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PUBLIC SERVICE  
COMMISSION

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

In the Matter of

CMN-RUS, INC.

COMPLAINANT

v.

WINDSTREAM KENTUCKY EAST, LLC

RESPONDENT

**WINDSTREAM KENTUCKY EAST, LLC'S RESPONSES  
TO SECOND SET OF REQUESTS FOR INFORMATION  
FROM PUBLIC SERVICE COMMISSION**

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In Response to the Public Service Commission's Second Set of Requests for Information, Windstream Kentucky East, LLC ("Windstream East"),<sup>1</sup> hereby states as follows:

1. Refer to Windstream East's response to Commission Staff's First Request for Information (Staff's First Request), Item 1 and WIN0304. Provide the total number of poles included in the applications identified in WIN0304 during each period shown in the tables.

ANSWER: The total number of poles included in the applications identified in WIN0304-305 during each period shown in the tables provided at WIN7686.

Witness Responsible for Answer: Joyce Latham

2. Identify the total number of poles in Kentucky owned or controlled by Windstream East and any affiliate of Windstream East, including those poles identified in response to Staff's First Request, Item 9 that are located in Kentucky.

ANSWER: The total number of poles in Kentucky owned or controlled by Windstream East and any affiliate of Windstream East, including those poles identified in response to Staff's First Request, Item 9 that area located in Kentucky is 185,680.

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<sup>1</sup> Windstream Kentucky East, LLC has used the abbreviations herein that were used in the Public Service Commissions' Second Set of Requests for Information.

Witness Responsible for Answer: Joyce Latham

3. Refer to Windstream East's response to Staff's First Request, Item 5. State the typical time period during which the following portions of the procedure for processing pole attachment applications are completed by Windstream East (assuming there is no delay for the payment of invoices by the applicant and each application is for 25 pole attachments):

- a. From when the Permitting Team receives the application to when the application is sent to the OSP Engineering Managers and OSP Engineers;
- b. From when the application is sent to the OSP Engineering Managers and OSP Engineers to when the application is sent to the Engineering Contractor;
- c. From when the application is sent to the Engineering Contractor to when the application is sent back to the OSP Engineering Managers and OSP Engineers to review the survey work;
- d. From when the application is returned to the OSP Engineering Managers and OSP Engineers following the survey work to when the application is first referred to the construction contractor for a bid or, if no bid is necessary, to complete the make-ready work; and
- e. From when the application is first referred to the construction contractor until the completion of the make-ready work by the construction contractor.

ANSWER:

- a. The application is sent the same day.
- b. The application is sent to the Engineering Contractor the same day it's received by OSP Engineering or up to three days after.

- c. Within 30 days.
- d. Assuming the prospective attacher has paid the estimated charges, it is sent within 3-5 days.
- e. Assuming the third party attacher transfers timely, on average, it takes 60 days.

Witness Responsible for Answer: Joyce Latham, Ashley Sanders

4. If the time periods provided in response to Request No. 3 above do not account for any material step or period from the time Windstream East receives the applications to the time Windstream East's construction contractors complete their make-ready work, please describe the step and identify the time it typically takes to complete the step.

ANSWER: All material steps and periods in the application process are accounted for in Windstream East's Response to Request No. 3.

Witness Responsible for Answer: Joyce Latham, Ashley Sanders

5. Refer to Windstream East's response to Staff's First Request, Item 5 in which Windstream East discusses the role of Third Party Attachers.

- a. State when Third Party Attachers are notified of the need to perform make-ready work;
- b. State how Third Party Attachers are notified of the need to perform make-ready work; and
- c. Identify the period during which each Third Party Attacher in Fayette County is currently required to complete its make-ready work pursuant to any agreement with Windstream East or a parent, sister, or other affiliated company.

ANSWER:

- a. A Third Party should be notified that Make Ready is required once the Make Ready Estimate has been paid.
- b. If Third Party Make Ready is required, it is the prospective attacher's responsibility to notify that party.
- c. The Pole Attachment Agreements do not specify a time period.

Witness Responsible for Answer: Joyce Latham, Ashley Sanders

6. Refer to Windstream East's response to Staff's First Request, Item 5 in which Windstream East discusses make-ready work performed by its construction contractor. State whether the make-ready work performed by Windstream East's construction contractor includes work for Third Party Attachers and, if so, state why some make-ready is performed by Windstream East's construction contractors on behalf of Third Party Attachers and other work is not.

ANSWER: Windstream East's construction contractors do not perform make ready work for any Third Party Attachers.

Witness Responsible for Answer: Ashley Sanders

7. Refer to Windstream East's response to Staff's First Request, Item 5 in which Windstream East states "[t]he Windstream OSP Engineering Manager then updates the Excel tracker with the JobTrac number, Windstream internal application number, and whether a permit is required." Describe the "permit" referred to in that response and state when it would be required and how it would be obtained.

ANSWER:

"Permit" means a permit from a county, city, or state that would permit Windstream East to construct communications facilities within that county, city, or state's right-of-way (a "Right-

of-Way Permit”). In Kentucky, as with all states, utilities must obtain permission before building within the right-of-way. Thus, a permit is always required.

The Right-of-Way Permit process is different with every county, city, or state. Generally, there is an application process whereby Windstream East must provide engineering specifications explaining the work to be performed and the exact coordinates of the placement of the aerial or underground facilities. Once the permit application is approved Windstream East has permission to build in the right-of-way.

A Lexington Fayette Urban County Government Right-of-Way Permit cost \$100 and must include a start and stop date for the make ready work. Windstream East does not apply for permits with LFUCG until after CMN pays the make ready estimate. This ensures its permits do not expire prior to the completion of building.

Witness Responsible for Answer: Joyce Latham, Ashley Sanders

8. Refer to Windstream East’s response to Staff’s First Request, Item 15 in which Windstream East indicated that “[t]here are currently five ongoing projects in Lexington: KIH, Mobilite (ATT), Crown Castle; FiberTech, and CMN.”

- a. State whether Windstream East would accept pole attachment applications containing up to 300 poles in total from each of those entities in each rolling 30-day period;
- b. State whether Windstream East has the capacity to review applications, including the processing of the application, the completion of survey work and the completion of make-ready work, in the time periods identified in response to Item 3 and Item 4 above assuming KIH, Mobilite

(ATT), Crown Castle, FiberTech, and CMN each submitted applications containing a total of 300 poles during each rolling 30-day period; and

- c. If not, state the time periods Windstream East contends would be necessary to review those applications, including the time necessary to process those applications, complete the survey work, and complete the make-ready work, and explain the basis for Windstream East's contention as to the necessary time periods.

ANSWER:

- a. Windstream East would accept pole attachment applications containing up to 300 poles in total from each of those entities in each rolling 30-day period.
- b. Receiving applications for 1,500 poles in a 30-day period would place a great burden on Windstream East's resources in Lexington. Currently, Windstream East does not have the capacity to review and approve or reject 1,500 applications within the fourteen day period CMN is requesting. Windstream would not be able to complete the survey or make ready construction timely if all 1,500 poles were applied for at the same time.
- c. It takes 900 hours of work to perform engineering surveys for 1,500 poles. On average, it would take one crew 2,400 hours to perform the make ready construction for 1,500 poles. There are 240 business hours in a forty-five-day period. Triple D has five total crews under its control in Lexington-- three in-house, and two subcontractor crews. If Triple D assigned all five of its crews solely to these projects, on average, it could perform construction

make ready on 600 poles in a forty-five-day period. If 1,500 poles were applied for in a thirty-day period, then those 1,500 poles would be expected to be ready for the attacher to attach to within forty-five days. However, Triple D does not solely work on a single project. Requesting that Triple D did complete make ready construction on 1,500 poles within a forty-five-day period is impractical and unreasonable.

Witness Responsible for Answer: James Lloyd, Ashley Sanders

9. State the maximum total number of applications that Windstream East contends it could review, including the processing of the applications, the completion of survey work, and the completion of make-ready work, in the time periods identified in response to Item 3 and Item 4 above assuming that each application contains the maximum number of requests for pole attachments allowed by Windstream East.

ANSWER: The maximum total number of applications that Windstream East contends it could review in the time periods referenced is twelve.

Witness Responsible for Answer: Ashley Sanders

10. State the maximum total number of applications that Windstream East contends it could review, including the processing of the applications, the completion of survey work and the completion of make-ready work, in the time periods established by the Federal Communications Commission's regulations assuming that each application contains the maximum number of requests for pole attachments allowed by Windstream East.

ANSWER: The maximum total number of applications that Windstream East contends it could review in the time periods referenced is twelve.

Witness Responsible for Answer: Ashley Sanders

11. State whether any representative of Byers Engineering has indicated to Windstream East or its affiliates in the last year and a half that Byers Engineering does not have the capacity to perform additional survey work related to new pole attachments on behalf of Windstream East.

ANSWER: Byers Engineering has not indicated that it does not have additional capacity to perform additional survey work related to new pole attachments on behalf of Windstream East.

Witness Responsible for Answer: Ashley Sanders

12. State whether any representative of Windstream East or its affiliates have had any communication, whether in writing or orally, with any representative of Byers Engineering within the last year and a half regarding Byers capacity to perform additional survey work related to new pole attachments on behalf of Windstream East. If so, please describe each such communication in detail by:

- a. Describing when the communication took place;
- b. Identifying those involved in the communication on behalf of Windstream East and Byers Engineering and their positions;
- c. Describing the content of the communication and any response with respect to Byers Engineering's capacity; and
- d. If such communications are in writing, regardless of form, then please provide such communications.

ANSWER: Windstream East has not had any communications with Byers Engineering regarding Byers performing additional survey work related to new pole attachments.

Witness Responsible for Answer: Ashley Sanders

13. State whether any representative of Triple D Communications has indicated to Windstream East or its affiliates in the last year and a half that Triple D Communications does not have the capacity to perform additional survey work related to new pole attachments on behalf of Windstream East.

ANSWER: Triple D has not indicated that it does not have additional capacity to perform additional survey work related to new pole attachments on behalf of Windstream East.

Witness Responsible for Answer: Ashley Sanders

14. State whether any representative of Windstream East or its affiliates have had any communication, whether in writing or orally, with any representative of Triple D Communications within the last year and a half regarding Triple D Communications capacity to perform additional make-ready work related to new pole attachments on behalf of Windstream East. If so, please describe each such communications in detail by:

- a. Describing when the communication took place;
- b. Identifying those involved in the communication on behalf of Windstream East and Triple D Communications and their positions;
- c. Describing the content of the communication and any response with respect to Triple D Communications' capacity; and
- d. If such communications are in writing, regardless of form, then please provide such communications.

ANSWER: Windstream East has not had any communications with Triple D regarding performing additional Make Ready work related to new pole attachments.

Witness Responsible for Answer: Ashley Sanders

15. Refer to the Testimony of James Lloyd at pages 6 and 7 in which he indicates that outsourcing the review of the surveys and the make-ready work could result in increased liability to Windstream.

- a. Identify all civil actions against Windstream East or any other subsidiary of Windstream Services, LLC, in the state of Kentucky in the last 5 years that alleged the type of liability referred to in the testimony of James Lloyd at pages 6 and 7.
- b. State whether and, if so, why Windstream East contends that it cannot obtain security against such risk by including an indemnity, defense, and hold harmless agreement; a requirement to obtain insurance; a requirement to list Windstream East as an additional insured in any agreement with independent contractors retained to perform such work; or some combination of the above.

ANSWER:

- a. A list of civil actions against Windstream East or any other subsidiary of Windstream Services, LLC, in the state of Kentucky in the last 5 years that alleged the type of liability to Windstream is provided at WIN7687.
- b. Windstream can and would obtain indemnity, defense, and hold harmless clause in any agreement it enters into with CMN in Kentucky along with insurance requirements. While these clauses eventually provide legal protection, there are other considerations. When accidents occur, plaintiffs do not know or seek to know what pole attacher must indemnify what pole owner. The plaintiff sues the pole owner as the lead defendant, then sues all

attachers, they sue any contractors and any and all parties possibly involved or connected to that accident.

- c. Windstream as the pole owner is typically the first named defendant in these types of lawsuits. Companies do not proactively offer to indemnify other parties regardless. The seeking party must tender a demand for indemnity. This takes time and resources. Based on CMN's hostility towards Windstream it seems highly unlikely that it would proactively tender defense or indemnity. It is more likely that Windstream would have to crossclaim against CMN to force the acceptance of defense and indemnity. That would cause Windstream to suffer additional time and resources.

Windstream attempts to maintain a positive relationship with the citizens in the local communities it provides services in. That relationship hinges on reliability and safety. If frequent accidents are occurring because of CMN, or if CMN lines along Windstream poles are causing safety hazards or hurting citizens then this could hurt Windstream's credibility and relations with the citizens of Lexington to decline. It also places a strain on Windstream's credibility with the LFUCG, and with Commission Staff, which is equally as important.

Witness Responsible for Answer: James Lloyd

16. State whether Windstream Services, LLC, or any subsidiary or affiliate of Windstream Services, LLC, owns or controls poles in any state in which the Federal Communications Commission regulates pole attachments because the state has not exercised reverse preemption. Describe how Windstream Services, LLC, or any subsidiary or affiliate of

Windstream Services, LLC, handles pole attachment applications that exceed the 300 poles in each rolling 30-day period in those states.

ANSWER: There is no FCC regulation that excludes a utility from limiting the number of poles it will accept in a 30-day period.

Witness Responsible for Answer: James Lloyd

17. Refer to the Testimony of Ashley Sanders at page 3 and page 4, which states, “[a]ll surveys and applications must be reviewed by Windstream to ensure CMN is not illegally attaching to poles or placing attachments to poles in an unsafe manner or improper manner.”

- a. State whether Windstream East or Windstream Services, LLC, or its subsidiary ever assign other engineers, whether from another area, an affiliated company an affiliated contractor, or otherwise, to assist the OSP Engineering Managers and OSP Engineers responsible for pole attachments in a given area with their review of surveys and make-ready work.
- b. If so, describe the circumstances under which that would occur and why.
- c. If not, state whether it would be possible under any circumstances and why or why not.

ANSWER:

- a. Windstream Services, LLC does not assign internal engineering resources to other areas, other affiliated companies, affiliated contractors, or others to perform pole attachment make ready work in areas to which they were not originally assigned.
- b. Not applicable.

- c. This would not be possible as Windstream Services, LLC assigns a specified number of internal engineering resources to certain geographic areas based on expected need. If some of these employees were transferred to other areas, that would leave their originally assigned areas without necessary resources.

Witness Responsible for Answer: Ashley Sanders

18. Refer to the Testimony of Daniel King at page 4 in which he indicates that Windstream East is skeptical that CMN will appropriately honor new agreements to pay costs associated with Windstream East's review of applications for pole attachments.

ANSWER: As CMN has a history of non- and late-payment, Windstream is concerned that this practice will continue into CMN's obligations for future payments. In particular, Windstream is concerned that the increased volume of make ready estimates that would arise from processing 1,500 poles per month, will only increase CMN's practice of non- and late-payment.

Witness Responsible for Answer: Daniel King

19. State what type of security, if any, Windstream East contends would be necessary to ensure CMN's payment of costs incurred in reviewing the applications in this matter, including the processing of the applications, the completion of survey work, and the completion of make-ready work, and explain the basis for that contention.

ANSWER:

As is custom in the industry, the only security Windstream typically has to encourage payment is that the make ready construction does not start until the make ready estimate has been paid. Failure to pay or failure to pay on time will result in delays for the Attacher. The request of further assurances, such as paying a retainer or bond prior to submitting the application would be

a drastic break from industry standard. The reason this is not standard is likely because it is near impossible to estimate the cost of make ready until someone has been to each pole and assessed the cost-creating the estimate. As such, Windstream is not willing to speculate about the amount of security that would be required to ensure CMN paid the cost of make ready.

Witness Responsible for Answer: James Lloyd

20. Refer to the Testimony of Daniel King at page 4 in which he indicates that CMN should be made to honor its prior agreements with Windstream KDL, LLC “before Windstream extends the company further credit.” State whether Windstream KDL, LLC, and Windstream East maintain separate corporate forms.

ANSWER: Windstream KDL, LLC and Windstream East are separately incorporated and are both subsidiaries of Windstream Communications, LLC.

Witness Responsible for Answer: James Lloyd

**VERIFICATION**

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

  
James Lloyd  
Litigation Counsel  
Windstream

STATE OF ARKANSAS )

COUNTY OF PULASKI )

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

  
NOTARY PUBLIC

EXPIRATION: 09-01-21

NOTARY ID: 12383725



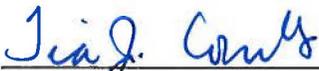
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**CERTIFICATE OF SERVICE**

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

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*Counsel for Respondent,  
Windstream Kentucky East, LLC*

### Windstream Kentucky East

Month/Year	Pole Count
Jan-15	60
Feb-15	231
Mar-15	279
Apr-15	350
May-15	604
Jun-15	1,400
Jul-15	610
Aug-15	656
Sep-15	805
Oct-15	610
Nov-15	305
Dec-15	172
<b>2015 Totals</b>	<b>6,082</b>

Month/Year	Pole Count
Jan-16	384
Feb-16	361
Mar-16	330
Apr-16	488
May-16	553
Jun-16	253
Jul-16	415
Aug-16	468
Sep-16	714
Oct-16	1,528
Nov-16	1,578
Dec-16	906
<b>2016 Totals</b>	<b>7,980</b>

Month/Year	Pole Count
Jan-17	713
Feb-17	476
Mar-17	390
Apr-17	490
May-17	379
Jun-17	627
Jul-17	452
Aug-17	569
Sep-17	365
Oct-17	361
Nov-17	392
Dec-17	206
<b>2017 Totals</b>	<b>5,420</b>

Month/Year	Pole Count
Jan-18	371
Feb-18	367
Mar-18	483
Apr-18	270
May-18	471
Jun-18	379
Jul-18	380
Aug-18	353
<b>2018 YTD Totals</b>	<b>3,074</b>

Case Caption	Case Number
Crase Lawn Care, Inc. vs. Windstream Communications, LLC, et al.	Jessamine Circuit Court, Civil Action No. 15-CI-759
Richard and Sherri Shipley vs. Windstream Communications, LLC	Allen Circuit Court, Civil Action No. 17-CI-00155
Shelton, Ricky vs. Windstream Communications, LLC, et al.	Clinton Circuit Court, Civil Action No. 16-CI-00158
East KY Mobile Movers, Inc. vs. Windstream Communications, LLC, et al.	Pike Circuit Court, Civil Action No. 18-CI-00461