

FILE

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January 23, 2013

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, Ohio 43215-3793

Re: Strip, Hoppers, Leithart, McGrath & Terlecky Co., LPA v. Windstream Ohio, Inc., et al.  
Case No. 12-3291-TP-CSS

Dear Sir or Madam,

Enclosed please find an original and ten (10) copies of Complainant Strip, Hoppers, Leithart, McGrath & Terlecky Co., L.P.A.'s Memorandum in Opposition to Motion to Dismiss to be filed in the above action. Please time stamp extra copies of the memorandum and return them using the enclosed self-addressed envelope.

Do not hesitate to contact me if you have any questions. Thank you.

Sincerely,



Nicholas W. Reeves, Esq.

Encls.

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Strip, Hoppers, Leithart, McGrath  
& Terlecky Co., L.P.A.,

Complainant,

v.

Windstream Ohio, Inc., et al.,

Respondents.

Case No. 12-3291-TP-CSS

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**COMPLAINANT STRIP, HOPPERS, LEITHART, MCGRATH & TERLECKY CO.,  
L.P.A.'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS**

Complainant, Strip, Hoppers, Leithart, McGrath & Terlecky Co., L.P.A. (hereinafter "SHLM&T"), submits this memorandum in opposition to the Motion to Dismiss of Respondent Windstream Ohio, Inc. (the "Motion to Dismiss") filed by Respondent Windstream Ohio, Inc. (hereinafter "Windstream Ohio") on January 16, 2012. For the reasons stated herein, it is respectfully requested that the Court deny the Motion to Dismiss.

Windstream Ohio argues that it "has nothing to do with this Complaint and should be dismissed as a respondent" based on its assertion that it is not a party to the Customer Service Agreement and "has a defined service territory which does not include Columbus, Ohio or the Strip, Hoppers location." Despite this assertion, SHLM&T's inclusion of Windstream Ohio as a respondent in this action is appropriate in light of the express language of the Customer Service Agreement (the "Agreement"). Specifically, the preamble of the Agreement provides as follows:

This Customer Service Agreement ("CSA") is made by and between Windstream NuVox, Inc., a Delaware corporation, *and its affiliates* ("Company") having its principal place of business at 4001 Rodney Parham Rd., Little Rock, AR 72212 and the customer ("Customer"). (Emphasis added).

See Customer Service Agreement at 1, attached the Complaint as "Exhibit A."

By its own admission Windstream Ohio is an affiliate of Windstream NuVox Ohio, Inc. The opening paragraph of its Memorandum in support of its Motion to Dismiss states that “Complainant Strip, Hoppers, Leithart, McGrath & Terlecky Co., LPA (“Strip, Hoppers”) filed a Complaint on December 24, 2012 against Windstream Ohio *and its affiliate*, Windstream NuVox Ohio, Inc....” (Emphasis added). Furthermore, the Agreement does not further define the term “affiliate” as used therein. Although it may be true that Windstream Ohio has a defined territory that does not include Columbus, Ohio, part of SHLM&T’s Complaint is based on the breach of the Agreement, under which Windstream Ohio was clearly a party as an affiliate of Windstream NuVox Ohio, Inc.

Accordingly, as an affiliate of Windstream NuVox Ohio, Inc., Windstream Ohio is by definition a party to the Customer Service Agreement and subject to its terms. By failing to provide the service under the terms of the Customer Service Agreement, and by failing to take necessary steps to remedy the problems that arose, Windstream Ohio is a proper party to this action. The Motion to Dismiss therefore should be denied.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing **Plaintiff Strip, Hoppers, Leithart, McGrath & Terlecky Co., L.P.A.'s Memorandum in Opposition to Motion to Dismiss** was served upon the parties listed below by e-mail, this 23rd day of January, 2013.

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