that's it.
CHAIRMAN ARMSTRONG: I have a question.

EXAMINATION

By Chairman Armstrong:
Q. Do you use any reliability -- for reliability third parties to check on your calls and the number of calls that you are billing for?
A. Do we use third parties to validate our billing?
Q. Right. Like we used to have, service companies.
A. No. Our revenue assurance function

internally makes sure that -- that's the way we approach it is we ensure that all the billing records, you know, from our switches, you know, are entered into billing and are obviously maintained in the monthly billing for our customers.

So we don't engage -- if I'm understanding you, sir, we don't engage a third party to come in and validate that for us.

CHAIRMAN ARMSTRONG: Thank you.

VICE-CHAIRMAN GARDNER: I have just a couple follow-up questions and clarifying questions.

REEXAMINATION

By Vice-Chairman Gardner:

Q. The first is on the indebtedness. Currently right now neither Windstream Kentucky ILEC has any debt?

A. Right.

Q. Is that correct?

A. Yes.

Q. Nor obligation or guaranty or anything?

A. No guaranty.

Q. Okay. Similarly, when this transaction is completed, there wont' be -- that Windstream -- the Kentucky Windstreams will not have any debt, guaranty, or anything like that with respect to any

of these?
A. That's correct.
Q. Okay. And when you said that the revenues were -- the capital investment is going to increase from -- or the investment is going to increase from 11 to 13 percent to 13 to 15 percent of revenues, is that -- is that revenues of the two ILECs, or is it revenues of Windstream Corporation?
A. We looked at it as revenue for Windstream Corporation, but as I said earlier, Kentucky, being such a large portion of the revenues of Windstream, we expect those percentages to apply to Kentucky as well.
Q. Okay. So -- so why are you increasing the percentage of revenues to Kentucky from 13 to 15 percent as opposed to some other state?
A. Well, you know, first of all, Kentucky is one -- I mean, at least Lexington is one of our most competitive markets. I can tell you just as -- I forget who asked earlier, we have seen the benefits of the investments in Kentucky in terms of the higher speeds.
Q. So it's basically you think you'll get more response from the dollars that you invest?
A. We do. We think the customers there will be

great returns.

Q. Okay. And there is no direct consideration or value going to the Kentucky Windstream companies as a result of transferring the properties. I mean, I understand everything that you've said about, you know, you hope to increase investments in Kentucky, and then there will be benefits at the corporate level, but there's no direct consideration that the companies are getting in exchange for transferring the properties.

A. I think the answer is there's more investment to be provided for.

Q. But, I mean, so the answer is no?

A. The answer is no, we would not plan to take distributed cash as part of the transaction for CSL and place it and keep it on Kentucky's books.

Q. Okay.

MR. OVERSTREET: May I ask?

VICE-CHAIRMAN GARDNER: Yes.

MR. OVERSTREET: Thank you, Vice-Chair.

REDIRECT EXAMINATION

By Mr. Overstreet:

Q. Just one or two. Mr. Gunderman, you had a discussion earlier this morning about the fact that the -- the debt that's going to be extinguished as part of this transaction is held at the Windstream corporate level.

A. Yes.

Q. Now, although the debt is held at that corporate level, that debt was issued, is it not true, for the benefit of Windstream -- Windstream Corporation's operating companies, including the Kentucky ILECs?

A. That's correct.

Q. And so the fact that it's at the Windstream Corporation level is a financing method?

A. That's correct. Yes, that's correct.

Q. And the -- you had some discussion a little earlier about this successor tenant provision. Do you remember that?

A. Yes.

Q. If you need to defer this to Mr. Fletcher, that's fine. Do you have any understanding about whether Commission approval would be required in that instance?

A. I'll defer that to John and let him talk about --

Q. Fair enough.

A. -- the requirements on unlikely scenarios, I like to call it.

Q. All right. Fair enough.
MR. OVERSTREET: I believe that's all I have.
VICE-CHAIRMAN GARDNER: Mr. Rubin, do you have any redirect -- recross?
MR. RUBIN: No, thank you.
VICE-CHAIRMAN GARDNER: Mr. Gillespie?
MR. GILLESPIE: Nothing further. Thank you.
MR. PINNEY: Nothing from the Commission staff.
VICE-CHAIRMAN GARDNER: Okay. You may step down. Appreciate your time.
THE WITNESS: Thank you.
VICE-CHAIRMAN GARDNER: Why don't we break for lunch, and let's make it easy, let's come back at 2:30.
(Recess from 1:19 p.m. to 2:30 p.m.)
2:32 p.m.)
VICE-CHAIR GARDNER: Linda will be here shortly, but we'll go ahead.
And Mr. Overstreet, call your next witness, please.
MR. OVERSTREET: Thank you, Mr. Behr -- excuse me. Mr. Vice-Chairman. We call John P. Fletcher.
* * *

JOHN PRESLEY FLETCHER, called by Windstream, having been first duly sworn, testified as follows:

VICE-CHAIR GARDNER: Please have a seat. State your full name, please.

THE WITNESS: John Presley Fletcher.

VICE-CHAIR GARDNER: And with whom are you employed?

THE WITNESS: Windstream Holdings.

VICE-CHAIR GARDNER: And what is your position with Windstream Holdings?

THE WITNESS: I'm the executive vice president, secretary, and general counsel of Windstream Holdings and all of its subsidiaries, including Windstream Kentucky East and Windstream Kentucky West.

VICE-CHAIR GARDNER: Thank you. Welcome to Kentucky.

THE WITNESS: Thank you.

VICE-CHAIR GARDNER: Mr. Overstreet.

MR. OVERSTREET: Thank you.

DIRECT EXAMINATION

By Mr. Overstreet:

Q. Mr. Fletcher, did you cause to be filed in the record of this proceeding testimony -- excuse me -- and certain responses to data requests?

A. Yes.

Q. And did you verify the application that was filed in this proceeding?

A. Yes.

Q. And do you have any changes or amendments to your testimony or data request responses?

A. No.

Q. And if you were asked those same questions here today, would your answers be the same?

A. They would be the same, yes.

MR. OVERSTREET: The witness is available.

CHAIRMAN ARMSTRONG: Mr. Rubin.

MR. RUBIN: Thank you, Mr. Vice-Chairman.

CROSS-EXAMINATION

By Mr. Rubin:

Q. Good afternoon, Mr. Fletcher. We met earlier today. I'm Scott Rubin. I represent the Communications Workers of America in this case, and I'd like to start with a question that I was going to ask Mr. Gunderman but realized that he was deferring the legal questions to you, so we'll start with that.

Is one of the agreements that will be part of this transaction an employee matters agreement?

A. Yes, it is.

Q. Which employees will that cover?
A. That will cover a small group of transferred employees who will become employees of CSL. I may sometimes refer to CSL as the REIT. I know you defined it as CSL, but I may also refer to it as the REIT.
Q. That's fine. Are any Kentucky ILEC employees being transferred to CSL?
A. No.
Q. Are any ILEC employees -- or, excuse me, are any Windstream employees who are covered by a collective bargaining agreement being transferred to CSL?
A. No.
Q. Is any work performed by employees of the Kentucky ILEC being eliminated as a result of this transaction?
A. No.
Q. And is any of that work being transferred to CSL?
A. No.
Q. Will CSL employees or contractors perform any work on the Kentucky ILEC facilities?
A. That is not expected. All work to be performed by the Windstream entities, who will have

the exclusive right to perform that work.
Q. Okay. So all of that work will continue to be performed by employees of the Kentucky ILEC as they do today?
A. As they do today, correct.
Q. Do you anticipate any change in the number or type of employees in Kentucky as a result of this transaction?
A. No.
Q. Has the employee matters agreement been finalized at this point?
A. No. It is still in preliminary form.
Q. Okay. Even though it has not been finalized yet, can you confirm that the agreement will have no effect on any employees of the Kentucky ILECs?
A. I can confirm that, that that fact will not change.
Q. All right. Thank you. Let's turn our attention for a moment to the master lease agreement, and I think these questions will be just as general as the last set of questions were.
Will the respective rights of CSL and the Kentucky ILECs concerning property in Kentucky be governed by Kentucky law or by some other state's law?

A. The choice of law of the master lease agreement will be New York on general contract matters, but as to matters of real property law that would affect Kentucky, real property interests such as remedies upon events of default, that would be a Kentucky law matter, as it would be a matter of every other state where the property is domiciled.
Q. Would you agree with me that the Kentucky ILEC assets that would be transferred to CSL are used today to provide service to your customers in Kentucky?
A. They are a component of the assets used to provide service today, correct.
Q. And you heard -- excuse me. I guess I should say for the record, you were present in the room earlier today when Mr. Gunderman was on the stand?
A. Yes, I was.
Q. And did you hear him discuss how this transaction is, in effect, a form of a sale-leaseback?
A. Those are two structural components of the overall transaction, correct.
Q. Okay. So you agree that the transaction would transfer ownership of assets to CSL, correct?
A. Correct.

Q. Do you also agree that this transaction is a form of financing?
A. I would not characterize it as a financing.
Q. Why not?
A. I would characterize it as a sale to leaseback.
Q. Okay. And are you aware that the Financial Accounting Standards Board has preliminarily concluded that a failed sale-leaseback is a type of financing transaction?
A. I am not an accountant and I cannot offer an informed view on the FASB, GAAP, or any other accounting matter.
Q. Okay. So you're not aware that just a few days before you announced this transaction FASB met about the accounting for sale-leaseback transactions?
A. No. I don't follow their docket.
Q. Now, would I be correct that the Kentucky ILECs are -- I think the term of art, if you will, is an electing telecommunications utility? That is, they have elected to be exempt from rate-of-return type of regulation in the state?
A. I'm not familiar with that terminology, but I think I know where you're going, but I would need

clarification as to that. I'm not a Kentucky regulatory law expert.
Q. Okay. Well, is it your understanding that the Kentucky ILECs are not subject to rate-of-return regulation?
A. That is how I understand it and would articulate it, yes.
Q. Okay. And are you aware that, because of their election to do that, that this Commission does not have to approve financing transactions for the utility?
A. That is not my understanding. I thought that we would still have to obtain Kentucky PSC approval for the incurrence or guaranty of debt, but I -- that's my recollection.
Q. Okay. And of course you're still required to obtain approval of transactions involving a change of ownership or control, correct?
A. I'm sorry. Repeat the question.
Q. Okay. Are the Kentucky ILECs still required to obtain Commission approval of transactions involving a change of ownership or control?
A. That's my understanding. This is not a change of ownership, of control, so we don't -- I have not -- we don't believe that that is occurring

here, but my understanding is, if we were to undergo a change of control, it would require PSC approval.

Q. Okay. Well, is there any -- sorry.

Do you dispute that the ownership of certain assets being used to serve the public would change as a result of this transaction?

A. The ownership of the assets. No.

Q. Okay. So -- and what --

A. I do not dispute that characterization.

Q. All right. So what you're suggesting is that the ownership of the assets is one thing, but the ownership of the company is not changing?

A. They are different things.

MR. RUBIN: Okay. Thank you. That's all I have for this witness.

VICE-CHAIR GARDNER: Thank you.

Mr. Gillespie.

MR. GILLESPIE: Thank you, Mr. Vice-Chairman.

CROSS-EXAMINATION

By Mr. Gillespie:

Q. Mr. Fletcher, I'm Gardner Gillespie representing KCTA. We met earlier.

A. Yes.

Q. I have some similar questions for you that I put to Mr. Gunderman earlier that he was unable to answer and deferred to you. In terms of easements and rights-of-way that are currently owned by the operating companies, who is going to own title to those -- to easements and rights-of-way under this arrangement?

A. The operating companies are expected to retain title to those easements and rights-of-way.

Q. What do you mean "expected"?

A. That is our -- that is our current intention. We -- and it's -- that's what we're going to do.

Q. Now, if you would, turn to the summary of the master lease that is the Exhibit D to the company's responses to KCTA's data request.

A. What date is that document? Is that October?

Q. No, this is November 3.

A. But on the face of the -- of the summary of the master lease, what does it say? July 28th or October 31st?

Q. No, the outline of the master lease is October 31st.

A. I have that in front of me.

Q. And on the first page of that outline, under Leased Property, there is a reference toward the bottom of the first bullet there where it says that leased property includes all easement, permits, and

pole agreements?
A. Yes, and this is the lease.
Q. Pardon me?
A. This is the lease.
Q. Yeah. Well, who's -- what party will own the easements, permits, and pole agreements?
A. Well, the first step of the transaction is the sale. That's under the distribution agreement.
Q. Right.
A. Under the distribution agreement, Windstream will retain title to that class of assets. But whatever asset is transferred to Wind -- to the REIT is then released back to Windstream under this lease. And whatever interest it receives, the REIT receives, whether it be title, any other right, title, or interest, all of those, all of that bundle of rights is leased back to Windstream.
Q. All right. And if you turn to page 3 of Exhibit D, to the first full bulleted paragraph there, this says that the landlord may require the tenant to convey legal title to the landlord to any or all of the easements, permits, and pole agreements.
Do you see that?
A. I see that.

Q. And can you explain that to us, please?
A. That is a right that CSL will have that -- as I said, I don't expect them to exercise that. And our current intention going into the transaction is that they will not exercise that right due to administrative convenience and the avoidance of duplicative effort and costs without any real incremental benefit. We address that in one of our responses.
Q. And under what circumstances may the landlord require the operating companies to convey legal title?
A. It's at their discretion, but I cannot entertain a scenario when that would be a worthwhile exercise, so I don't expect them to exercise it, because every one of these assets is completely and wholly exclusively leased back to Windstream. There's really not any need for them to have title in their name.
Q. Can you explain to us why this provision -- well, let me -- let me take a step back. The negotiation -- the preparation of the master lease is entirely in the hands, at this point, of the -- of Windstream and the operating companies, correct?
A. Correct.

Q. And the summary of the -- of the master lease here was prepared by Windstream and the operating companies, right?
A. Correct.
Q. Because CSL does not yet exist, right?
A. It exists as a legal entity. We've named a director from our board, Skip Frantz. We've named Tony Thomas, our former CFO, to be the head of the REIT operation, so they have some, you know, beginning operations and officers. They're not -- they do exist as a legal entity.
Q. Well, they exist as legal entity, those people are currently being paid by Windstream; is that right?
A. They are currently part of the Windstream family, yes.
Q. And so there wasn't any negotiation of this -- of this master lease between Windstream and CSL, it was simply prepared by Windstream as what the master lease would look like, correct?
A. There is not a separate third-party entity, the REIT, here to negotiate, but they have constituencies within the deal team and who have looked at the REIT's interests as we have structured the transaction.

Q. And what was the reason why Windstream placed this provision in the master lease?
A. We believe it was necessary to achieve the tax treatment of the -- of the transaction. To get a true sale transfer of the asset, we thought this provision was important to the IRS.
MR. GILLESPIE: I have no further questions.
VICE-CHAIR GARDNER: Pinney.

CROSS-EXAMINATION

By Mr. Pinney:
Q. Good afternoon. How are you doing today?
A. Good.
Q. Thank you. Some of these questions I've asked Mr. Gunderson [sic], so if they sound repetitive, they are. Who are the parties to the master lease?
A. Windstream Holdings and then multiple subsidiaries of the REIT, and there is an exhibit that might --
Q. Is -- was that the exhibit that was provided I think response to the cable association's --
A. Exhibit A, if -- I don't know if you want me to refer to that, but it'll be CSL National LP, and every entity below CSL National LP will be the landlord. It will be a group of companies.

Q. Okay. And under that, I remember that there was a CSL Kentucky, for lack of a better word.
A. CSL Kentucky, LLC.
Q. LLC. And will that be registered in Kentucky as an LLC or will that be in Maryland?
A. We believe -- and this is where the -- the REIT doesn't exist yet, but they do have their own team --
Q. Uh-huh.
A. -- that will -- and they'll have their own legal department and general counsel. We have not formed the system LLCs, but if I were to do it -- but I'm not going to do it for them. If I were to do it, I would make them a Delaware LLC and have it registered to do business in Kentucky, and I believe that is what they'll do.
Q. I mean, I notice that the -- one of the entities just reincorporated in Maryland. Is that still --
A. Yes, CSL was originally a Delaware entity. We learned two things: That almost 90 percent of publicly held REITs are incorporated in Maryland, and we thought it would help CSL to be consistent with that broader peer group. And second, Maryland does not have a franchise tax on its stock, capital

stock, and that'll save CSL $200,000 a year. So those are the two reasons we went ahead and reincorporated the Mary -- to a Maryland entity.

Q. Yeah, but in -- but in response to my question about where the Kentucky LLC will be incorporated, you don't know because that's subject to a different -- you don't have control over where it will be?

A. Oh, I could probably influence it, but --

Q. Well --

A. -- I'm going to defer to the new general counsel and let him make that decision, but my recommendation will be that it -- and I'm not trying to be difficult. I would make it a Delaware entity.

Q. Okay.

A. That would be what I --

Q. That's fair enough. I mean, I'm not -- it's not particularly important, but I want to just nail down as much as I can. When is the master lease expected to be executed?

A. So there are three dates to think about. We announced the transaction on July 29th, 2014. That was an authorization of a plan. Management was authorized to pursue the spin-off and to draft the definitive -- definitive documentation for the transaction, to obtain regulatory approvals, to prepare the financing requirements for the transaction, and we believe those steps will be done early first quarter.

Then we will go to the Windstream board with definitive drafts of the distribution agreement and all of the various exhibits that we've talked about today, and at that time we would ask the board to approve the transaction. And if they approve the transaction at that time, which I expect they will, we would execute the distribution agreement. So let's call that January 1. That would be the earliest we would do it. I think that's the earliest we would be ready. January 1, 2015.

And it will take us about 30 days, we believe, to actually raise the money needed to do this transaction, and I expect a 30-day gap between the distribution agreement date and the closing date for the transaction and the spin-off, which in my example would be February 1st.

Those dates would be the earliest we could possibly do it. So sometime in the first quarter of 2015 those -- the signing and closing dates would occur.

Q. And so at what point during that would the

master lease be executed?
A. So, I'm sorry, the -- at the closing.
Q. Okay.
A. So at the closing we would execute the master lease agreement, and we would execute the employee matters agreement, we would execute all the other ancillary agreements, but the principal one is the master lease.
Q. And are there, to your knowledge, any provisions that are currently in the working draft, I guess, of the master lease or you anticipate provisions to be in there that would ensure that the Windstream Kentuckys have the necessary assets to continue to provide adequate telecommunication service to Kentucky consumers?
A. Well, they're -- the Windstream Kentucky entities will have an exclusive long-term lease and right -- exclusive right to use and occupy all the assets that are within their system today. So I think in that sense, yes. That's how I'm thinking about it when I answer your question yes.
Q. And I just asked you about when the master lease would be executed. And the proceeding here is styled in two parts. One is for declaratory orders for the PSC to state that it does not need to

authorize this transaction or that if it does, it can approve it under KRS 278.020 and also, I think, declare that CSL is not a utility. Is that a fair summarization of how this proceeding is couched?

A. Yes. I don't know the chapter and versus you cited there, but that is a fair -- that's my understanding, yes.

Q. Subject to check, I'm going to say --

A. Subject to check, yes.

Q. -- that's correct. But my question goes to this: You're asking the Commission, "you," the global you, the royal you, to approve or make a declaration about this with essentially not all the facts in the record, meaning that the master lease is what's going to show to what degree or not CSL is going to have control over these assets or have control over Windstream Holdings and thereby Windstream Corporation --

A. Uh-huh.

Q. -- and the subsidiaries therein. In your opinion, how can the Commission move forward and rule on this matter without knowing what the final contents of the master lease is? Because we heard a lot from the previous witness about it's not expected to or is expected to when answering a question --

A. Right.

Q. -- but nothing seems to be set in stone, and without those, you know, considerations, without those objective truths, so to speak --

A. Uh-huh.

Q. -- how do you think the Commission can proceed?

A. That's a good question. So here's how. First of all, we think that the summaries that have been provided cover the material terms and we do not expect those to be changed in any material way, and certainly in any adverse way to the operating companies, but what -- one question was asked this morning, "What happens if a state comes out?" Well, we're not going to just keep the rent at 650 million if a state is pulled from the transaction due to failure of regulatory approval. That's the biggest remaining open thing, I think, that is -- that is to be determined, and that's what we're here today to do is to confirm the terms in which we can include the Kentucky properties. So that's really the big point.

And then the provisions you're not seeing I would couch as the traditional guardrails and parameters any landlord would put on a commercial tenant. Someone asked earlier how long this document is. It's about a hundred pages, and I think you'll thank me when you get the document that you haven't had to read it yet. It's a very lengthy, cumbersome commercial agreement, and we have summarized the key provisions, and I think that these summaries you have today do capture the material terms that the PSC needs to understand to be able to approve the transaction.

Q. So the master lease is not necessarily the product of an arm's length transaction? I mean, it's -- since CSL only exists as a legal entity, it's not, you know, two, you know, differently interested parties that are summarizing it; is that correct?

A. It is not the product of an arm's length negotiation --

Q. Negotiation.

A. -- but we -- we -- I'm sorry.

Q. And I just -- I just want to state, I do not think -- I'm not accusing Windstream of being duplicitous and giving us a summary and something else is going to be in the master lease, but, you know, due diligence requires the fact that if

something is not signed and set in stone, you know, that we have to be a little wary of that here.
A. Well, and if it weren't an arm's length deal, it would be probably in the -- for the benefit and favor of the existing entity --
Q. Right.
A. -- Windstream and the operating companies.
Q. Now, under the expected terms of the master lease, as they have been summarized here and as we have discussed before, upon the execution of the master lease, what control will CSL have over the assets?
A. They have -- they will have leased the exclusive right to use, access, and operate the assets. I would think of CSL -- if you've ever read a commercial lease, they'll have the typical provisions that they have -- they'll have the right to periodically access and inspect the premises to confirm that we're maintaining them in good condition. You know, they will -- they have those traditional types of landlord rights to confirm that we're doing what we're supposed to under the agreement. They do not have the right, though, to come in and just access the facilities at any time that they want to, and -- but they can, through

their representatives or through contractors, have a right to come, during reasonable hours, upon proper coordination with Windstream, to view and inspect the assets. But no, they don't have a right to come send people in, start doing things with our facilities.

Q. Under the terms of -- the expected terms of the master lease?

A. Under any -- under any term. We would never give a landlord -- you know, a landlord would never have that --

Q. Well --

A. -- right, in my view.

Q. True. But, you know, I'm thinking back to my college days, when moving out of, you know, the townhouse, where part of the security deposit was not returned. I dispute why, but it was not. But also we were instructed to make certain repairs before we left. Now, would CSL have the ability, if they were to conduct the inspection, as you said --

A. Uh-huh.

Q. -- to order Windstreams to make repairs to the system?

A. We are agreeing with them to maintain the system. When we talked about the triple net

obligation --
Q. Obviously when you say "we," you say --
A. I'm sorry.
Q. -- Windstream?
A. Windstream.
Q. Okay. Go ahead.
A. I will be staying with Windstream.
Q. All right.
A. I lost my train of thought. What was --
Q. All right. You said --
A. -- the question again.
Q. -- you would agree to -- we would agree to --
A. Maintain the asset.
Q. Maintain it. Yeah.
A. So that's part of the triple net lease obligation, that we have the obligation, both from a regulatory standpoint to maintain these assets, and also by a matter of contract with the landlord to maintain them.

And by the way, the standard we're going to have to maintain them is to meet our historical maintenance obligations, including all regulatory obligations. So one of their interests will be to confirm that Windstream is discharging its regulatory obligations.

Q. Well --
A. Did that answer your question?
Q. That checks off the next question too. So what is the remedy -- I know it seems unlikely when we're discussing this transaction, but what is the remedy if either of the parties breaches the master lease agreement? Let's say, for example -- let's take, for example, Windstream Holdings withholds payment or breaches some condition of the master lease. What is the remedy?
A. They have traditional remedies of a landlord. You would have -- we'd have an opportunity to cure some breaches of payment. You have the fewest numbers of day to cure -- to cure a payment default, but there's a cure period where they would put us on notice. We would have to -- a very quick time to cure any payment default and 30 days or more to cure a -- other defaults. And if we failed to do that, they could begin exercising remedies in preparing for, you know, ultimately termination of the lease.
The -- there are -- you know, like on the topic of maintenance, I think that would be the type of dispute that we -- there is a dispute resolution provision where the parties would be forced to go through a mediation process, nonbinding resolution,

because meet -- you know, maintenance kind of example, where reasonable minds might differ, and so we have a separate mediation process for that type of operational dispute.

Q. And is -- the choice of law for that, is that New York, you said?

A. New York is the choice of law, but this would be a nonbinding mediation. What we --

Q. Okay.

A. Really that venue would be really forcing the two sides to have appropriate-level members of the organization with authority to resolve a dispute to meet and go through a dispute resolution process. Mediation may be a little overstated.

Q. And so if either party, because I asked you specifically if Windstream was in default, but if for some reason CSL was in some sort of breach of the master lease, it would go through the nonbinding resolution?

A. Right. But landlords don't have to do much.

Q. Well, I mean, that's why we ask questions about this, because it's a -- I mean, I asked the previous witness about landline facilities, and they're commonly known as what are bottleneck facilities. Would you agree that they're frequently

referred to as bottleneck facilities?
A. I'm actually not --
Q. Would you -- let me rephrase it this way: Would you agree with the generalization that incumbent landline facilities enjoy a somewhat natural monopoly with regard to their facilities in an area?
A. I would agree at a historic time they did. I'm not sure that's -- with wireless competition and other -- we don't feel like a monopoly given the competitive --
Q. I understand that --
A. -- environment that we're in.
Q. -- nobody with access lines does these days.
A. No.
Q. But, I mean, I'm just saying that incumbent local exchange carriers are not subject to competition from other landline-based competition, facilities-based competition by and large?
A. In the residential area especially.
Q. In the residential area. That's what I'm -- that's what I'm asking. Let's see here.
A. But just on that point, today many residents don't even have wire line. They -- wireless is still -- I wonder if my children will ever have a

wire line. You know, they -- they're going to use their iPhone. And they still ask me why we have a wire line phone in our house, so it -- you know, I do think there is, even if -- in the residential setting, wireless competition.

Q. Well, and we're speaking purely about telecommunications as it's defined by the FCC currently. However, we -- I think we're both aware that -- or most people are aware that there might be moves afoot to reclassify certain other aspects of broadband that might fall under the purview or be classified as telecommunication service, at which point would you agree that the backbone facilities, the landline facilities, might become a little more important?

A. Perhaps, but again I go back to my children who still want me to get LTE from Verizon for their broadband.

Q. Right. I mean, I was just thinking that the landlines will be -- perhaps would be around for a while, even though --

A. We fully --

Q. -- they're shrinking?

A. -- expect them to be.

Q. Yeah.

A. And they do have an advantage from a -- you know, a physics standpoint with their ability to handle a higher capacity. That's why when you said "bottleneck," I don't think of wire line as necessarily a bottleneck device.

Q. It might be more of an archaic term, but -- and I believe that either in response to data requests or in testimony that this transaction is ongoing or has been proposed in 37 states?

A. The -- I don't have the exact list of states in front of me. They were -- we're confusing facilities with states, and it may be best just to get you that list, but the -- we've grouped a few state assets into one facility or pod --

Q. Okay.

A. -- because the facilities we're trying to get a critical mass of assets in, and there are some CLEC states that we have -- where we have very small presence where we have combined them into one facility. But 37 is very close to the number. We have a facility for every ILEC jurisdiction and we have a -- and wherever we have ILEC assets, we have by -- in that state we also have a separate CLEC facility, so I think there are 15, if I -- I think there were 15 ILEC jurisdictions included. Again, we will follow up to confirm these. In those 15 states there's an ILEC pod and a CLEC pod, and in all the other states where we're only a CLEC presence, we -- that is mostly pod by state, but there are some just very small states where we've collapsed them. So it is very close to about 37 states.

Q. And could you explain to me what is happening to the -- I'll define this term first, competitive local exchange carriers, but the CLECs, their assets are being treat differently than the incumbents, is -- am I correct? Or are they treated -- are their assets being treated the same, those that can be transferred to the REIT?

A. They're largely being treated the same.

Q. Okay.

A. There is that org chart. We thought it would be -- we are having an LLC per ILEC entity. We thought it would be prudent to keep the ILEC assets separately encapsulated even within the CSL entities, but other than that distinction, I don't really have a difference that comes to mind between the ILEC and CLEC assets.

Q. And we heard earlier today that three states have already approved this transaction; is that correct?

A. Yes, sir.

Q. Arizona, Alabama, and North Carolina?

A. Let me get my -- it's -- so there are two -- there are four other ILEC approvals pending -- that we have either made or are pending. Alabama and North Carolina, who have approved the transaction.

Q. Okay.

A. Georgia and Ohio remain pending and are progressing well, and I believe we're on track for approval by the end of the year. Then there's Kentucky, which we have stipulated and filed that we believe no approval is required, but if the Commission determines approval is required, there would be five ILEC states requiring approval.

And then we have approvals in four CLEC states. Arizona has approved the transaction. So that's the third approved state. And West Virginia, Indiana, and Pennsylvania are pending and progressing well.

Q. And of these things, there's been no denials?

A. There have been no denials in any state.

Q. And are you aware of any conditions attached to the approvals in the two states that have approved -- in Alabama or North Carolina?

A. No, Alabama and North Carolina simply stipulated that the final terms are substantially consistent with the applications. You know, the approval is, you know, conditioned on the accuracy of the application.

Q. And in Windstream's response to the cable association's Item 23, it states that "An Event of Default as to any Facility is an Event of Default as to all the Facilities," and I think this has been explained before. Could you explain to me the -- should the Commission be concerned about this, that some entity in another state will not pay their rent, therefore the entire lease is in default?

A. This does need clarification. So someone referred to the master lease earlier, why are we calling this a master lease. This is a single indivisible master lease for all properties. We are not allocating rent by separate states or properties or facilities. There is a -- and if we get the transaction approved on the terms submitted, that rent will be 650 million. There is no allocation or bifurcation of that rent by state, and it is an obligation at the ultimate parent level, Windstream Holdings.

So it's not dependent on Windstream Kentucky or Windstream Arkansas or Windstream Texas to pay the rent, it's going to be a consolidated obligation, a single indivisible lease obligation for the initial term, which is 15 years and can be extended five years at Windstream's election. The facilities become relevant upon renewal, and from Windstream's perspective, we think it's better for Windstream not to have to renew the lease for the entire 37 facilities, that it would be in our interest to be able to make the landlord know we could choose not to renew select pods and was also a process upon renewal of determining the rent by the renewed entities. And so we think that increases the incentive of the landlord to work with us well in advance of renewal to get an extended negotiated term.

We don't expect we'll ever go through a renewal option, but that feature was put in -- put in there to sort of divide and conquer, if you will, that if they're worried about us not renewing five or ten of the 37 pods, they'll be more worried about negotiating with us on a renewed term. So the facilities are not relevant until a renewal event. And we think the facility structure ensures you'll never get to a renewal situation because the parties will want to come together and renew the rent -- the lease together.

Now, going back to the event of default provision, we have defined these facilities as geographic areas that have, you know, some minimum value to them, and from a landlord's perspective, they don't want to see us fail to perform our obligations in every facility until they can exercise their rights. And so the event of default is just saying if you fail to maintain one facility, you have failed to do your obligation to a significantly high enough level that we should consider that a material event of default.

Q. Okay. All right. And it's your testimony that the Windstream -- this -- the trans -- this transfer of assets in the master lease will not affect Windstream Kentucky East or West's obligations under Kentucky law or particularly to the Public Service Commission; is that correct?

A. Correct.

Q. And the Commission will retain its -- the same jurisdiction over service, rates, whatever you have right now as it exists over Windstream East and West; is that correct?

A. Unchanged, correct.

Q. Unchanged. In the event that the Commission were to order Windstream to make changes to its facilities, including some of these subject assets, the Commission would still have jurisdiction to do that?
A. Yes. We have the right to make not only maintenance improvements but capital improvements to these assets, and they would -- and I think the only limitation would be that we can't come in and deploy these assets for a nontelecom purpose.
Q. The nontelecom purpose, would that be --
A. I don't know what that would be, but --
Q. Okay.
A. -- the only --
Q. Well, because I'm thinking, you know, pole attachments for cable may be an nontelecom purpose.
A. Yeah, that would -- that would be what we have to do today.
Q. Okay. Now, what if there were -- I think these other types of attachments that aren't contemplated right now but might be, you know, popping up. I'm thinking about the small modular antenna that are sometimes deployed for a local wireless network, right of that. Would that --
A. That -- more broadly defined, that would be a

communications purpose. It would be within the purview of our obligation. We would have the right under the lease to do so and the PSC could order us to do so.

Q. Okay. And so the Commission, if it were to order Wind -- there's probably -- would you think that there be would scenario where the Commission could order Windstream to do something to these subject assets that would violate the master lease?

A. I cannot envision a scenario where that would occur.

Q. Okay. And if there were, I mean, hypothetically, who would win, the Commission or the master lease?

A. Who would win? Well, I think that -- so the Commission is seeking to order action that we cannot comply with under the master lease?

Q. Correct.

A. Well, first, again, I just -- we've drafted this in a way where I cannot envision that scenario occurring, but I guess theoretically, to take your question to its fullest logical conclusion, there is a theoretical risk, but I can't envision a scenario in which that would occur.

Q. Okay. Well, we discussed earlier that access lines are dropping for landline companies, and so what would happen if certain of these assets that are part of the lease become obsolete to the Windstream companies? You know, for example, if Windstream no longer wishes to provide service in an area over copper facilities, is Windstream still obligated to continue to make lease payments for that property?

A. There would be no abatement of -- there would be no abasement or reduction of rent obligation if we chose to retire and decommission any of the assets.

Q. Okay. And do facilities that Windstream constructs in the future, do they automatically transfer to CSL?

A. Mr. Gunderman answered this pretty well in the -- in the earlier question. The one example that you would really think about is, is extensions in residential subdivisions. If Windstream funds those with our own capital, we would own those assets. Most other extensions within an ILEC territory and any replacements in overbuilding within a -- the -- an existing area where the distribution systems are located would -- those improvements would accrue to the lease to state and

would be owned by the REIT or CSL.
Q. And so anything -- not trying to put words in your mouth, but it would be accurate to say that anything that's within the existing footprint of the assets as they are transferred right now, any improvements would go to the -- be the property of CSL?
A. Except for residential subdivision extensions --
Q. Right. Right.
A. -- I think that's a fair characterization.
Q. Which brings me to the question about easements. I think it's fairly clear that the title to the easements is not going to transfer; is that correct?
A. Correct.
Q. But the benefits will. Can you explain that a little bit more? Will you --
A. So when we talk --
Q. -- discuss that?
A. -- about beneficial interest -- I'm sorry.
Q. Yeah, that's exactly what I would like you to speak to.
A. "Beneficial interest" means the benefits and burdens, so if you -- if you transfer the beneficial

interest in an asset, you have the right to the income, profits, and capital appreciation of that asset, as well as the burdens, the risk of loss, risk of future devaluation of the asset, risk of destruction of the asset. So that's what we mean by benefits and burdens.

And with most property conveyances, when title also conveys, they're all part of one bundle of rights that convey. But the easements, rights-of-way, and pole agreements, we're having title retained in the operating companies in the -- at the -- in the Windstream entities, because the transaction, when you break it down into its core components, two of its key components are the sale and the lease back.

And so as you think about retained title, think about what it would mean to retitle those easements. You would -- you would go put them in the name of CSL, but what do they need to do with them? They're not going to use them, they're not going to release them to anybody else, they're not going to pay anything on them, because we're triple net, we're making all payments under those obligations, so there's no -- if it stopped there, there would be a reason to retitle those assets, but the next immediate step is to exclusively lease all of that bundle of rights back to Windstream, and so if you -- if you title these assets in the name of CSL, you have to also retitle them back into Windstream as lessee, so it's a -- it's a -- it's a circular, duplicative, unnecessary set of actions that we -- for administrative convenience, we're not going to go through. And so that is retained title.

Q. Okay. All right. If for some reason at the end of the 15 years the lease ends and the assets are -- the assets would still remain to CS -- with CSL; is that correct? The assets that are transferred would still remain with CSL at the end of the 15-year lease --

A. Yes. They --

Q. -- assuming no negotiations, no extension, and assuming landlines are still, you know, in existence at the time, and also assuming that the statutory framework in Kentucky has not changed, Windstream would still be under an obligation to provide basic local exchange service over -- in Kentucky. Would you agree that the Commission would then have the authority to compel Windstream to build its own facilities to meet the statutory obligation?

A. Yes, if we did not transfer the assets to a successor tenant who was able to assume those.
Q. Okay. Would there be any effect on the master lease or the assets if the -- I'm going to refer to the pod. So you've clustered everything together. If one or some of them were transferred or sold to another entity, say, for example, Comcast or CenturyLink --
A. By --
Q. -- or Frontier --
A. Transferred by whom?
Q. From -- if a certain Windstream entity was sold --
A. Okay.
Q. -- what right would they have to the assets if they are no longer a Windstream entity?
A. If we wanted to sell --
Q. Say Windstream --
A. -- let's pick Kentucky.
Q. Yeah, Windstream Kentucky --
A. If we want --
Q. -- West --
A. -- to sell Kentucky, which we have no intention to do, but to follow the analogy, what Windstream would do is they could sell -- sell the

operations and the -- we could partition the lease and have a sublease for the benefit of the seller -- of the buyer of those assets, and that's how you would effect it.

MR. PINNEY: Okay. I have no further questions, but if I could be indulged to speak to --

VICE-CHAIR GARDNER: Sure.

MR. PINNEY: -- speak to counsel for a few post-hearing data requests.

VICE-CHAIR GARDNER: I've got some questions.

MR. PINNEY: Okay.

EXAMINATION

By Vice-Chair Gardner:

Q. Mr. Fletcher, let's start with this last issue about the change in title with respect to the easements, and I know we've gone over that, but -- so the title is -- so the easement -- if one were searching the records of the local county clerk, one would see no change in the easement title during this whole period; is that correct?

A. Well, you know, and the practice varied, but many times these easements were not recorded.

Q. Okay. Does -- I would think that there's value to the easements, though, wouldn't you?

A. There certainly is value, and that's --

Q. But the easements are not being transferred?
A. The beneficial interests, the rights and the benefits and burdens are transferred but being leased back. But in our view, Windstream still needs to be record holder. Take the pole attachment agreements, they're not a traditional recorded instrument, but we need to continue to be the party recognized by the counterparty, which is frequently -- and when we're the user of other people's poles, the power companies. So when we talk -- we also use the retained title concept talking about pole agreements.
And so we continue to need to be the recognized party of interest to occupy the poles, to maintain the poles. And if we were no longer recognized as a record interest under those pole agreements, the owners would say you don't have a right to access them.
Q. Yeah. And I'm not questioning that you would ultimately -- in the other version in which I thought it was was the easements and pole agreements and all that were being transferred, but they're being retained, so, I mean, that's fine with the IRS and --
A. They understand that.

Q. Okay. I didn't understand the renewal issue from the -- so the tenant has the exclusive right to renew the lease after 15 years for four renewal terms; is that right?
A. Correct.
Q. Okay. And so I didn't understand what you were saying about, you know, the parties coming together and -- but the tenant will -- in other words, the ILECs will have the exclusive right to renew those leases for five -- for four five-year terms after that?
A. Correct.
Q. Was there -- was there a -- has there been a change in an IRS ruling? I guess we know that there wouldn't have been a change from Congress, but was there any change that allowed this to be -- the REIT concept to be applicable here? I know you-all requested a private letter ruling. Was there another ruling or anything that broadened scope or made it more applicable to you-all, or is this a tool that theoretically you-all could have used five years ago, for example?
A. Correct. Theoretically, we, as the -- I'm not in -- steeped in the history of the IRS regulations here, but as I became familiar with it,

this is a logical extension of historical IRS precedent for what constitutes a real estate interest and they theoretically could have made this determination five years ago if someone had asked them to.

Q. Okay. And not only do -- will the individual ILECs not guaranty any debt, they will have no obligation to pay the rent?

A. Correct.

Q. Okay. Will -- and the CSL will be a publicly traded LLC, I think you said?

A. It -- the publicly traded entity will be a corporation.

Q. Okay.

A. It needs to be a corporation. The immediate subsidiaries will --

Q. Will be LLCs?

A. -- be LLCs.

Q. And those are not publicly traded?

A. No, those will not be publicly traded.

Q. Okay. Because be sole -- the sole owner of those will be the CSL corporate?

A. Correct. They'll all be wholly owned.

VICE-CHAIR GARDNER: Okay. Okay. That's all I have. Thank you.

MR. OVERSTREET: No redirect, Your Honor.
VICE-CHAIR GARDNER: Anybody have -- yes, sir.
MR. GILLESPIE: Thank you, Mr. Vice-Chairman.

RECROSS-EXAMINATION

By Mr. Gillespie:
Q. I do have one follow-up question.
A. Uh-huh.
Q. There was a series of discussions that you had with Mr. Pinney and with Mr. Gardner about title to pole agreements --
A. Uh-huh.
Q. -- and beneficial interest to pole agreements. The pole agreements you were referring to are pole agreements that are held by Windstream for attachment to other parties' poles, correct?
A. Correct.
Q. And with respect to the pole agreements that Windstream has with -- for example, with members of KCTA, those are matters that will be wholly owned, if I may use that term, by Windstream, correct?
A. Our interest in those will be transferred to the CSL too.
Q. Your interest --
A. But I was focused on the other side of the

equation, where we -- we're typically a net user of other people's poles. That's been a hot topic in this proceeding, but we are -- tend to be a nine-to-one user of other people's poles.

Q. So who will be the holder of title to the pole agreements between Windstream and KCTA?

A. We expect those to be -- remain in the name of Windstream. We don't see any reason for the members of your association to interact with CSL.

Q. And the beneficial interest of those pole agreements lies where?

A. Well, the beneficial interest will be sold to CSL and then immediately and exclusively leased back to Windstream for an up to a 35-year term. So there is a residual beneficial interest that solely resides in CSL, but for the foreseeable future Windstream has the exclusive rights and benefits of that beneficial interest through the lease is how I would characterize it.

So I think the short answer to your question is you will continue to deal with Windstream as you do today.

MR. GILLESPIE: Nothing further.

VICE-CHAIR GARDNER: Any further questions of this -- yes, sir.

MR. PINNEY: I just have some --

VICE-CHAIR GARDNER: Sure. Post-hearing things.

MR. PINNEY: Post-hearing.

VICE-CHAIR GARDNER: Sure.

MR. PINNEY: And one apology. I think I referred to Mr. Gunderman as Gunderson a few times, so my apologies --

MR. GUNDERMAN: No problem.

MR. PINNEY: -- to you. I started referring to you as the previous witness when I realized the mistake, but I apologize for getting your name incorrect.

Mr. Overstreet, Mr. Crittenden, I think that we've already gone over a few of the data requests, but here is some additional information that we would like. One would be the -- I think Mr. Gunderman discussed this, the fair value analysis of the assets that was used to determine the lease payments. I know it was preliminary, but if we can -- if the Commission could have that.

Maybe a response to how the assets will be booked, the transfer of the assets will be booked for the purposes of ratemaking, particularly the pole methodology, if that's the case, or --

MR. OVERSTREET: I'm sorry, I did not follow that.

MR. PINNEY: Like how the assets would be booked on Windstream's books.

MR. OVERSTREET: Oh, okay. Okay.

MR. PINNEY: If they're going to be booked any differently. I mean, and if they're not, then just state so.

The anticipated value of the assets that will be -- that would be left in Kentucky Windstream East and West that are not transferred to CSL.

MR. OVERSTREET: And do you want that broken down East and West?

MR. PINNEY: Yes, please.

A description of how the rate of return is calculated in the pole attachment formula. I mean, I know this might reach back to the 1980s, but an explanation of that would be appreciated.

And that should be it from us.

Commission Staff has no further questions of this witness.

VICE-CHAIR GARDNER: Okay. You're free to go. Thank you, sir. Appreciate it.

THE WITNESS: Thank you.

VICE-CHAIR GARDNER: Mr. Rubin -- excuse me.

And that is your last witness?

MR. OVERSTREET: Yes, Your Honor, that is our last witness.

MR. RUBIN: Yes. Thank you, Mr. Chairman. The Communications Workers of America calls Randy Barber to the stand.

MR. OVERSTREET: I'm sorry, Mr. Barber.

MR. BARBER: That's all right.

* * *

RANDY BARBER, called by the Communications Workers of America, having been first duly sworn, testified as follows:

VICE-CHAIR GARDNER: Please have a seat and state your full name, please.

THE WITNESS: My name is Randy Barber.

VICE-CHAIR GARDNER: And, Mr. Barber, with whom are you employed?

THE WITNESS: I'm employed by my own firm, which is called the Center for Economic Organizing. I am here on behalf of the Communication Workers of America as a consultant.

VICE-CHAIR GARDNER: And what is your address, please, your office address, please?

THE WITNESS: Office address is 6539 Laurel Avenue, Suite 204, Takoma Park, Maryland, with a K.

VICE-CHAIR GARDNER: This is minor, but in your testimony I see it says your address on Laurel is 6935.

THE WITNESS: Didn't I say that?

VICE-CHAIR GARDNER: No, sir. I think you said 6 -- 6359. Sorry.

MR. RUBIN: It is --

THE WITNESS: Dyslexic. Six -- six -- that is correct.

VICE-CHAIR GARDNER: 6935?

THE WITNESS: Uh-huh.

VICE-CHAIR GARDNER: Okay. Thank you. You may ask. Sorry.

MR. RUBIN: I caught the same thing. That's okay.

DIRECT EXAMINATION

By Mr. Rubin:

Q. Mr. Barber, have you prepared written direct testimony for this case?

A. Yes, I have.

Q. And attached -- well, first, the questions and answers in the testimony, are they true and correct to the best of your knowledge?

A. Yes, they are.

Q. Do you have any corrections in those

questions and answers?
A. I do not.
Q. If I were to ask you those questions, would your answers be as shown therein?
A. Yes.
Q. And attached to your testimony were four schedules. Are those documents that you received from Windstream that you have copied?
A. Yes.
Q. And are those true and accurate copies of those documents?
A. Yes, they are.
MR. RUBIN: Thank you.
Mr. Vice-Chair, I would move Mr. Barber's testimony into evidence and make him available for cross-examination.
VICE-CHAIR GARDNER: Thank you. I'm not sure the order in this case. Mr. Gillespie, do you have questions or do you --
MR. GILLESPIE: No questions.
VICE-CHAIR GARDNER: Mr. Overstreet.
MR. OVERSTREET: No questions, Your Honor.
VICE-CHAIR GARDNER: Mr. Pinney.
MR. PINNEY: Just a few.

CROSS-EXAMINATION

By Mr. Pinney:

Q. Good afternoon.

A. Good afternoon.

Q. You raised several concerns about the proposed transaction in your prefiled testimony that was filed with the Commission. Has anything you've heard today or in the rebuttal testimony that was filed by Mr. Gunderman alleviated any of your concerns or addressed any of your concerns?

A. Well, certainly one, and that actually was contained in his rebuttal, which is that the lease payments are, in fact, according to Mr. Gunderman, going to be tax deductible. Looking at it, at least as far as, you know, we could understand it, it was -- that was a question. There are other questions that remain.

Q. Okay. And to clarify, the fact that the lease payments might be tax deductible, does that alleviate some of your concerns about the cash flow, the free cash flow?

A. It certainly addresses it, although, again, in his explanation of the -- what the -- in fact the impact on cash flow was, I'm actually still trying to disentangle that.

MR. PINNEY: Okay. All right. No further questions, Your Honor.

VICE-CHAIR GARDNER: Do you have any questions?

COMMISSIONER BREATHITT: No questions.

VICE-CHAIR GARDNER: One second, please, Mr. Barber.

I don't have any questions, so thank you.

So Mr. Barber is free to go unless there's any other questions. Thank you, Mr. Barber.

THE WITNESS: Thank you.

VICE-CHAIR GARDNER: So this concludes the taking of evidence today.

There are certain post-hearing data requests. Does the order provide how many days in which to submit those, Mr. Overstreet?

MR. OVERSTREET: My failing memory says no, but I'm -- it's subject to being --

MR. PINNEY: It does not, Your Honor.

MR. GILLESPIE: I don't think so.

VICE-CHAIR GARDNER: Okay. So my understanding is you would like an order by --

MR. OVERSTREET: I don't think it's my preference, I think --

VICE-CHAIR GARDNER: Okay.

MR. OVERSTREET: -- it's the --

MR. PINNEY: Your Honor -- Your Honor, we have docketed this as a transfer under 278.020 out of an abundance of caution, if that's what the Commission concludes.

VICE-CHAIR GARDNER: It's 60 days.

MR. PINNEY: Well, we -- it's statutorily, from the filing date, we have -- the Commission has to issue an order on or before December 5th.

VICE-CHAIR GARDNER: Or grant an extension, right?

MR. PINNEY: The -- no, sir; this --

VICE-CHAIR GARDNER: This is the extension?

MR. PINNEY: This is the extension date.

VICE-CHAIR GARDNER: Okay. All right.

MR. OVERSTREET: Of course, I mean, if the Commission were to determine that no approval is required, then the --

MR. PINNEY: It would extend past, but out of an abundance of caution, I think we established --

MR. OVERSTREET: No, I understand why you --

MR. PINNEY: In our order establishing this procedurally --

MR. OVERSTREET: Sure.

MR. PINNEY: -- we noted that.

MR. OVERSTREET: Surely.

VICE-CHAIR GARDNER: Okay. So, given that, how many days do you want -- do you need for your post-hearing data?

MR. OVERSTREET: May I just confer --

VICE-CHAIR GARDNER: Sure.

MR. OVERSTREET: -- with my client briefly?

VICE-CHAIR GARDNER: Of course.

MR. OVERSTREET: With the Commission's indulgence, could we have until the 21st? That would be a week from tomorrow.

MR. PINNEY: No objection from Commission Staff.

VICE-CHAIR GARDNER: Okay. So -- and tell me about briefs. Are you anticipating no brief or briefs or what's the pleasure of the parties?

MR. OVERSTREET: We have not discussed that. I think we probably would like to file a brief.

VICE-CHAIR GARDNER: Okay. Typically here we do simultaneous briefs, so what's a reasonable length of time? Three days?

MR. OVERSTREET: You mean three days after the data requests are filed?

VICE-CHAIR GARDNER: So --

MR. OVERSTREET: I think -- let's see. Well, I think the calendar decides it for us. Could we -- the 21st is it next Friday. If we could have to the following Wednesday, which will be three business days, that would be the last working day before Thanksgiving. Is that --

VICE-CHAIR GARDNER: That works.

MR. OVERSTREET: -- acceptable?

VICE-CHAIR GARDNER: Mr. Rubin?

MR. RUBIN: Whatever would help the Commission we will do. Yeah, as long as we're not going -- well, whatever. Thanksgiving is just another day on the calendar sometimes, so yeah. That's fine, we can do that.

MR. OVERSTREET: Will that work for Staff?

MR. PINNEY: You-all get it done before Thanksgiving, I've gotta read it on Thanksgiving, so I mean, that works perfectly, yes.

VICE-CHAIR GARDNER: All right. So is there -- so again, three days -- three business days to -- for the post-hearing data requests, which is the 21st.

MS. HARWARD: 26th for the briefs.

VICE-CHAIR GARDNER: And 26th for the briefs.

MR. OVERSTREET: Twenty-first for the -- for the --

VICE-CHAIR GARDNER: Post-hearing data requests and 20 --

MR. OVERSTREET: -- response to those data requests?

VICE-CHAIR GARDNER: Yep. Yep.

MR. OVERSTREET: Yes, sir. Thank you.

VICE-CHAIR GARDNER: Okay. Thank you all. Any further business?

Okay. We are adjourned. Thank you all.

MR. RUBIN: Thank you.

(Hearing concluded at 3:39 p.m.)

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STATE OF KENTUCKY.)
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COUNTY OF JEFFERSON)

We, Laura J. Kogut and Jennifer R. Janes, Notaries Public within and for the State at Large, commissions as such expiring 25 July 2015 and 16 May 2015 respectively, do hereby certify that the foregoing hearing was taken at the time and place stated and for the purpose in the caption stated; that witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the hearing was reduced to shorthand writing in the presence of the witnesses; that the foregoing is a full, true, and correct transcript of the hearing; that the appearances were as stated in the caption.

WITNESS my hand this 17th day of November 2014.

Laura J. Kogut
Registered Merit Reporter
Certified Realtime Reporter
KY CCR 20042BF060
Notary Public, State at Large

Jennifer R. Janes
Registered Professional Reporter
Certified Realtime Reporter
Notary Public, State at Large