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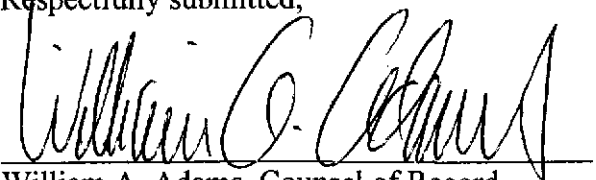
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|-----------------------------------|---|-------------------------|
| In the Matter of the Complaint of |) | |
| Bizcorp, LLC, et al., |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | Case No. 14-0372-TP-CSS |
| |) | |
| Windstream Communications, Inc. |) | |
| |) | |
| Respondent. |) | |

**MOTION TO DISMISS OF RESPONDENT
WINDSTREAM COMMUNICATIONS, INC.**

Windstream Communications, Inc. by its attorney and pursuant to Section 4901:1-12 of the Commission's rules, moves to dismiss the captioned Complaint for the reason that it was filed on behalf of a corporation and limited liability companies that are not properly represented by an attorney-at-law admitted to the practice of law in the State of Ohio. A memorandum in support of this motion is attached.

Respectfully submitted,



William A. Adams, Counsel of Record
BAILEY CAVALIERI LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215-3422
(614) 229-3278 (telephone)
(614) 221-0479 (fax)
William.Adams@baileycavalieri.com
*Attorneys for Respondent Windstream
Communications, Inc.*

MEMORANDUM IN SUPPORT

A Commission rule specifies that, in practice before the Commission, "[c]orporations must be represented by an attorney-at-law." Ohio Admin. Code § 4901-1-08(A). Bizcorp, LLC and certain of the other Complainants are limited liability companies organized under Ohio law, which is equivalent to a corporation for purposes of this rule as explained further below. One of the entities, National Check Cashers, is a registered trade name for Checks 2 Cash, Inc., which is an Ohio corporation. The Commission may not permit a corporation to institute a formal complaint unless an attorney-at-law admitted to practice in the State of Ohio represents the corporation. The Commission may not accept, and certainly should not process, any formal complaint brought by a corporation or limited liability company that is not represented by a qualified attorney-at-law.

It is the law of Ohio that a corporate body cannot act through its corporate officers rather than through an attorney-at-law to maintain litigation on the corporation's behalf. *Union Savings Assn. v. Home Owners Aid, Inc.* (1970), 23 Ohio St.2d 60. In *Sharon Village Ltd. v. Licking Cty. Bd. of Revisions* (1997), 78 Ohio St.3d 479, the Supreme Court of Ohio held that "[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." Thus, an attorney must prepare and file the complaint for a corporate owner. In the *Union Savings* case, the Court observed that "[a] corporation is an artificial person, created by the General Assembly and deriving the power, authority and capacity from the statutes." The Court held that "[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." *Id.* (syllabus par. 1).

Just as a corporation derives its power, authority and capacity from the statutes and is an artificial person, so it is with limited liability companies. Limited liability companies are governed by Chapter 1705 of the Ohio Revised Code just as corporations are governed by Chapter 1701 of the Ohio Revised Code. Limited liability companies are separate legal entities from their owners just as corporations are.

The practice of law generally has been defined as encompassing three types of activities: "(1) legal advice and instructions to clients advising them of their rights and obligations; (2) preparation of documents for clients, which requires legal knowledge not possessed by an ordinary layman; and (3) appearing for clients in public tribunals and assisting in the interpretation and enforcement of law, where such tribunals have the power and authority to determine rights of life, liberty, and property according to law." *Mahoning Cty. Bar Assn. v. The Senior Serv. Group, Inc.* (Bd. Commrs. Unauth. Prac. 1994), 66 Ohio Misc.2d 48, 52. The filing of a formal complaint with the Commission pursuant to Ohio Rev. Code §§ 4905.26 or 4927.21 clearly fits the third category of activities described in that case. The Commission, as a public tribunal, has the right to determine the rights and responsibilities of public utilities *vis-à-vis* their customers in the formal complaint process. It is for that reason that the filing of a formal complaint before the Commission by a corporation or limited liability company only may be undertaken by an attorney-at-law.

The Supreme Court of Ohio has confirmed and expanded upon these precedents and has repeated its holding in the *Sharon Village* case that "[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." *Worthington City School Dist. Bd. of Edu. v. Franklin County Bd. Of Revision* (1999), 85 Ohio St.3d 156, 160; *see also Cincinnati Bar Assn. v. Clapp*

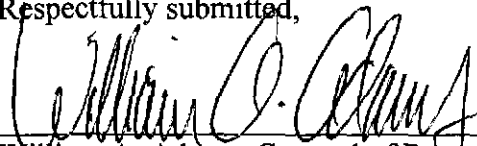
& Affiliates Financial Services, Inc. (2002), 94 Ohio St.3d 509 (a corporate officer was held in contempt for engaging in the unauthorized practice of law).

The Court also has declared that the practice of law includes the conduct of litigation and those activities which are incidental to appearances in court. *Akron Bar Assn. v. Greene* (1997), 77 Ohio St.3d 279. In that case, the Court reviewed its holding in *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23 (paragraph one of the syllabus), where it said, "The practice of law *** embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts ***." The preparation of a formal complaint pursuant to Ohio Rev. Code §§ 4905.26 or 4927.21 clearly meet this test for determining whether such activity constitutes the practice of law.

The Supreme Court of Ohio found that the preparation, signing, and filing of documents instituting formal complaints before the Commission constitute the practice of law. *Cleveland Bar Assn. v. Woodman*, 98 Ohio St.3d 436, 2003-Ohio-1634. The Commission has cited and relied on that precedent. *Terry Metzenbaum v. AT&T Corp.*, Case No. 03-142-TP-CSS, Entry, May 22, 2003, p. 4.

For all of the foregoing reasons, Respondent Windstream Communications respectfully requests that this Complaint be dismissed. In addition, the Commission should not process the Complaint further unless and until the Complainants are represented by an attorney-at-law.

Respectfully submitted,



William A. Adams, Counsel of Record

BAILEY CAVALIERI LLC

10 West Broad Street, Suite 2100

Columbus, OH 43215-3422

(614) 229-3278 (telephone)

(614) 221-0479 (fax)

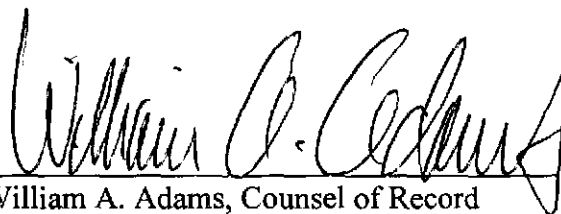
William.Adams@baileycavalieri.com

*Attorneys for Respondent Windstream
Communications, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Motion to Dismiss of Respondent Windstream Communications, Inc.* was served this 26th day of March, 2014, by regular U.S. Mail upon Complainants as follows:

Bizcorp, LLC
c/o John Chaffin, President
1335 Dublin Road, Suite 118-A
Columbus, OH 43215



William A. Adams, Counsel of Record