

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

RECEIVED

DEC 04 2018

PUBLIC SERVICE  
COMMISSION

In the Matter of

CMN-RUS, INC.

COMPLAINANT

v.

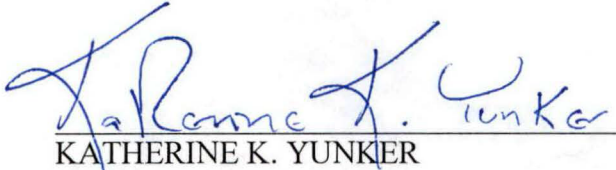
WINDSTREAM KENTUCKY EAST, LLC

RESPONDENT

**CMN-RUS, INC.'s AND WINDSTREAM KENTUCKY EAST, LLC's**  
**JOINT MOTION FOR SETTLEMENT APPROVAL**

Come the parties, CMN-RUS, Inc. ("CMN") and Windstream Kentucky East, LLC ("WKE"), by counsel, and, in accordance with ¶6 of the 8/7/18 Scheduling Order and 807 KAR 5:001, § 20, hereby request the approval of the Commission for their proposed settlement of this complaint case. Attached hereto is the parties' Settlement Agreement. The parties' intended resolution and settlement of disputes includes a Pole Attachment License Agreement ("PAA") and First Amendment thereto ("FA") which the parties have entered into and which will govern wireline attachments by CMN to WKE poles on a going-forward basis. Concurrently herewith, the PAA and FA are being submitted to the Commission with a Joint Motion for Confidential Treatment. The resolution reflected in the Settlement Agreement is a fair, just, and reasonable basis, that is agreeable to both parties, for resolving disputes between them and avoiding or minimizing future disputes.

WHEREFORE, the parties request that the Commission enter an order approving the Settlement Agreement, and also retaining jurisdiction and keeping this case open for the purposes and time period specified in the Settlement Agreement.



KATHERINE K. YUNKER  
WILLIAM J. GEORGE  
McBRAYER, McGINNIS, LESLIE &  
KIRKLAND PLLC  
201 East Main Street, Suite 900  
Lexington, KY 40507  
(859) 231-8780  
kyunker@mmlk.com  
wgeorge@mmlk.com  
*Counsel for Complainant,  
CMN-RUS, Inc.*



CASEY C. STANSBURY  
TIA J. COMBS  
MAZANEC, RASKIN & RYDER CO., LPA  
230 Lexington Green Circle, Suite 605  
Lexington, KY 40503  
(859) 899-8499  
(859) 899-8498 – Fax  
cstansbury@mrrlaw.com  
tcombs@mrrlaw.com  
*Counsel for Respondent,  
Windstream Kentucky East, LLC*

## **CMN-WKE Settlement Agreement**

1. By this Settlement Agreement, the parties — CMN-RUS, Inc. (“CMN”), a company organized and existing under the laws of the State of Indiana, and Windstream Kentucky East, LLC (“WKE”), a company organized and existing under the laws of the State of Delaware — document their proposed resolution of Kentucky PSC Case No. 2018-00157, in which CMN is the complainant and WKE is the respondent. The parties agree to jointly submit this Settlement Agreement to the Kentucky PSC for its approval, and cooperate with each other and to make every reasonable effort to obtain that approval.
  
2. Both parties acknowledge and represent that a crucial part of the consideration for this settlement for each of them is their entry into a Pole Attachment License Agreement (“PAA”) and First Amendment (“FA”) thereto. By the PAA, the parties have established, going forward, their respective rights and obligations and the rates, terms, conditions, and procedures for WKE’s providing CMN access to its poles in Kentucky for the purpose of CMN attaching wireline facilities thereto; by the FA, the parties have created a Simplified Attachment Request and License Process (“SARLP”) to address CMN’s submission of applications for attachment to a large number of poles in connection with its build-out in the Lexington-Fayette Urban County (“LFUC”) area. The parties acknowledge and agree that the PAA will govern CMN’s wireline attachments to WKE’s poles, and the PAA and FA will govern CMN’s wireline attachments to WKE’s poles in the LFUC area — instead of WKE’s CATV Pole Attachment Tariff, P.S.C. KY No. 11 (“the WKE Tariff”). It is the parties’ understanding that the PSC’s approval is not required for the PAA and FA; however, if the PSC’s approval is required for the PAA, the FA, or both agreements, the parties agree to cooperate with each other and to make every reasonable effort to obtain that approval.

3. Each party (a) agrees that during the period before September 1, 2019, or the termination of the FA (ending WKE's obligation to process the increased pole application count), whichever comes later ("the Initial Period"), either party may immediately take to the PSC any complaint, issue, or dispute over the operation of the PAA or FA or about the other party's performance thereunder, and (b) waives, during the Initial Period, the PAA Section 25 requirement of prior steps before raising any issue, dispute, or complaint with the PSC.
4. CMN agrees that, if the PSC approves this Settlement Agreement in its entirety, and upon entry of its order giving that approval, then its requests in its Complaint initiating Case No. 2018-00157 for declarative or injunctive relief relating to the prospective operation or application of the WKE Tariff will be moot and it will not further assert or pursue any right or request for such relief relating to the WKE Tariff in this proceeding.
5. The parties agree that the PSC should retain jurisdiction and keep Case No. 2018-00157 open through the Initial Period to consider complaints, claims, or disputes about operation, application, or performance of the PAA, FA, or SARLP brought to it by either party. The parties agree to request that the PSC retain jurisdiction and keep Case No. 2018-00157 open for such purposes; CMN represents that the PSC's granting that request is of particular importance to it. Each party also (a) agrees to take all feasible steps and otherwise cooperate with the other party in expediting the PSC's consideration and final action on any such complaint, claim, or dispute, and that any 360-day period applicable from 807 KAR 5:006, §22(3) does not begin to run until the complaint, claim, or dispute is raised with the PSC, and (b) waives any requirement that the PSC take final action in this proceeding before May 11, 2019. Nothing in this paragraph shall waive any rights or defenses held by the party

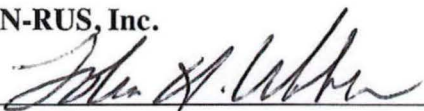
opposing any such complaint, claim, or dispute other than the defense that the complaint claim or dispute is outside the time period described in 807 KAR 5:006 § 22(3).

6. The parties agree that Case No. 2018-00157 should be closed and any portions of CMN's initial Complaint not already affirmatively disposed of by final action of the PSC should be dismissed with prejudice at the later date of: (a) the end of the Initial Period if there are no complaints, claims, or disputes then pending before the PSC or (b) the PSC's final action on any complaint, claim, or dispute filed in Case No. 2018-00157 and pending at the end of the Initial Period. Each party also agrees (a) that the other may notify the PSC when the end of the Initial Period has occurred and (b) to make periodic reports that the PSC may require about progress or performance under the SARLP until expiration of the Initial Period.
7. In Case No. 2018-00157, both parties referred to an ongoing dispute over unpaid invoices for make-ready relating to CMN attachments to Duke Energy poles in Indiana. WKE's affiliate, Windstream KDL, LLC ("KDL"), has an intermediary role between Duke Energy and CMN relating to those attachments. WKE represents that KDL is willing to make good-faith efforts to help CMN resolve that dispute, including to seek Duke Energy's participation in mediation or direct negotiations with CMN, and even to participate in such mediation or negotiations if required by Duke Energy. In reliance on that representation and in consideration of this settlement, CMN agrees (a) to make good-faith efforts to resolve the dispute over the Duke Energy invoices, including to participate in any mediation or direct negotiations with Duke Energy that CMN, KDL, or any WKE affiliate might be able to arrange and (b) to negotiate in good faith with KDL to amend their Pole Attachment Rights/Dark Fiber Rights Exchange Agreement to include appropriate provisions for CMN's indemnification and defense of KDL by December 31, 2018.

8. It is expressly acknowledged and agreed by both parties that this Settlement Agreement is the compromise of contentions that are disputed and denied between them, and that the execution of this Settlement Agreement and its submission to the PSC for approval are not to be construed as a waiver, modification, or retraction of any of the positions of the parties. Furthermore, the parties expressly agree that this Agreement cannot and shall not be used (a) as evidence of alleged rights, duties, or obligations of either of the parties or (b) as precedent for or an admission, waiver, or estoppel as to any claims or issues brought in any proceeding other than Case No. 2018-00157.
9. The parties also acknowledge, represent, warrant, and agree as follow:
  - a. The effective date of this Settlement Agreement is December 3, 2018.
  - b. If the PSC approves part(s) but not the entirety of this Settlement Agreement or declines to keep open Case No. 2018-00157 as requested by the parties, then the approved portions of this Settlement Agreement will be enforceable between the parties if and only if each party notifies the other in writing within five (5) working days of the entry of the PSC order regarding approval of the settlement that it accepts the PSC order as entered and waives any right of rehearing, appeal, or judicial review of the order.
  - c. This Settlement Agreement, and the rights and obligations contained in it, shall be governed and construed under the laws of Kentucky, without reference to its choice of laws rules.
  - d. This Settlement Agreement shall be construed as if the parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one party.

- e. Each party represents and warrants that it is an entity duly organized, validly existing in the state of its organization, and in good standing under the law of Kentucky. Each party warrants that it has full power and authority to execute and deliver this Settlement Agreement and to make the representations and perform its obligations hereunder.
- f. This Agreement may be executed using facsimile signatures and any facsimile version of the Agreement shall have the same legally-binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed and original.

CMN-RUS, Inc.

By: 

Name: John H. Weber

Title: Chief Financial Officer

Date: 12/4/18

Windstream Kentucky East, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

- e. Each party represents and warrants that it is an entity duly organized, validly existing in the state of its organization, and in good standing under the law of Kentucky. Each party warrants that it has full power and authority to execute and deliver this Settlement Agreement and to make the representations and perform its obligations hereunder.
- f. This Agreement may be executed using facsimile signatures and any facsimile version of the Agreement shall have the same legally-binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed and original.

**CMN-RUS, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Windstream Kentucky East, LLC**

DocuSigned by:  
By: Joyce Latham

3B94FD8090FA44F...  
Name: Joyce Latham

Title: Director OSP Engineering

Date: 12/4/2018