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PUCO

October 28, 2014

Barcy McNeal, Secretary
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, OH 43215-3793

Re: *In the Matter of the Application of Windstream Holdings, Inc. et al. to Transfer*
PUCO Case No. 14-1438-TP-ATR

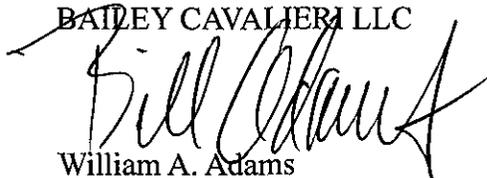
In the Matter of the Application of Talk America Services, LLC to Provide
Competitive Local Exchange and Competitive Telecommunications Services
PUCO Case No. 14-1439-TP-ATR

Dear Ms. McNeal:

Enclosed are the original and one (1) copy of *Applicants' Memorandum Contra Motion to Intervene and Comments of the Communications Workers of America* to be filed in the above-referenced matters. Please time-stamp the additional copies of the *Memorandum Contra* and return them to our courier.

Please let me know if you should have any questions. Thank you for your assistance.

Very truly yours,

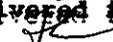
BAILEY CAVALIERI LLC

William A. Adams

WAA/sg

Enclosure

cc(w/enclosure): Matthew R. Harris, District 4 Counsel
Communications Workers of America, AFL-CIO
20525 Center Ridge Road, Suite 700
Cleveland, OH 44116

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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Windstream) Case No. 14-1438-TP-ATR
Holdings, Inc., et al. to Transfer)

In the Matter of the Application of Talk America) Case No. 14-1439-TP-ACE
Services, LLC to Provide Competitive Local)
Exchange and Competitive Telecommunications)
Services

**APPLICANTS' MEMORANDUM CONTRA MOTION TO INTERVENE
AND COMMENTS OF THE COMMUNICATIONS WORKERS OF AMERICA**

The Applicants¹ hereby oppose the Motion to Intervene and Comments of the Communications Workers of America ("CWA"). CWA's motion is not timely and does not raise any substantive issues of concern, as explained below, and should be denied.

On August 19, 2014, the Applicants filed their applications with the Public Utilities Commission of Ohio ("Commission"). Both applications were subject to the thirty-day automatic approval process, which meant that they would have been automatically approved on September 19, 2014. However, on September 17, 2014, the Commission issued an Entry suspending automatic approval for sixty days. The new automatic approval date is November 16, 2014. On October 22, 2014, CWA filed its motion to intervene.

CWA's motion to intervene is not timely. The motion should have been filed within fifteen days of the filing of the applications, which was September 3, 2014. The certification rule specifically provides a fifteen-day intervention deadline for thirty-day automatic approval

¹ "Applicants" refers to Windstream Holdings, Inc., Windstream Ohio, Inc., Windstream Western Reserve, Inc., Intellifiber Networks, Inc., Windstream KDL, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, Inc., Windstream Norlight, Inc., PAETEC Communications, Inc., Talk America, Inc., US LEC Communications LLC, Windstream Communications, Inc., Windstream NuVox Ohio, Inc., Windstream NTI, Inc., Communications Sales and Leasing, Inc. and Talk America Services, LLC.

applications. Ohio Adm. Code § 4901:1-6-08(C)(1). The purpose of the rule is to receive prompt input from interested persons in cases that are subject to short automatic approval time frames. This same rationale and deadline should apply to thirty-day automatic approval applications filed under the changes in operations rule (Ohio Adm. Code § 4901:1-6-29), like Case No. 14-1438-TP-ATR, even though that rule does not specifically address intervention.

Because CWA did not timely file its motion to intervene, the motion only can be granted upon a showing of extraordinary circumstances. Ohio Adm. Code § 4901-1-11(F). CWA's motion does not make any such showing. Indeed, the motion makes clear that there are no extraordinary circumstances. CWA mentions (page 5) that it has been monitoring this and parallel proceedings in other jurisdictions yet did not move to intervene earlier. CWA filed a protest in Pennsylvania on September 24, 2014, significantly earlier than the motion at issue here.

Even if a showing of extraordinary circumstances were not required, the motion to intervene should be denied because it could unduly prolong and delay these cases. Ohio Adm. Code § 4901-1-11(B)(3). Timely approval is important to the Applicants' plans to close the transactions in the first quarter of 2015. Any significant delay in approval beyond the November 16, 2014 auto approval date could have a negative impact on the closing.

Not only is the CWA's motion untimely, but the operational and financial issues mentioned in the comments lack merit and are not reasons to delay approval of the applications. Operationally, CWA's main concern (pages 6 – 8) is that approval of the applications will somehow impair its members' access to easements and poles. That is not the case. The Applicants will transfer their beneficial rights and interests to Communications Sales and Leasing, Inc. ("CSL"), but they will retain title to the easements and rights-of-way. There will be

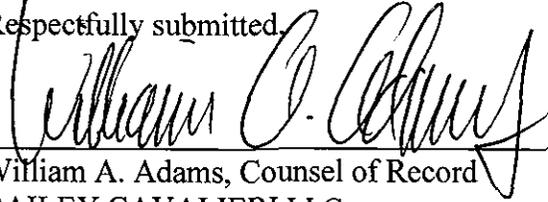
no change in the nature, scope or manner of use of the easements and rights-of-way. The Applicants will continue to be responsible for the provision of pole attachments to third-parties, and the Applicants will continue to be subject to all of the Commission's rules regarding pole attachments. The Applicants will continue to have all obligations to secure rights-of-way and easements for line extensions. Employees will access these facilities in precisely the same way that they do now. There will be no change.²

Similarly, CWA's financial concerns (pages 9 – 10) lack merit. The essence of its financial concerns is that the Transaction will not enhance the Applicants' competitive position in the marketplace. This misses the entire thrust of the applications, which is to accelerate the Applicants' transformation from a rural voice provider to an advanced communications and technology services company by increasing the amount of capital available to invest. In fact, the transaction will reduce the Applicants' long-term debt by approximately \$3.2 billion which will result in increased free cash flow, thereby providing the Applicants more financial flexibility. The increased financial flexibility will allow the Applicants to increase their target capital expenditures from 11-13% to 13-15% of total revenue. The anticipated impact for Ohio is to increase the Applicants' capital spending by millions of dollars annually to upgrade and expand communications and broadband networks and strengthen infrastructure resulting in enhanced services to customers. No regulatory commitment is needed because the Applicants already have the market incentive to accelerate this transformation in Ohio.

² This will be the situation for 35 years if the Applicants exercise their unilateral renewal rights in the lease. What happens at the end of the lease will occur very far into the future. It is impossible to anticipate now what the communications industry will be like in 35 years.

The Applicants respectfully request that the Commission deny CWA's Motion to Intervene.

Respectfully submitted,



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Attorneys for Applicants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Memorandum Contra Motion to Intervene and Comments of Communications Workers of America* was served this 28th day of October, 2014, by regular U.S. Mail upon:

Matthew R. Harris, District 4 Counsel
Communications Workers of America, AFL-CIO
20525 Center Ridge Road, Suite 700
Cleveland, OH 44116



William A. Adams, Counsel of Record
Attorney for Applicants