

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

MOTION TO INTERVENE AND COMMENTS OF
COMMUNICATIONS WORKERS OF AMERICA

The Communications Workers of America ("CWA") hereby moves the Public Utilities Commission of Ohio ("Commission") pursuant to Revised Code § 4903.221 and Commission Rule 4901-1-11, to intervene as a party to the above-captioned proceeding. As set forth in the Memorandum in Support, this motion is timely; CWA has a real and substantial interest in these proceedings; the disposition of these proceedings without its participation may impair or impede its ability to protect that interest; and its participation in these proceedings will contribute to a just result. CWA further submits that no existing party represents its interest in these proceedings and that granting its motion to intervene will not unduly delay these proceedings or unjustly prejudice any existing party.

In its Memorandum, CWA also provides initial Comments concerning the proposed transaction.

Respectfully submitted,



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MEMORANDUM IN SUPPORT AND COMMENTS

INTERVENTION

On August 19, 2014, Windstream Holdings, Inc., and its Ohio subsidiaries ("Windstream") initiated this proceeding to seek Commission approval of the transfer of certain unspecified assets to Communications Sales and Leasing, Inc. ("CSL"). CSL would then be spun off to the shareholders of Windstream, creating a new, publicly traded company completely independent of Windstream.

According to the Application and public statements made about the transaction by Windstream, Windstream would lease back the assets that it sells to CSL for a period of 15 years, with options to extend the lease to a total of 35 years.

As consideration for the transfer of assets, CSL would assume (or pay off) certain debt obligations of Windstream.

CSL would be organized as a Real Estate Investment Trust ("REIT") which would provide the shareholders of CSL with certain tax advantages.

On September 12, 2014, Windstream filed a supplemental letter in which it purported to explain some of the tax and accounting implications of the proposed transaction. This letter marked the first, and to CWA's knowledge the only, instance in which Windstream has made such information available to the public.

On September 17, 2014, the Attorney Examiner suspended this Application for 60 days, or until November 17, 2014.

The Communications Workers of America ("CWA") represents approximately 60 employees of Windstream in Ohio. Many of the employees represented by CWA also are customers of Windstream. This proposed transaction and the decisions of this Commission with

respect thereto are likely to have a direct and immediate impact on the people CWA represents, both as employees and as customers of Windstream in Ohio.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Windstream's employees will or may be adversely affected by this case. In particular, the proposed transaction would involve the transfer of nearly all of Windstream's field assets (real estate, wires, cables, poles, conduits, etc.) to an independent company and then the lease back of those same assets.

As explained in CWA's Comments, below, this raises serious concerns about continued safe access to these facilities. CWA would note that Windstream has not provided a copy of the actual lease agreement, but only a summary that, on its face, states that it is a "preliminary outline of the structure and certain key provisions" of the lease, "based on a draft ... circulated on 7/28." Project Rite, Outline of Master Lease, July 28, 2014 (appended to Application and referred to herein as "Draft Lease Outline"), p. 1 and footnote 1.

In addition, as explained more fully below, the proposed transaction raises serious financial concerns that became apparent only in Windstream's letter of September 12, 2014.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

In addition, the Commission's Rules (4901-1-11(B)(5)) add a fifth criterion: the "extent to which the person's interest is represented by existing parties."

CWA meets each of these five standards for intervening in this case.

First, CWA has a substantial interest in this case, as discussed above. It is seriously concerned about the impact on its members of the proposed transaction. CWA and its members will or may be directly and seriously affected if the proposed transaction is approved.

Second, CWA will limit the issues it raises to those that are squarely within the Commission's jurisdiction to consider. CWA will focus its attention on the financial and operational impacts of the proposed transaction. CWA will not seek to have the Commission address any labor relations issues or other matters that are outside the scope of the Commission's jurisdiction.

Third, granting CWA the ability to intervene will not unduly prolong or delay the proceeding. CWA is a frequent participant before state and federal regulatory commissions. CWA has access to experienced regulatory counsel and financial analysts who will be called upon, if necessary, to represent its interests in this case, and it will not engage in conduct that would unnecessarily delay this proceeding.

Fourth, CWA will bring a unique perspective to this proceeding. CWA is monitoring and/or participating in parallel proceedings involving this same transaction in other jurisdictions. Thus, CWA may have access to information that might not otherwise be available to parties in Ohio.

Fifth, no other party represents the interests of CWA. The perspective of a utility's employees is fundamentally different than the interests of other parties. Utility employees are often the first people affected if a utility experiences financial difficulties. Utility employees are

most directly – and potentially seriously – affected if the utility engages in unsafe and other unwise operational practices. In short, utility employees can provide a unique perspective on numerous issues that may be directly affected by the proposed transaction.

COMMENTS

Operational Concerns. Windstream proposes to transfer certain assets to a new company (CSL) that will not be regulated as a public utility. Specifically, Windstream states that it proposes to transfer the following assets to CSL: "all of the WIN Companies' distribution systems consisting of fiber optic cable, copper cable, conduits and conduit systems, poles, attachment hardware (bolts, lashing, etc.), guy wires, pedestals, concrete pads, central office land and buildings, signal repeaters, and amplifiers, together with all replacements, modifications, alterations, and additions, located in Ohio." Application, p. 18. A footnote then excerpts from the transaction "any distribution facilities financed in partnership with the federal government through the American Recovery and Reinvestment Act." Id. The Application is silent as to how those excluded assets will be identified and segregated in Ohio.

In contrast, however, the outline of Draft Lease Outline includes much broader categories of property. Specifically, that document purports to include the following types of property: "central office land and buildings ... [and] all fiber optic cable lines, copper cable lines, conduits, telephone poles, attachment hardware (including bolts and lashing), guy wires, anchors, pedestals, concrete pads, amplifiers and such other fixtures and other items of property, including all components thereof (such as cross connect cabinets, Windstream outside plant mini-cabinet mounting post (WOMP), fiber distribution hubs, fiber access terminals and first entry fiber splice cases) ... [and] all Easements, Permits and Pole Agreements related to the Leased Property." Draft Lease Outline, p. 1.

Of particular note, the Draft Lease Outline includes easements, permits, and pole agreements, where the Application is silent as to those categories or property.

Windstream also states that it will lease those same assets back from CSL. Yet, there is no mention of the ability of CSL, which will not be a public utility or otherwise certificated by this Commission, to occupy public rights of way, hold utility easements, occupy space on poles or in conduits, or otherwise provide access to such facilities so that CWA members may safely operate, maintain, repair, and replace those facilities.

To the extent that Windstream Companies propose to transfer utility easements, poles, conduits, copper and fiber placed on poles or in conduits, CWA questions whether Windstream has the legal right to transfer such assets to an entity that does not hold a certificate of public convenience from this Commission. CWA further questions whether it is in the public interest to permit an uncertificated entity to own or control such assets.

CWA is concerned for the safety of its members in their ability to obtain unfettered and safe access to facilities located on easements or rights of way that are not held by a public utility, when the original purpose of the easement or right of way may have been limited to the provision of service by a public utility.

CWA also is concerned that Windstream may be attempting to transfer to a non-utility real estate interests that were acquired solely for public utility purposes. If such a transfer were to occur, CWA members who enter onto the property to operate, maintain, repair or replace facilities could be threatened with legal action, or otherwise prohibited from safely performing their duties, because the property was no longer owned by an entity with the legal status of a public utility.

Similarly, while the Application states that Windstream will retain all operational control of the assets, the Draft Lease Outline states: "Landlord may require Tenant ... to convey legal title to Landlord to any or all of the easements, permits and pole agreements provided that (i) Landlord has obtained all certificates, consents, approvals, licenses or permits necessary for Landlord to hold such legal title" Draft Lease Outline, p. 3.

The Application also fails to mention what happens at the end of the lease term. The outline, however, indicates that Windstream will lose control of the assets when the lease ends. Specifically, that document states: "Upon expiration or termination of the Master Lease, Tenant shall transfer the Communications Assets to the Successor Tenant for fair market value." Draft Lease Outline, p. 7. That provision then continues by noting that the Communications Assets include not only the assets subject to the lease, but also "electronics and other equipment owned by Tenant, ... any customer relationships ..., and, if requested by a Successor Tenant, all employees primarily dedicated to the maintenance, operation or support of the Affected Facility subject to existing collective bargaining agreements." Id.

Moreover, CWA would note that while the terms of the lease are critically important to ensuring the rights and property retained by Windstream, a complete copy of the lease has not been provided; and it is not even apparent that a final lease exists.

Financial Concerns. Windstream states that the proposed transaction will relieve it of \$3.2 billion in debt company-wide. Application, p. 13. No information is provided about the portion of this debt that is associated with Ohio retail operations or the current cash flow requirements associated with the Ohio portion of the debt.

The outline of the draft lease mentions (but the Application does not) that Windstream will incur an annual lease obligation estimated at \$650 million, escalating by 0.5% per year beginning in the fourth year. Draft Lease Outline, p. 2. No information is provided about the portion of that lease obligation that will be associated with Ohio retail operations, or how that amount would compare to current cash flow requirements for debt service.

Thus, it is not at all apparent that the proposed transaction would have a positive effect on Windstream's cash flow in Ohio. In fact, CWA is afraid that it is likely that the proposed transaction would have a negative effect on Windstream's cash flow in Ohio, making it less likely that Windstream would have funds available to improve service to Ohio consumers.

In particular, in most lease transactions, the lease payment provides the equivalent of a return on investment and depreciation on that investment to the Landlord, perhaps with some discounting for tax effects. Thus, CWA believes it is likely that Windstream's lease payments to CSL would effectively include cash payments roughly equivalent to depreciation and interest. In contrast, in an ownership model, depreciation expense does not require a cash outlay; thereby providing a potential source of free cash flow for new capital investment. It is not at all apparent, therefore, that the proposed transaction would increase the cash flow available to Windstream to invest in its Ohio operations.

Moreover, Windstream's letter of September 12, 2014, raises further financial concerns about the proposed transaction. As CWA understands the rather confusing letter, the sale and leaseback will not be treated as a lease for accounting purposes. It appears, therefore, that the Windstream companies would be required to take a write-off representing the discounted present value of the lease payments it would be making to CSL. There is no mention of the effect this would have on Windstream's shareholder's equity or its ability to raise capital in the future.

CWA notes, however, that Windstream's total shareholders' equity as of December 31, 2013, was \$840.2 million.¹ Thus, it appears likely that a write-off of the value of future lease payments could result in a significant reduction (or even complete elimination) of Windstream's shareholders' equity. There also is no mention of the effect this would have on Windstream's Ohio operations.

Moreover, the letter leaves unanswered questions about the tax effect of the transaction. The letter states that CSL will be able to take depreciation on the assets for tax purposes; but it does not mention whether Windstream will be able to deduct the lease payments for tax purposes. If the lease payments are not deductible, then the transaction could result in a significant increase in Windstream's tax expense (since it would lose depreciation and interest expense), which could severely affect its cash flow.

Once again, Windstream's filings with this Commission leave many unanswered questions, and those questions are critical to a full understanding of the operational and financial impacts of the proposed transaction on the Ohio utilities (and their customers and employees).

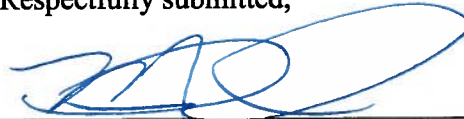
Finally, Windstream also claims that the transaction would enable it to "invest incremental capital to enhance broadband capabilities, accelerate their transition to an IP network and pursue additional opportunities to strengthen their infrastructure and provide enhanced services to customers." Joint Application, p. 12. No information is provided, however, about whether any such investment will be made in Ohio. If all other issues are resolved, such that the Commission can conclude that the transaction would be beneficial to Windstream in Ohio, the Commission should include a binding commitment for specific, additional capital investments in Ohio to benefit Windstream's retail customers.

¹ 2013 Annual Report of Windstream Holdings, Inc., available at: < <http://investor.windstream.com/investors/annuals-proxies.cfm> >.

CONCLUSION

WHEREFORE, CWA respectfully requests that the PUCO grant CWA leave to intervene and be made a party to this case, and to fully and carefully consider the Comments of CWA.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene was served upon the parties of record listed below this 22nd day of October, 2014, via U.S. mail, postage prepaid and/or electronic service:



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Summary: Motion Motion to Intervene, Memorandum in Support and Comments of
Communications Workers of America electronically filed by Mr. Matthew R Harris on behalf of
CWA