

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Chapter 11
)	
WINDSTREAM FINANCE CORP., <i>et al.</i> , ¹)	Case No. 19-22397 (RDD)
)	
Reorganized Debtors.)	(Formerly Jointly Administered under
)	Lead Case: Windstream Holdings, Inc.,
_____)	Case No. 19-22312)
)	
WINDSTREAM KDL, LLC)	
)	
Plaintiff,)	Adversary Proceeding
)	
v.)	Case No. 21-_____ (RDD)
)	
CMN-RUS, INC.)	
)	
Defendant.)	
_____)	

ORIGINAL COMPLAINT

The above-captioned debtors (the “Debtors”), as reorganized pursuant to and under the Plan (defined below) (collectively, the “Reorganized Debtors”), bring this Original Complaint against CMN-RUS, Inc. (“CMN”), seeking (1) reimbursement for excess payments by Windstream KDL, LLC (“Windstream KDL”) to CMN, (2) payment for CMN’s use of Windstream KDL’s Indianapolis site racks and power, and (3) payment for CMN’s outstanding invoices for fiber optic cable installation on a third-party’s utility pole network through Windstream KDL’s private contract with that third party, and respectfully alleges as follows:

¹ The last four digits of Reorganized Debtor Windstream Finance Corp.’s tax identification number are 5713. Due to the large number of Reorganized Debtors in these Chapter 11 Cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Reorganized Debtors’ claims and noticing agent at <http://www.kccellc.net/windstream>. The location of the Reorganized Debtors’ service address for purposes of these Chapter 11 Cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



NATURE OF THE ACTION

1. On February 25, 2019, the Debtors filed voluntary petitions for relief under title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). CMN submitted to the Bankruptcy Court its proof of claims, to which certain Debtors have objected, all of which is set forth in detail below. In pursuing some of these claims, however, CMN has not accounted for its own outstanding debts owed to Windstream KDL.

2. Prior to the filing of the bankruptcy petitions, Windstream KDL and CMN had entered into a number of contractual agreements for services that include the provision of rack space and power to each party’s benefit. Both Windstream KDL and CMN have used and continue to use rack space and power to deliver services to their respective customers. In general, the parties enjoy these services, which are mutually beneficial, in consideration for the provision of rack space and power at one another’s facilities.

3. Despite these contractual agreements, CMN overcharged Windstream KDL for excess rack space that Windstream KDL did not utilize. Based on information known to date, Windstream KDL inadvertently overpaid \$896,703.32 for services in Evansville, Indiana, that CMN did not provide or that should have been provided without charge, per the agreements. CMN therefore materially breached the parties’ agreement that CMN would provide free rack services to Windstream KDL in Evansville, Indiana, subject to certain power overages provisions.

4. In consideration of CMN’s provision of free rack space and power to Windstream KDL in Evansville, Windstream KDL provided CMN with free rack space and power at its Indianapolis, Indiana facility. Based on information known to date, CMN accrued \$259,747.51 in power overages and \$382,000 in rack space charges for sixteen racks (i.e., a number in excess of

the 10 racks to be provided free of charge per the parties' agreement) at the Indianapolis facility since 2008. Windstream KDL is entitled to payment from CMN for those accrued fees.

5. Finally, CMN is indebted to Windstream KDL for outstanding invoices for services Windstream KDL provided that are related to a third-party contract owned by Windstream KDL. Windstream KDL contracted with affiliates of third-party Duke Energy Corporation ("Duke Power") to have the right to attach fibers to Duke Power's network of poles, and CMN contracted with Windstream KDL to access that network. CMN is contractually obligated to pay for the installation of its fiber optic cables in Duke Power's network of utility poles through Windstream KDL. Based on information known to date, CMN has an outstanding balance of \$329,001.72 related to those services.

PARTIES

6. Windstream KDL is a limited liability company organized under the laws of the Commonwealth of Kentucky with its headquarters in the State of Arkansas. It is a leading provider of advanced network communications and technology solutions for consumers, businesses, enterprise organizations, and wholesale customers across the United States. Windstream KDL provides these solutions across a range of services including cloud computing, integrated voice and data services, internet security services, and consumer video services.

7. Upon information and belief, CMN is a corporation organized under the laws of the State of Indiana with its headquarters in the State of Indiana. It is engaged in, among other things, fiber optic communication services, and it offers internet, telephone, television, and data communication services. CMN's registered agent for service of process in Indiana is National Registered Agents, Inc., 334 North Senate Avenue, Indianapolis, IN 46204.

JURISDICTION AND VENUE

8. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. § 1334.

9. This Court has personal jurisdiction over CMN under Rule 7004(f) of the Federal Rule of Bankruptcy Procedure (the “Bankruptcy Rules”).

10. This adversary proceeding constitutes a “core” proceeding as defined in 28 U.S.C. § 157(b)(2)(A), (B) and (C). In the event that this or any other appropriate Court finds any part of this adversary proceeding to be “non-core,” Windstream KDL consents to the entry of final orders and judgments by this Court, pursuant to Rule 7008 of the Bankruptcy Rules.

11. Venue is proper under 28 U.S.C. §§ 1408 and 1409 because this adversary proceeding arises under and in connection with a bankruptcy case pending in this district.

12. This adversary proceeding is initiated under Bankruptcy Rule 7001(1) and (9), and 28 U.S.C. § 2201.

RELEVANT BACKGROUND

I. The Contracts

13. Throughout the tenure of their relationship, the parties have executed multiple agreements related to the provision of rack space, power, and shared infrastructure. Relevant here are the following agreements:

- a. the Collocation and Maintenance Agreement and its amendments (the “Collocation Agreement,” attached as Exhibit 1),
- b. the Rack Space Swap Agreement (the “Rack Swap Agreement,” attached as Exhibit 2).
- c. the Pole Attachment Rights/Dark Fiber Rights Exchange Agreement (the “Duke Power Agreement”),
- d. the Fiber Transport Services/Dark Fiber Rights Exchange Agreement (attached as Exhibit 3),
- e. the DWDM Capacity and Maintenance Agreement, and

f. the Fiber Exchange Agreement.

A. The Collocation Agreement

14. The parties entered the Collocation Agreement, with an effective date of February 7, 2005, for the purpose of Windstream KDL providing certain maintenance services. Collocation Agreement §§ 1, 3. In exchange for providing the maintenance services, Windstream KDL would receive a license from CMN to use its facilities. Collocation Agreement §§ 2, 7. In particular, CMN agreed to provide licenses for five racks and a power allotment at no additional charge to Windstream KDL at its Evansville facility (among other facilities). Collocation Agreement § 2 & Ex. A.

15. If Windstream KDL utilized more than the racks allotted under this agreement at any facility, CMN would be allowed to charge Windstream KDL \$500 per additional rack. Collocation Agreement § 4. Similarly, if Windstream KDL consumed additional power beyond its allotment, the parties created a formula for that cost coverage. Collocation Agreement § 4.

B. The Rack Swap Agreement

16. The parties also entered the Rack Swap Agreement for the purpose of providing each party with free rack space and 30 amps of power per rack at each other's respectively owned facility. Rack Swap Agreement § 1. Windstream KDL was entitled to ten racks and 300 amps of power at no additional charge at CMN's Evansville facility; CMN, in turn, was entitled to ten racks and 300 amps of power at Windstream KDL's Indianapolis facility. Rack Swap Agreement § 2. For any additional power used beyond the provided 300 amps, the parties agreed to a formula for determining that cost coverage. Rack Swap Agreement § 2.

17. In sum, under the Collocation Agreement and the Rack Swap Agreement, Windstream KDL was entitled to (and it was the intent of the parties that Windstream KDL have) free use of fifteen racks and a power allotment without charge from CMN.

C. The Duke Power Agreement

18. Finally, the parties entered into the Duke Power Agreement on February 7, 2005, for the purpose of CMN accessing Duke Power's utility poles in order to locate fiber optic cables on those poles through Windstream KDL's separate contract with Duke Power. Duke Power Agreement § 1.

19. Windstream KDL had contracted with Duke Power to access its utility poles for Windstream KDL's fiber optic cable. Duke Power Agreement § 1 & Ex. A. CMN wanted access to Duke's utility pole network as well and agreed to pay Windstream KDL a premium to piggyback off of its contract with Duke Power. Duke Power Agreement § 4. CMN notified Windstream KDL when it wanted to locate fiber optic cable along Duke's utility poles; if approved, Windstream KDL oversaw the installation and charged CMN all costs for said installation as well as an overhead allocation equal to 15% of the total costs. Duke Power Agreement § 4.

II. The Breaches

20. First, since December 2012 and continuing through September 2021, CMN has billed Windstream KDL \$1,008,687.32 for excess rack space in connection with CMN's Evansville facility. These charges were billed to Windstream KDL without accounting for the fifteen free rack spaces provided under the Collocation Agreement and the Rack Swap Agreement.

21. Based upon information and belief, Windstream KDL has used fewer than fifteen racks at the Evansville facility at all relevant times. And despite inadvertently paying those charges in full through September 2020 (in the amount of \$896,703.32), Windstream KDL disputes those charges in the amount of \$1,008,687.32 and demands a refund of \$896,703.32.

22. Second, based upon information and belief, CMN occupies sixteen racks of space at Windstream KDL's Indianapolis facility, eleven since 2008, followed by the addition of five

racks from 2009 through 2013.² This usage was in excess of the ten licensed racks under the Rack Swap Agreement. Thus, CMN has accrued \$382,000 in rack space fees at the Indianapolis facility.

23. Third, based upon information and belief, CMN has also accumulated power overages at Windstream KDL's Indianapolis facility since 2008, totaling \$259,747.51.

24. Fourth, Duke Power filed a proof of claim in Debtors' bankruptcy proceedings totaling \$1,134,043.69. *See* Claim No. 7261. Debtors obtained a reduction in the amounts owed to Duke Power to \$441,393.00 (the "Duke Settlement Payment"). In connection with that negotiated reduction, Debtors and CMN agreed that CMN would pay directly to Windstream KDL \$200,000.00 (the "CMN Settlement Payment") of the Duke Settlement Payment to account for fourteen of CMN's invoices that were encompassed by Duke's proof of claim against Windstream KDL. CMN has not yet paid Windstream KDL that settlement amount.

25. Fifth, based upon information and belief, CMN also owes Windstream KDL \$129,001.72 for outstanding invoices that are unrelated to the CMN Settlement Payment but that arise out of the Duke Power Agreement. CMN has failed to pay Windstream KDL for those services rendered.

III. The Plan, the CMN Proofs of Claim and the Claim Objections

A. The Plan

26. On April 1, 2020, the Debtors filed the *Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc., et al., Pursuant to Chapter 11 of the Bankruptcy Code* (as subsequently amended, the "Plan") [Docket No. 2243-1].

27. On June 26, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Windstream*

² These five racks were added on or about 6/10/2009, 8/15/2011, 5/7/2012, 7/24/2012, and 11/22/2013.

Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, confirming the Debtors' Plan [Docket No. 2243].

28. The Plan became effective on September 21, 2020 (the "Effective Date") [Docket No. 2527].

29. Pursuant to Article I.A.38 of the Plan, the deadline for objecting to Claims (as defined in the Plan), the "Claims Objection Deadline," "shall be on the date that is the later of (a) 180 days after the Effective Date and (b) such later date as may be fixed by the Bankruptcy Court." Based on the provisions of the Plan, the current Claims Objection Deadline is December 15, 2021 [Docket No. 199].

B. The CMN Proofs of Claim and the Claim Objections

30. CMN filed various pre- and post-petition proofs of claim against the Debtors. Specifically, CMN filed a pre-petition claim in the amount of \$432,439.00 (Claim No. 5161 against Windstream KDL), a pre-petition claim in an unliquidated amount (Claim No. 8710 against Windstream KDL), and a post-petition claim in the amount of \$100,933.36 (Claim No. 8713 against Windstream KDL).

31. On July 17, 2020, and in compliance with the *Order (I) Approving (A) Omnibus Claims Objection Procedures, (B) Omnibus Substantive Claims Objections and Form of Notice, and (C) Satisfaction Procedures and Form of Notice and (II) Waiving Bankruptcy Rule 3007(e)(6)* (the "Order Approving Omnibus Claims Objection Procedures") [Docket No. 1141], the Debtors filed the *Sixth Omnibus Objection to Amended Claims, Cross-Debtor Duplicate Claims, Equity Interest Claims, and No Liability Claims* (the "Sixth Omnibus Objection") [Docket No. 2317], which included an objection to Claim 5161 "because, among other reasons, the Debtors are unable to reconcile each purported liability with their books and records." *See* Sixth Omnibus Objection, ¶ 1. The Sixth Omnibus Objection further provides that the Debtors object to the claims listed on

Schedule 4 to the proposed order, which includes Claim 5161, because “the Debtors and their advisors have determined that such claims seek to recover amounts for which the Debtors are not liable.” *Id.* at ¶ 15. As set forth on Schedule 4 to the proposed order, “[p]ursuant to the Debtors’ books and records, no amounts are due and no liability exists for this claimant.” *Id.* at Schedule 4, p. 7.

32. On August 7, 2020, CMN filed its response to the Sixth Omnibus Objection [Docket No. 2379] in which CMN asserts that the Sixth Omnibus Objection should be denied.

33. On August 31, 2021, and in compliance with the Order Approving Omnibus Claims Objection Procedures, the Debtors filed the *Twentieth Omnibus Objection to the No Liability Claims, Substantively Duplicative Claims, and Claims to Be Modified* (the “Twentieth Omnibus Objection”) [Docket No. 184], which included objections to Claim 8710 and 8713 “because each purported liability cannot be reconciled with the Debtors’ books and records” *See* Twentieth Omnibus Objection, ¶ 1. The Twentieth Omnibus Objection further provides that the Debtors object to the claims listed on Schedule 1 to the proposed order, which includes Claim 8710 and Claim 8713, because “the Reorganized Debtors and their advisors have determined that such claims seek to recover amounts for which the Debtors are not liable” and such claims are “inconsistent with the Debtors’ books and records.” *Id.* at ¶¶ 11 and 13. As set forth on Schedule 1 to the proposed order, the Reorganized Debtors provide the following additional grounds for objecting:

Claim 8710. Pursuant to the Debtors’ books and records, no amounts are due and no liability exists for this claimant. This claim remains unliquidated as of the date hereof.

Claim 8713. Pursuant to the Debtors’ books and records, no amounts are due and no liability exists for this claimant. This claim alleges obligations related to power charges for facilities in Wolcott, Marion, and Seymour. However, the claimant owes the Reorganized Debtors on account of certain power payments for a facility in Indianapolis. In addition, the claimant owes the Reorganized Debtors for inadvertent payments the

Debtors made on account of fifteen (15) racks in Evansville that were to be free of charge pursuant to certain contract amendment(s). The Reorganized Debtors have provided materials for the claimant's review, including calculations.

Id. at Schedule 1, p. 1.

34. On September 22, 2021, CMN filed its response to the Twentieth Omnibus Objection [Docket No. 189] in which CMN asserts that the Twentieth Omnibus Objection should be denied.

CAUSES OF ACTION

COUNT I

(Breach of Contract: Overcharges as to Collocation Agreement and Rack Space Agreement)

35. Windstream KDL incorporates and realleges each of the allegations in the foregoing paragraphs as if set forth fully herein.

36. Windstream KDL performed all of its obligations under the Collocation Agreement and the Rack Swap Agreement.

37. CMN, however, has breached the Collocation Agreement and Rack Swap Agreement. CMN has, among other things, (a) overcharged Windstream KDL \$1,008,687.32 (through September 2021) for the provision of rack space in Evansville that should have been free to Windstream KDL, and (b) refused to issue a refund for Windstream KDL's inadvertent overpayment of \$896,703.32 despite being unjustly enriched by funds CMN did not earn.

38. These breaches violate at least Section 3 of the Collocation Agreement and Section 2 of the Rack Swap Agreement and have interfered with Windstream KDL's contractual right to free access to fifteen racks and power at CMN's Evansville facility.

39. Windstream KDL has satisfied all conditions precedent to seeking relief under the Collocation Agreement, including Section 18 thereof, and the Rack Swap Agreement,

including Section 14 thereof.

40. Windstream KDL has suffered and continues to suffer damages as a result of the breaches of contract.

41. Windstream KDL, therefore, is entitled to (i) a declaration that CMN breached the Collocation Agreement and Rack Swap Agreement, and (ii) monetary damages and/or offset or recoupment of monetary damages CMN is pursuing against Windstream KDL in CMN's proofs of claim.

42. Windstream KDL may claim greater damages once it better learns through discovery how CMN calculated certain invoiced charges.

COUNT II
(Unjust Enrichment)

43. Windstream KDL incorporates and realleges each of the allegations in the foregoing paragraphs as if set forth fully herein.

44. As a result of the conduct described in Count I, CMN has been unjustly enriched at the expense of Windstream KDL.

45. CMN has charged \$1,008,687.32 (through September 2021) and Windstream KDL inadvertently paid \$896,703.32 for rack space in connection with the Evansville facility. Those charges did not account for the fifteen racks provided to Windstream KDL under the Collocation Agreement and Rack Swap Agreement.

46. Windstream KDL disputed \$896,703.32 of those charges because CMN accepted payment for services it did not perform, but CMN refused to refund \$896,703.32 of those charges.

47. Windstream KDL has satisfied all conditions precedent to seeking relief under Collocation Agreement and Rack Swap Agreement.

48. Windstream KDL has suffered and continues to suffer damages as a result of CMN's unjust enrichment at the expense of Windstream KDL.

49. CMN should be required to disgorge the improper benefits that they unjustly obtained at the expense of Windstream KDL.

50. Windstream KDL, therefore, is entitled to monetary damages and/or offset or recoupment of monetary damages CMN is pursuing against Windstream KDL in CMN's proofs of claim.

51. Windstream KDL may claim greater damages once it better learns through discovery how CMN calculated certain invoiced charges.

COUNT III
(Declaratory Judgment – Evansville Facility Racks)

52. Windstream KDL incorporates and realleges each of the allegations in the foregoing paragraphs as if set forth fully herein.

53. A substantial controversy exists as to the parties' rights and obligations under the Collocation Agreement and Rack Space Agreement.

54. Windstream KDL therefore seeks the following declarations:

- a. Under the Collocation Agreement and the Rack Space Agreement, Windstream is entitled to licenses to 15 racks free of charge in CMN's Evansville facility.
- b. CMN invalidly charged \$1,008,687.32 for excess rack space in connection with CMN's Evansville facility for the time period of December 2012 to September 2021, and such amount is not due and owing to CMN.

COUNT IV
(Breach of Contract – Overdue Invoices for Rack Space and Power)

55. Windstream KDL incorporates and realleges each of the allegations in the foregoing paragraphs as if set forth fully herein.

56. Windstream KDL performed all of its obligations under the Rack Swap

Agreement.

57. CMN, however, has breached the Rack Swap Agreement. CMN has, among other things: (a) utilized sixteen racks at Windstream KDL's Indianapolis facility and accumulated \$382,000 of unpaid rack space fees, and (b) incurred power overages at Windstream KDL's Indianapolis facility and accumulated \$259,747.51 of unpaid power overage fees.

58. These breaches violate at least Section 2 of the Rack Swap Agreement.

59. Windstream KDL has suffered and continues to suffer damages as a result of the breaches of contract.

60. Windstream KDL, therefore, is entitled to (i) a declaration that CMN breached the Rack Swap Agreement, and (ii) monetary damages and/or offset or recoupment of monetary damages CMN is pursuing against Windstream KDL in CMN's proofs of claim.

COUNT V
(Declaratory Judgment – Indianapolis Facility Racks)

61. Windstream KDL incorporates and realleges each of the allegations in the foregoing paragraphs as if set forth fully herein.

62. A substantial controversy exists as to the parties' rights and obligations under the Rack Space Agreement.

63. Windstream KDL therefore seeks the following declarations:

- a. Since 2008, CMN has at all times used in excess of 10 racks in Windstream KDL's Indianapolis facility.
- b. CMN is responsible for license fees and power overages for its use of in excess of 10 racks in KDL's Indianapolis facility.

COUNT VI
(Breach of Contract – Duke Power Agreement)

64. Windstream KDL incorporates and realleges each of the allegations in the

foregoing paragraphs as if set forth fully herein.

65. Windstream KDL performed all of its obligations under the Duke Power Agreement.

66. CMN, however, has breached the Duke Power Agreement. CMN has, among other things, failed to pay \$129,001.72 in outstanding invoices to Windstream KDL for installation of CMN's fiber cables on Duke Power's network of utility poles. Additionally, CMN has not yet paid the CMN Settlement Payment to Windstream KDL.

67. CMN's breach violates at least Sections 4 and 6 of the Duke Power Agreement and have interfered with Windstream KDL's right to payment for services rendered to CMN at Windstream KDL's expense.

68. Windstream KDL has satisfied all conditions precedent to seeking relief under the Duke Power Agreement, including Section 25 thereof.

69. Windstream KDL has suffered and continues to suffer damages as a result of the breach of contract.

70. Windstream KDL, therefore, is entitled to (i) a declaration that CMN breached the Duke Power Agreement, and (ii) monetary damages and/or offset or recoupment of monetary damages CMN is pursuing against Windstream KDL in CMN's proofs of claim.

PRAYER FOR RELIEF

71. Windstream KDL respectfully requests that this Court enter a judgment granting the following relief:

- a) A declaration that CMN breached the Collocation Agreement;
- b) A declaration that CMN breached the Rack Swap Agreement;
- c) A declaration that CMN breached the Duke Power Agreement;

- d) A declaration that under the Collocation Agreement and the Rack Space Agreement, Windstream is entitled to licenses to 15 racks free of charge in CMN's Evansville facility;
- e) An award of \$896,703.32 as a refund for Windstream KDL's overpayment for racks in Evansville, Indiana, under the Collocation Agreement and the Rack Swap Agreement;
- f) A declaration that CMN invalidly charged \$1,008,687.32 for excess rack space in connection with CMN's Evansville facility for the time period of December 2012 to September 2021, and such amount is not due and owing to CMN;
- g) A declaration that Since 2008, CMN has at all times used in excess of 10 racks in Windstream KDL's Indianapolis facility;
- h) A declaration that CMN is responsible for license fees and power overages for its use of in excess of 10 racks in KDL's Indianapolis facility;
- i) An award of \$641,747.51 for CMN's use of sixteen racks with excess power charges in Indianapolis, Indiana;
- j) An award of \$129,001.72 for CMN's outstanding invoices and related debts concerning the Duke Power Agreement;
- k) An award of \$200,000.00 for the CMN Settlement Payment that CMN has not yet paid to Windstream KDL;
- l) An order sustaining the objections to Claim Nos. 5161, 8710, and 8713 for the reasons stated in this Complaint, the Sixth Omnibus Objection, and the Twentieth Omnibus Objection;
- m) A judgment that CMN take nothing on Claim Nos. 5161, 8710, and 8713;
- n) Attorneys' fees, costs, and expenses incurred in this Adversary Proceeding to the extent recoverable;
- o) Pre- and post-judgment interest up to the statutory maximum; and
- p) Any other relief that this Court may deem just, proper, or equitable under the circumstances.

Dated: October 22, 2021

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: /s/ James V. Leito IV
Richard Krumholz
Kristian W. Gluck
James V. Leito IV (*pro hac vice* pending)
NORTON ROSE FULBRIGHT US LLP
2200 Ross Avenue, Suite 3600
Dallas, Texas 75201-7932
Telephone: (214) 855-8000
Facsimile: (214) 855-8200
richard.krumholz@nortonrosefulbright.com
kristian.gluck@nortonrosefulbright.com
james.leito@nortonrosefulbright.com

COUNSEL FOR WINDSTREAM KDL, LLC

EXHIBIT 1

COLLOCATION AND MAINTENANCE AGREEMENT

This COLLOCATION AND MAINTENANCE AGREEMENT ("Agreement") is effective as of the 7th day of February, 2005 by and between Kentucky Data Link, Inc. ("KDL"), a Kentucky corporation, and Cjenergy MetroNet, Inc. ("CMN"), an Indiana corporation. KDL and CMN are sometimes referred to herein collectively as the "Parties" or individually as a "Party".

1. Purpose. CMN owns network transmission facilities (each individually a "Facility" collectively the "Facilities") at various locations throughout its fiber network. KDL has the expertise and ability to maintain the Facility sites. KDL and CMN wish to enter into an exchange of the right to use CMN Facilities for the performance of maintenance services as more particularly set forth below.
2. KDL Sites. Exhibit A sets forth a list of those Facilities where KDL wishes to obtain collocation space from CMN (each individually a "KDL Site" collectively the "KDL Sites"). In the future, the Parties may incorporate additional Facilities into this Agreement by amendment.
3. Collocation License. For each of the KDL Sites, CMN grants KDL a license to occupy, use and maintain rack spaces for purposes of installing, operating and maintaining KDL's equipment ("Licensed Space"). The Licensed Space for each of the KDL Sites is set forth in Exhibit A. As part of this license, at its sole cost, CMN shall provide thirty (30) amps of power to the Licensed Space ("KDL's Power Allocation") and heat, ventilation and air conditioning service to the Licensed Space sufficient to maintain an ambient temperature between fifty (50) and eighty (80) degrees Fahrenheit and to maintain the level of relative non-condensing humidity between five percent (5%) and ninety-five percent (95%).
4. Additional Services. KDL may request that CMN provide additional AC or DC power, backup power, space or racks at any KDL Site. Subject to its own operational needs, CMN shall use commercially reasonable efforts to accommodate any KDL request for additional services. CMN shall charge KDL Five Hundred Dollars (\$500.00) a month for any additional racks. For any power utilized by KDL beyond KDL's Power Allocation at a KDL Site, CMN shall invoice KDL based on the following formula without a mark up or an overhead allocation ("KDL's Portion"): [(A) divided by (B)] times (C) equals KDL's Portion, where (A) is the total number of additional breakered amps of power delivered to KDL's racks in excess of KDL's Power Allocation at the KDL Site; (B) is the total breakered amps of power delivered to all racks at the KDL Site (including KDL's racks); and (C) is the total power costs CMN incurs in connection with the KDL Site including the cost of breakered amps of power and power costs for common area power, such as power for HVAC usage. For example, assume that KDL has 2 racks at the KDL and has exceeded the KDL Power Allocation by 100 breakered amps of power. Further assume that at the KDL Site there are a total of 10 racks (including KDL's 2 racks) using a total of 1000 breakered amps of power (including KDL's 100 additional amps of power). Finally, assume that the total power costs incurred by CMN associated with the Evansville Facility in the example month is \$5,000. KDL's Portion for such month would be \$500 (100 divided by 1000 = .01 x \$5,000).

5. Installation. KDL shall be solely responsible for the installation and maintenance of any KDL equipment in a Licensed Space. KDL shall not install any equipment in a Licensed Space that overloads any electrical circuits or associated hardware. All KDL equipment located in a Licensed Space shall be maintained and operated by KDL in accordance with prudent telecommunications industry standards and procedures, in accordance with all applicable local, state and federal laws, ordinances and regulations.

6. Access. Subject to reasonable rules and regulations as may be promulgated by CMN from time to time, KDL shall have unescorted access to each KDL Site twenty-four (24) hours a day, seven (7) days a week for purposes of accessing the Licensed Space and performing KDL's obligations under this Agreement. CMN hereby grants KDL an easement of ingress and egress to extend KDL's network and equipment from the public rights of way into the Licensed Space.

7. Maintenance of Facilities. KDL shall perform or oversee the performance of all routine and emergency maintenance at each KDL Site, as may be amended from time to time. Such maintenance shall include but is not limited to the following: (i) maintaining the performance of all batteries and rectifiers; (ii) keeping the KDL Site, inside and out, free from debris and broom clean; (iii) continually remotely monitoring available security, environmental and power alarms (if installed by CMN) at each KDL Site; (iv) monitoring the climate temperature of each KDL Site; and (v) providing escorted access to any third parties requiring access to a KDL Site. CMN shall be responsible for reimbursing the out of pocket Costs incurred by KDL in performing the maintenance activities set forth in this Section 7.

8. Billing and Payment. A Party providing or performing a service (referred to in this Section 8 as a "Provider") to the other Party (referred to in this Section 8 as a "Recipient") shall invoice the Recipient for all amounts due under this Agreement. All invoices shall be due and payable within thirty (30) days of receipt by the Recipient. Should the Recipient dispute any of the charges on an invoice, it shall notify the Provider in writing within sixty (60) days after the Recipient's receipt of invoice of the disputed charges and the Recipient's reason for disputing the same. If the Recipient does not deliver a challenge or dispute to any invoice within sixty (60) days after the Recipient's receipt of that invoice, the invoice will be considered final and accepted without recourse or later dispute by the Recipient.

9. Term. The initial term of this Agreement shall be forty (40) years. After the expiration of the initial term the Agreement shall continue on a year-to-year basis until terminated by either Party with one hundred eighty (180) days prior written notice.

10. Termination. Notwithstanding anything to the contrary in Section 9 above, either Party may terminate this Agreement during the initial term by delivering notice to the non terminating Party at least twenty-four (24) months in advance of the proposed termination date.

11. Representations and Warranties. Except as expressly set forth herein, each Party represents and warrants that this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, or creditors' rights. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED SPACE OR THE EQUIPMENT OR MAINTENANCE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. ALL LICENSED SPACE IS EXPRESSLY ACCEPTED BY KDL ON AN "AS" "IS" "WHERE IS" BASIS.

12. Limitation of Liability. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT TO THE EXTENT CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

13. Remedies. The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance of the obligations hereunder. Additionally, if KDL fails to perform any of its obligations under Section 7 of this Agreement in a timely manner, with reasonable prior notice to KDL under the circumstances, CMN may perform such obligation and invoice KDL for any out of pocket expenses incurred by CMN in performing such obligation. The Parties intend for the remedies set forth in this Section 13 to be the sole remedies available to either Party for a breach of this Agreement.

14. Loan Agreement Obligations. The Parties previously entered into a Services Agreement by and between KDL, CMN and Norlight, Inc. (f/k/a Cinergy Communications Company) dated March 1, 2004 ("Services Agreement"). The Services Agreement was approved by the United States Department of Agriculture's Rural Utilities Service Division (the "RUS"). The purpose of this Agreement is to further clarify the Parties' obligations under an arrangement the Parties believe is permitted under the Services Agreement. KDL, however, acknowledges and understands that CMN's rights and obligations under this Agreement are expressly subject and subordinate to the Loan and Security Agreement dated November 14, 2005, by and between CMN and the United States of America ("Loan Agreement"). Notwithstanding anything to the contrary herein, if this Agreement is determined by the RUS to be violation of the Loan Agreement, upon written notice to KDL from CMN, this Agreement shall immediately terminate and neither Party shall have any further obligation to the other Party hereunder. CMN shall endeavor to provide KDL with as much advance notice of termination as possible under the circumstances.

15. Assignment. Neither Party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Parties may assign this Agreement without the consent of the other Party to any affiliate of such Party, to the surviving entity into which such Party may merge or consolidate, or to any entity to which the Party transfers all, or substantially all, of its business and assets. Each Party shall also have the right, without the consent of the other Party, to assign or otherwise transfer this Agreement as collateral to any lender of such Party (or lender to any successor or assign of such Party); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement. In the event any such lender assigns any rights it has under this Agreement, the non assigning Party agrees to accept performance of this Agreement by the assignee so long as the assignee is subject to the provisions of this Agreement.

16. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications given to KDL at:

Kentucky Data Link, Inc.
3701 Communications Way
Evansville, IN 47715
Attn: President

with a copy to:

Kentucky Data Link, Inc.
8829 Bond Street
Overland Park, KS 66214
Attn: Legal Dept

All notices and other communications shall be given CMN at:

Cinergy MetroNet, Inc.
3701 Communications Way
Evansville, IN 47715
Attn: President

Cinergy MetroNet, Inc.
8829 Bond Street
Overland Park, KS 66214
Attn: Legal Department

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may be similar notice given change the address to which future notices or other communications shall be sent.

17. Force Majeure. Neither Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; government codes, ordinances, laws, rules, regulations or restrictions (collectively; "Regulations"); war or civil disorder; strikes or other labor disputes; or any cause beyond the reasonable control of such Party. The Party claiming relief under this Section 17 shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay.

18. Dispute Resolution. The Parties hereto plan to use due diligence and use their best efforts to work together to implement this Agreement and amicably resolve their differences. However, the Parties understand that issues and conflicts may arise where they reach an impasse. The Parties acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either Party may start by delivering to the other Party a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of the Parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved thirty (30) days after receipt of the Demand, either Party may start binding arbitration in Evansville, Indiana. The Parties will use their best efforts to conclude the arbitration as expediently as possible but in no event later than sixty (60) days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the Parties from resolving the Dispute within such sixty (60) day period. If such interim relief or court action is sought, then the Parties will use their best efforts to conclude the arbitration within sixty (60) days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each Party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the Party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either Party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication, and the Parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators. No statements by, or communications between, the Parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each Party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided, No interest shall be applied to any arbitration award. It is the intent of the Parties to first allow the arbitrators an opportunity to meet and negotiate a decision.

However, if an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the Parties.

Notwithstanding the foregoing, either Party hereto may resort to a court by applying for interim relief, without the requirement to post a bond or security, if such Party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party. The venue for any such proceeding shall be in Evansville, Indiana.

19. Non Exclusive. This Agreement is non exclusive and each Party reserves the right to enter into separate agreements or arrangements with third parties to the extent that such agreements or arrangement do not violate the terms of this Agreement.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Indiana, without reference to its choice of law principles.

21. Waiver. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the wavier thereof in any instance, shall not be construed as a general waiver or relinquishment of its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

22. Jointly Drafted. No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

23. No Third Party Rights. Nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement.

24. No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section 24 and shall be entitled to enforce the obligations of this Section 24.

25. Relationship of the Parties. The relationship between CMN and KDL shall not be that of partners, agents, or joint venture.

26. Interpretation. The captions or headings in this Agreement are for convenience or reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement. Where context requires, singular terms shall include references to the plural and vice versa. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular article, section or provision of this Agreement. The format, words and phrases used in this Agreement shall have the meaning generally understood in the broadband and communications industries.

27. Survival. The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.

28. Entire Agreement. This Agreement and Exhibit A sets forth the entire understanding and supersedes all prior agreements and understanding between the Parties relating to the subject matter hereof. This Agreement may not be amended or otherwise modified except by an instrument in writing signed by an authorized representative of each Party. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise regarding the subject matter hereto other than as expressly stated in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written above.

Kentucky Data Link, Inc.

Signature

John Greenbank

Name

Pres

Title

8/15/10

Date

Cinergy MetroNet, Inc.

Signature

John Cinelli

Name

as its president

Title

8/15/10

Date

EXHIBIT A

KDL SITES

Address	City, State	Racks
112 W Washington Ave	Greencastle, IN	2
3701 Communications Way	Evansville, IN	5
600 E Avenue	Seymour, IN	2
287 N 15 th St	Vincennes, IN	2
1113 Clifty Drive	Madison, IN	1
219 N Jennings Rd	North Vernon	1
146 W Market St	Wabash IN	1
703 Thorn St	North Manchester	1
317 E State St	Huntington IN	1
3765 S US 231	Wolcott IN	2
1558 W 16 th St	Marion IN	2

Amendment to Collocation and Maintenance Agreement

This Amendment modifies the Collocation and Maintenance Agreement entered between Kentucky Data Link ("KDL"), a Kentucky corporation, and CInergy MetroNet, Inc. ("CMN"), an Indiana corporation, dated February 7, 2005 ("Agreement"). KDL and CMN are referred to herein collectively as "the Parties" and individually as a "Party."

Section 2 of the Agreement and all corresponding references to "KDL Site" in the Agreement are hereby modified as follows:

2. KDL/CMN Sites. Exhibit A sets forth a list of those Facilities where KDL wishes to obtain collocation space from CMN (each individually a "KDL/CMN Site" collectively the "KDL/CMN Sites"). In the future, the Parties may incorporate additional Facilities into this Agreement by amendment.

Section 7 of the Agreement shall be modified to the following:

7. Maintenance of Facilities. KDL shall perform or oversee the performance of all routine and emergency maintenance at each KDL/CMN Site, as may be amended from time to time by mutual agreement of the parties. Such maintenance shall include but is not limited to the following: (i) maintaining the performance of all batteries and rectifiers; (ii) keeping the KDL/CMN Site, inside and out, free from debris and broom clean; (iii) continually remotely monitoring available security, environmental and power alarms (if installed by CMN) at each KDL/CMN Site; (iv) monitoring the climate temperature of each KDL site; and (v) providing escorted access to any third parties requiring access to a KDL/CMN Site. CMN shall be responsible for reimbursing the out of pocket Costs incurred by KDL related to the replacement of any equipment owned by CMN or used exclusively by CMN or the performance of any repair services by a third party on equipment owned by CMN or used exclusively by CMN. For avoidance of doubt, KDL shall perform all other maintenance activities set forth in this Section 7 at KDL's sole cost. In the event CMN expands or modifies a KDL/CMN Site at any time after August 15, 2010, to add floor space that requires additional monitoring capabilities, unless otherwise agreed to by the parties, KDL shall not be required to monitor or otherwise perform any maintenance activities for the additional space.

Except as modified herein, all other terms and conditions of the Agreement remain unmodified and in full force and effect. The Agreement and this Amendment constitute the Parties' entire agreement related to the subject matter contained in each.

This Amendment shall be effective as of the last date entered below and may be executed in several counterparts, each of which shall constitute one binding agreement on the Parties hereto and each executed counterpart shall be deemed an original. Facsimile signatures shall be accepted as valid and binding for all purposes.

The Parties each aver that the signatories below have authority to sign this Amendment.

Kentucky Data Link, Inc:

By: 

Printed Name: John Greenbank

Title: as President

Date: 11/7/10

Cinergy MetroNet, Inc:

By: 

Printed Name: John Cinelli

Title: as President

Date: 11/05/10

Amendment # 2 to Collocation and Maintenance Agreement

This Amendment # 2 is effective as of 2nd day of June, 2012 ("Effective Date"), and modifies the Collocation and Maintenance Agreement entered between Kentucky Data Link n/k/a Windstream Kentucky Data Link, Inc. ("KDL"), a Kentucky corporation, and CInergy MetroNet, Inc. n/k/a CMN-RUS, Inc. ("CMN"), an Indiana corporation, dated February 7, 2005 ("Agreement"). KDL and CMN are referred to herein collectively as "the Parties" and individually as a "Party."

The Agreement shall be deemed amended as follows:

1. **Purpose.** Pursuant to Section 4 of the Agreement, KDL wishes to obtain additional rack space in CMN's data center located at 3701 Communications Way, Evansville, IN ("Data Center"). CMN is willing to grant KDL such rack space in the Data Center in accordance with the terms of the Agreement and this Amendment.
2. **License.** CMN hereby grants KDL a non-exclusive year to year license to occupy those racks and portions of racks that are located in the Data Center and identified in Schedule 1 to this Amendment (each a "KDL Rack").
3. **Termination Rights.** With written notice at least thirty (30) days prior to the end of the then current license term, KDL may terminate that portion of the license applicable to any KDL Rack. If CMN wishes to terminate KDL's license to use a KDL Rack, CMN shall provide KDL with written notice at least ninety (90) days prior to the end of the then current license term. Prior to the date of termination, KDL shall remove all of its equipment from any KDL Rack vacated pursuant to this Section 3.
4. **License Fee.** The license fee for the licenses granted in Section 2 is set forth in Schedule 1 to this Amendment ("Cumulative License Fee"). With written notice at least thirty (30) days prior to the effective date of the increase, CMN may increase the Cumulative License Fee based upon the greater of: (a) any actual increases in the cost to operate and maintain the Data Center including, but not limited to, increases in the price of electricity; or (2) any increase in the CPI-U consumer price index from the previous year. Payment of the Cumulative License Fee and KDL's Portion of the any additional power charges for the KDL Racks shall be paid in accordance with Section 8 of the Agreement.
5. **Adjustments to the License Fee.** Upon the termination of a KDL Rack in accordance with Section 3 above, provided KDL's equipment has been removed from the vacated KDL Rack, the Cumulative License Fee shall be reduced by an amount equal to the monthly license fee for the vacated KDL Rack set forth in Schedule 1 to this Amendment.
6. **Miscellaneous.** Except as modified herein, all other terms and conditions of the Agreement remain unmodified and in full force and effect. The Agreement and this Amendment constitute the Parties' entire agreement related to the subject matter contained in each. In cases of conflict between the terms in this Amendment and those in the Agreement, the terms of this Amendment shall prevail. This Amendment shall be effective on the Effective Date and may be executed in several counterparts, each of which shall constitute one binding agreement on the Parties hereto and each executed counterpart shall be deemed an original. Facsimile signatures shall be accepted as valid and binding for all purposes.

The Parties each aver that the signatories below have authority to sign this Amendment.

Windstream Kentucky Data Link, Inc.

By: [Signature]

Printed Name: Anthony Walsh

Title: VP Transport Engineering

CMN-RUS, Inc.

By: [Signature]

Printed Name: John P. Cinelli

Title: as President

Reviewed JMC Legal

SCHEDULE 1

KDL Racks 1/3 Dedicated to KDL

Rack Number	Monthly License Fee
105.01 1B	\$166.00
108.03C	\$166.00

KDL Racks 1/2 dedicated to KDL

Rack Number	Monthly License Fee
102.10	\$250.00
103.07	\$250.00
110.02	\$250.00
112.04	No charge
114.04	\$250.00
114.08	\$250.00
101.07	\$250.00

KDL Racks 100% dedicated to KDL

Rack Number	Monthly License Fee
103.05	\$500.00
103.06	\$500.00
104.05	\$500.00
104.06	\$500.00
104.07	\$500.00
104.08	\$500.00
109.11	\$500.00
110.01	\$500.00
112.05	\$500.00
112.07	\$500.00
113.01	\$500.00
114.01	\$500.00
114.03	\$500.00
114.07	\$500.00
114.10	\$500.00

EXHIBIT 2

RACK SPACE SWAP AGREEMENT

This RACK SPACE SWAP AGREEMENT ("Agreement") is effective as of the 1st day of January, 2008 by and between Kentucky Data Link, Inc. ("KDL"), a Kentucky corporation, and Cinergy MetroNet, Inc. ("CMN"), an Indiana corporation. KDL and CMN are sometimes referred to herein collectively as the "Parties" or individually as a "Party".

1. Purpose. CMN operates a network facility located at 3701 Communications Way, Evansville, Indiana (the "Evansville Facility"). KDL operates a network facility located at 701 Henry Street, Indianapolis, Indiana (the "Indianapolis Facility"). KDL and CMN wish to enter into an agreement for the exchange of rack space and associated rights in the Evansville Facility for rack space and associated rights in the Indianapolis Facility as more particularly set forth below.

2. Licenses.

- (a) In consideration for the license set forth in Section 2(b) below, CMN hereby grants to KDL a license to occupy, use and maintain ten (10) rack spaces for purposes of installing, operating and maintaining KDL's equipment in the Evansville Facility ("KDL Licensed Space"). As part of this license, at its sole cost, CMN shall provide thirty (30) amps of power to each of the racks in the KDL Licensed Space ("KDL's Power Allocation") and heat, ventilation and air conditioning service to the KDL Licensed Space sufficient to maintain an ambient temperature between fifty (50) and eighty (80) degrees Fahrenheit and to maintain the level of relative non-condensing humidity between five percent (5%) and ninety-five percent (95%).

For any power utilized by KDL beyond KDL's Power Allocation, CMN shall invoice KDL based on the following formula without a mark up or an overhead allocation ("KDL's Portion"): [(A) divided by (B)] times (C) equals KDL's Portion, where (A) is the total number of additional breakered amps of power delivered to KDL's racks in excess of KDL's Power Allocation in the Evansville Facility; (B) is the total breakered amps of power delivered to all racks in the Evansville Facility (including KDL's racks); and (C) is the total power costs CMN incurs in connection with the Evansville Facility including the cost of breakered amps of power and power costs for common area power, such as power for HVAC usage. For example, assume that KDL has 10 racks in the Evansville Facility and has exceeded the KDL Power Allocation by 100 breakered amps of power. Further assume that in the Evansville Facility there are a total of 45 racks (including KDL's 10 racks) using a total of 1300 breakered amps of power (including KDL's 100 additional amps of power). Finally, assume that the total power costs incurred by CMN associated with the Evansville Facility in the example month is \$12,000. KDL's Portion for such month would be \$840 (100 divided by 1300 = .07 x \$12,000).

- (b) In consideration for the license set forth in Section 2(a) above, KDL hereby grants to CMN or any affiliate of CMN a license to occupy, use and maintain ten (10) rack spaces for purposes of installing, operating and maintaining the equipment of CMN or any affiliate of CMN in the Indianapolis Facility ("CMN Licensed Space"). As part of this license, at its sole cost, KDL shall provide thirty (30) amps of power to each of the racks ("CMN Power Allocation") in the CMN Licensed Space and heat, ventilation and air conditioning service to the CMN Licensed Space sufficient to maintain an ambient temperature between fifty (50) and eighty (80) degrees Fahrenheit and to maintain the level of relative non-condensing humidity between five percent (5%) and ninety-five percent (95%).

For any power utilized by CMN beyond CMN's Power Allocation, CMN shall invoice KDL based on the following formula without a mark up or an overhead allocation ("CMN's Portion"): $[(A) \text{ divided by } (B)] \text{ times } (C) \text{ equals CMN's Portion}$, where (A) is the total number of additional breakered amps of power delivered to CMN's racks in excess of CMN's Power Allocation in the Indianapolis Facility; (B) is the total breakered amps of power delivered to all racks in the Indianapolis Facility (including CMN's racks); and (C) is the total power costs KDL incurs in connection with the Indianapolis Facility including the cost of breakered amps of power and power costs for common area power, such as power for HVAC usage. For example, assume that CMN has 10 racks in the Indianapolis Facility and exceeds the CMN Power Allocation by 100 breakered amps of power. Further assume that in the Indianapolis Facility there are a total of 45 racks (including CMN's 10 racks) using a total of 1300 breakered amps of power (including CMN's 100 additional amps of power). Finally, assume that the total power costs incurred by KDL associated with the Indianapolis Facility in the example month is \$12,000. CMN's Portion for such month would be \$840 (100 divided by 1300 = .07 x \$12,000).

3. Installation.

- (a) KDL shall be solely responsible for the installation and maintenance of any KDL equipment in the KDL Licensed Space. KDL shall not install any equipment in the KDL Licensed Space that overloads any electrical circuits or associated hardware. All KDL equipment located in the KDL Licensed Space shall be maintained and operated by KDL in accordance with prudent telecommunications industry standards and procedures, in accordance with all applicable local, state and federal laws, ordinances and regulations.

- (b) CMN shall be solely responsible for the installation and maintenance of any CMN equipment in the CMN Licensed Space. CMN shall not install any equipment in the CMN Licensed Space that overloads any electrical circuits or associated hardware. All CMN equipment located in the CMN Licensed Space shall be maintained and operated by CMN in accordance with prudent telecommunications industry standards and procedures, in accordance with all applicable local, state and federal laws, ordinances and regulations.

4. Access.

- (a) Subject to reasonable rules and regulations as may be promulgated by CMN from time to time, KDL shall have unescorted access to the Evansville Facility twenty-four (24) hours a day, seven (7) days a week for purposes of accessing the KDL Licensed Space. CMN hereby grants KDL an easement of ingress and egress to extend KDL's network and equipment from the public rights of way into the KDL Licensed Space.
- (b) Subject to reasonable rules and regulations as may be promulgated by KDL from time to time, CMN shall have unescorted access to the Indianapolis Facility twenty-four (24) hours a day, seven (7) days a week for purposes of accessing the CMN Licensed Space. KDL hereby grants CMN an easement of ingress and egress to extend CMN's network and equipment from the public rights of way into the CMN Licensed Space.

5. Billing and Payment. A Party providing additional power (referred to in this Section 5 as a "Provider") to the other Party (referred to in this Section 5 as a "Recipient") shall invoice the Recipient for all amounts due under this Agreement. All invoices shall be due and payable within thirty (30) days of receipt by the Recipient. Should the Recipient dispute any of the charges on an invoice, it shall notify the Provider in writing within sixty (60) days after the Recipient's receipt of invoice of the disputed charges and the Recipient's reason for disputing the same. If the Recipient does not deliver a challenge or dispute to any invoice within sixty (60) days after the Recipient's receipt of that invoice, the invoice will be considered final and accepted without recourse or later dispute by the Recipient.

6. Term. The initial term of this Agreement shall be twenty (20) years. After the expiration of the initial term the Agreement shall continue on a year-to-year basis until terminated by either Party with one hundred eighty (180) days prior written notice.

7. Representations and Warranties. Except as expressly set forth herein, each Party represents and warrants that this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, and creditors' rights. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED SPACE TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. ALL LICENSED SPACE IS EXPRESSLY ACCEPTED BY EACH PARTY ON AN "AS" "IS" "WHERE IS" BASIS.

8. Limitation of Liability. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT TO THE EXTENT CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

9. Specific Performance. The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance of the obligations hereunder, as its sole remedy.

10. Loan Agreement Obligations. The Parties previously entered into a Services Agreement by and between KDL, CMN and Norlight, Inc. (f/k/a Cinergy Communications Company) dated March 1, 2004 ("Services Agreement"). The Services Agreement was approved by the United States Department of Agriculture's Rural Utilities Service Division (the "RUS"). The purpose of this Agreement is to further clarify the Parties' obligations under an arrangement the Parties believe is permitted under the Services Agreement. KDL, however, acknowledges and understands that CMN's rights and obligations under this Agreement are expressly subject and subordinate to the Loan and Security Agreement dated November 14, 2005, by and between CMN and the United States of America ("Loan Agreement"). Notwithstanding anything to the contrary herein, if this Agreement is determined by the RUS to be violation of the Loan Agreement, upon written notice to KDL from CMN, this Agreement shall immediately terminate and neither Party shall have any further obligation to the other Party hereunder. CMN shall endeavor to provide KDL with as much advance notice of termination as possible under the circumstances.

11. Assignment. Neither Party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Parties may assign this Agreement without the consent of the other Party to any affiliate of such Party, to the surviving entity into which such Party may merge or consolidate, or to any entity to which the Party transfers all, or substantially all, of its business and assets. Each Party shall also have the right, without the consent of the other Party, to assign or otherwise transfer this Agreement as collateral to any lender of such Party (or lender to any successor or assign of such Party); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement. In the event any such lender assigns any rights it has under this Agreement, the non assigning Party agrees to accept performance of this Agreement by the assignee so long as the assignee is subject to the provisions of this Agreement.

12. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications given to KDL at:

Kentucky Data Link, Inc.
3701 Communications Way
Evansville, IN 47715
Attn: President

with a copy to:

Kentucky Data Link, Inc.
8829 Bond Street
Overland Park, KS 66214
Attn: Legal Dept

All notices and other communications shall be given CMN at:

Cinergy MetroNet, Inc.
3701 Communications Way
Evansville, IN 47715
Attn: President

Cinergy MetroNet, Inc.
8829 Bond Street
Overland Park, KS 66214
Attn: Legal Department

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

13. Force Majeure. Neither Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; government codes, ordinances, laws, rules, regulations or restrictions (collectively, "Regulations"); war or civil disorder; strikes or other labor disputes; or any cause beyond the reasonable control of such Party. The Party claiming relief under this Section 13 shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay.

14. Dispute Resolution. The Parties hereto plan to use due diligence and use their best efforts and work together to implement this Agreement and amicably resolve their differences. However, the Parties understand that issues and conflicts may arise where they reach an impasse. The Parties acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either Party may start by delivering to the other Party a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of the Parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved thirty (30) days after receipt of the Demand, either Party may start binding arbitration in Evansville, Indiana. The Parties will use their best efforts to conclude the arbitration as expediently as possible but in no event later than sixty (60) days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the Parties from resolving the Dispute within such sixty (60) day period. If such interim relief or court action is sought, then the Parties will use their best efforts to conclude the arbitration within sixty (60) days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each Party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the Party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either Party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication, and the Parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators. No statements by, or communications between, the Parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each Party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided, No interest shall be applied to any arbitration award. It is the intent of the Parties to first allow the arbitrators an opportunity to meet and negotiate a decision. However, if an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the Parties.

Notwithstanding the foregoing, either Party hereto may resort to a court by applying for interim relief, without the requirement to post a bond or security, if such Party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party. The venue for any such proceeding shall be in Evansville, Indiana.

15. Non Exclusive. This Agreement is non exclusive and each Party reserves the right to enter into separate agreements or arrangements with third parties to the extent that such agreements or arrangement do not violate the terms of this Agreement.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Indiana, without reference to its choice of law principles.

17. Waiver. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment of its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

18. Jointly Drafted. No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

19. No Third Party Rights. Nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement.

20. No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section 20 and shall be entitled to enforce the obligations of this Section 20.

21. Relationship of the Parties. The relationship between CMN and KDL shall be that of independent contractors and not be that of partners, agents, or joint venture.

22. Interpretation. The captions or headings in this Agreement are for convenience or reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement. Where context requires, singular terms shall include references to the plural and vice versa. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular article, section or provision of this Agreement. The format, words and phrases used in this Agreement shall have the meaning generally understood in the broadband and communications industries.

23. Survival. The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.

24. Entire Agreement. This Agreement sets forth the entire understanding and supersedes all prior agreements and understanding between the Parties relating to the subject matter hereof. This Agreement may not be amended or otherwise modified except by an instrument in writing signed by an authorized representative of each Party. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise regarding the subject matter hereto other than as expressly stated in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written above.

Kentucky Data Link, Inc.


Signature

John Greenbank
Name

Pres
Title

8/15/10
Date

Cinergy MetroNet, Inc.


Signature

John Cinelli
Name

as its President
Title

8/15/10
Date

EXHIBIT 3

FIBER TRANSPORT SERVICES/DARK FIBER RIGHTS EXCHANGE AGREEMENT

This FIBER TRANSPORT SERVICES/DARK FIBER RIGHTS EXCHANGE AGREEMENT ("Agreement") is made as of this 15th day of August, 2010 by and between Kentucky Data Link, Inc. ("KDL"), a Kentucky corporation, and Cinergy MetroNet, Inc. ("CMN"), an Indiana corporation. KDL and CMN are sometimes referred to herein collectively as the "Parties" or individually as a "Party".

1. Purpose. CMN constructs and operates fiber-to-the-premises ("FTTP") network systems in communities to provide broadband services to end users. KDL provides long haul fiber transport services to other communications providers. CMN wishes to obtain fiber transport services from KDL between certain FTTP network systems and certain network hub sites. KDL wishes to obtain dark fiber rights from CMN throughout certain FTTP network systems. The Parties, therefore, wish to enter into this Agreement whereby CMN shall provide dark fiber rights to KDL in exchange for fiber transport services as more particularly set forth below.

2. Eligible FTTP Network Systems. A CMN FTTP network system that satisfies the following criteria shall be considered an "Eligible System" under this Agreement: (i) the FTTP network system must span at least sixty (60) fiber miles upon completion of construction by CMN; and (ii) KDL must have the network capacity and equipment to provide two (2) diverse 10 Gb optical wavelengths (collectively a "Transport Service") from the proposed origination or "a" location and the proposed termination or "z" location for the transport service.

3. Request for Transport Service. At any time during the Term of this Agreement, CMN may request that KDL provide a Transport Service from an Eligible System to an Authorized Location, as that term is defined below, by sending KDL written notice. Subject to Section 4 below, the "a" location for a Transport Service must be a site where the KDL fiber network intersects with the Eligible System (e.g. a Central Office). The "z" location for a Transport Service must be a CMN network hub site located in Evansville (the "Authorized Location"). Each notice shall contain a minimum of the following information: (i) the addresses of the proposed "a" and "z" locations; and (ii) the requested delivery date for the Transport Service. Upon receipt of notice, KDL shall promptly review and verify that it has the network capacity and equipment in place to provide the requested Transport Service. KDL shall promptly notify CMN if it cannot provide the requested Transport Service and shall specify to CMN the reason the request was rejected.

4. Fiber Segments. If CMN proposes an "a" location for a Transport Service where KDL is not currently located, CMN shall construct and maintain (including securing any necessary building entrance rights) a fiber segment from a mutually agreed point on the KDL System to the proposed CMN "a" location ("Fiber Segment"). In addition to those fibers being provided to KDL pursuant to Section 10, CMN shall provide KDL with two (2) fibers in each Fiber Segment for purposes of providing the Transport Services to CMN.

5. Service Acknowledgement. Upon verification by KDL that it is feasible for KDL to provide a Transport Service requested by CMN; the Parties shall execute a service acknowledgement in substantially the same form as is attached hereto as Exhibit A ("Service Acknowledgment"). When fully executed each Service Acknowledgement shall become a part of this Agreement.
6. Approved Eligible Systems. Schedule A sets forth a list of Eligible Systems that are approved by KDL as of the date of this Agreement. If CMN requests a Transport Service from an Eligible System listed in Schedule A to an Authorized Location, the Parties shall promptly enter into a Service Acknowledgment for that Transport Service.
7. Incremental Costs. CMN shall reimburse KDL for all out of pocket Costs associated with provisioning a Transport Service. For purposes of this Agreement the term "Costs" shall be the sum of: (a) all actual costs paid or payable by KDL including, without limitation, pass through costs paid to third parties and network card costs and (b) an overhead allocation equal to fifteen percent (15%) of the sum of the costs set forth in (a).
8. License. For each Transport Service set forth in a fully executed Service Acknowledgment, KDL hereby grants CMN an exclusive, non transferable, fully paid-up (with no periodic payments), license to utilize such Transport Service solely for the purpose of transporting CMN's communications services and end user traffic and for no other purpose. For avoidance of doubt, CMN may not use the Transport Services to either directly or indirectly, whether in whole or in part, provide a transport service (e.g. T1s, DS3s, etc.) to a Carrier. A "Carrier" is a person or entity, who sells or otherwise provides voice, video, data hosting or data services to third parties (e.g., local or long distance telephone service, fiber or fiber transport service, Internet service or cable television service). Carriers include, without limitation, LECs, CLECs, ISPs, IXC's, CAPs, CATV providers, Wireless providers or other persons or entities, which provide similar services.
9. Interconnection. CMN hereby grants KDL, a license to use however much space (power included) at each "a" and "z" location listed in a Service Acknowledgment, that KDL reasonably requires in order to provide the Transport Service to CMN ("CMN Locations"). Such arrangement shall be governed by the Terms and Conditions attached as Exhibit B hereto, as well as the terms of this Agreement. It shall be the responsibility of CMN to obtain interconnection from KDL's equipment at the CMN Locations described in each Service Acknowledgment.
10. Grant of IRU. For any Eligible System covered by a fully executed Service Acknowledgment, CMN hereby conveys to KDL a fully paid-up (with no periodic lease payments), fully transferable, indefeasible right to use four (4) dark fiber strands throughout the Eligible System and in any Fiber Segments (collectively the "IRU Fibers"). CMN shall specifically identify the IRU Fibers in each Eligible System and shall use reasonable efforts to ensure such fiber assignment will be consecutive in count. For avoidance of doubt, fiber drops to customer locations are not a part of an Eligible System.

11. Use of Fibers. KDL and CMN shall use their respective fibers in an Eligible System covered by this Agreement in a manner that does not cause material technical interference with the other Party's network, fiber, or any equipment or element thereof. Each Party shall be responsible for the operation and maintenance of any equipment it attaches or uses in conjunction with the fibers granted or used by such Party in an Eligible System. Neither KDL, nor any affiliate of KDL, shall use any of the IRU Fibers to directly provide voice, video and/or Internet services to residential or small business consumers in competition with voice, video and/or Internet services provided by CMN. Notwithstanding the foregoing, KDL or any KDL affiliate, may use the IRU Fibers: (i) to provide wholesale transport services to any carrier including, without limitation, carriers providing voice, video and data services to residential and business consumers; (ii) to provide services to any school or post secondary school; or (iii) for any other purpose not prohibited under this Agreement.

12. Access. CMN shall provide KDL with access to the IRU Fibers at any splice point, handhole, manhole or slack loop in the Eligible System by cable stub taken by CMN from the Eligible System and delivered to KDL at any splice points in the KDL System, as reasonably requested by KDL from time-to-time, (the "Connecting Points"). All connections described in this paragraph shall be performed by CMN, without cost to KDL and in accordance with CMN's applicable specifications and operating procedures. Subject to any underlying rights or third party restrictions, CMN shall provide KDL with reasonable access to Connecting Points at all times on a 24 hour / 7 days per week basis. KDL shall provide its own cable from the Connecting Points to KDL's equipment.

13. Testing. The Parties shall establish a mutually agreed upon commencement date under each Service Acknowledgment at which time the IRU Fibers and Transport Service will be available for use by the other Party, as applicable ("Commencement Date"). Each Party shall make the IRU Fibers and Transport Service available to the other Party, as applicable, for testing, thirty (30) days prior to the Commencement Date. The testing Party shall immediately notify the non-testing Party of any defects in the IRU Fibers or Transport Service, as applicable. Upon receipt of such notice, the non-testing Party shall immediately commence repairing the IRU Fibers or Transport Service, as applicable. If the defects are not corrected to the reasonable satisfaction of the testing Party by the Commencement Date, with notice to the non-testing Party, the testing Party may terminate the affected Service Acknowledgment.

14. Maintenance.

(a) KDL shall use commercially reasonable efforts to ensure that the fibers and equipment used to provide any Transport Service covered by a fully executed Service Acknowledgment are maintained in good working order, condition and repair, ordinary wear and tear excepted. KDL shall, at its cost, perform, or oversee the performance of, all maintenance, splicing and relocation activities involving the Transport Service fibers and equipment.

(b) CMN shall use commercially reasonable efforts to ensure that all IRU Fibers are maintained in good working order, condition and repair, ordinary wear and tear excepted. CMN shall, at its cost, perform, or oversee the performance of, all maintenance, splicing and relocation activities involving the IRU Fibers.

15. Term - Agreement. The term of this Agreement shall be forty (40) years, commencing on the date first written above. Thereafter, this Agreement shall be automatically renewed from year to year, unless and until terminated at the end of the initial term or the end of the then current renewal term, as applicable, which either Party may do by providing written notice of termination to the other Party not less than thirty (30) days prior to the expiration of the then current term. Notwithstanding such termination, this Agreement shall remain in full force and effect, and shall continue to govern, with respect to any then-existing Service Order for so long as such Service Acknowledgment is in effect.

16. Term – Service Acknowledgment. Each Service Acknowledgment shall have its own initial term of forty (40) years. Upon the expiration of the initial term applicable to that Service Acknowledgment, the term of such Service Acknowledgment shall automatically renew from year to year under the same terms and conditions as stated herein, unless either Party gives the other Party written notice of termination at least one hundred eighty (180) days prior to the end of the initial term or renewal term.

17. Taxes. It is understood and agreed as between the Parties that for accounting and federal and all applicable state and local tax purposes, KDL shall be treated as the owner of the IRU Fibers.

18. Representations and Warranties. Each Party represents and warrants that this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, or creditors' rights. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE IRU FIBERS OR ANY TRANSPORT SERVICE TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

19. Limitation of Liability. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT TO THE EXTENT CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

20. Specific Performance. The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance of the obligations hereunder, as its sole remedy of a breach of this Agreement.

21. Loan Agreement Obligations. The Parties previously entered into a Services Agreement by and between KDL, CMN and Norlight, Inc. (f/k/a Cinergy Communications Company) dated March 1, 2004 ("Services Agreement"). The Services Agreement was approved by the United States Department of Agriculture's Rural Utilities Service Division (the "RUS"). The purpose of this Agreement is to further clarify the Parties' obligations under an

arrangement the Parties believe is permitted under the Services Agreement. KDL, however, acknowledges and understands that CMN's rights and obligations under this Agreement are expressly subject and subordinate to that Loan and Security Agreement dated November 14, 2005 between CMN and the United States of America ("Loan Agreement"). Notwithstanding anything to the contrary herein, if this Agreement is held to be invalid or unenforceable under the Loan Agreement by the RUS, this Agreement shall be immediately terminated, and neither Party shall have any further obligation to the other Party hereunder.

22. Assignment. Neither Party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Parties may assign this Agreement without the consent of the other Party to any affiliate of such Party, to the surviving entity into which such Party may merge or consolidate, or to any entity to which the Party transfers all, or substantially all, of its business and assets. Each Party shall also have the right, without the consent of the other Party, to assign or otherwise transfer this Agreement as collateral to any lender of such Party (or lender to any successor or assign of such Party); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement. In the event any such lender assigns any rights it has under this Agreement, the non assigning Party agrees to accept performance of this Agreement by the assignee so long as the assignee is subject to the provisions of this Agreement.

23. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications given to KDL at:

Kentucky Data Link, Inc.
3701 Communications Way
Evansville, IN 47715
Attn: President

with a copy to:

Kentucky Data Link, Inc.
8829 Bond Street
Overland Park, KS 66214
Attn: Legal Dept

All notices and other communications shall be given CMN at:

Cinergy MetroNet, Inc.
3701 Communications Way

Evansville, IN 47715
Attn: President

Cinergy MetroNet, Inc.
8829 Bond Street
Overland Park, KS 66214
Attn: Legal Department

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may be similar notice given change the address to which future notices or other communications shall be sent.

24. Force Majeure. Neither Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; government codes, ordinances, laws, rules, regulations or restrictions (collectively; "Regulations"); war or civil disorder; strikes or other labor disputes; or any cause beyond the reasonable control of such Party. The Party claiming relief under this Section 24 shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay.

25. Dispute Resolution. The Parties hereto plan to use due diligence and use their best efforts and work together to implement this Agreement and amicably resolve their differences. However, the Parties understand that issues and conflicts may arise where they reach an impasse. The Parties acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either Party may start by delivering to the other Party a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of the Parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved thirty (30) days after receipt of the Demand, either Party may start binding arbitration in Evansville, Indiana. The Parties will use their best efforts to conclude the arbitration as expediently as possible but in no event later than sixty (60) days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the Parties from resolving the Dispute within such sixty (60) day period. If such interim relief or court action is sought, then the Parties will use their best efforts to conclude the arbitration within sixty (60) days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each Party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the Party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either Party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they

deem efficient and appropriate for making the determinations submitted to them for adjudication, and the Parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators. No statements by, or communications between, the Parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each Party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided, No interest shall be applied to any arbitration award. It is the intent of the Parties to first allow the arbitrators an opportunity to meet and negotiate a decision. However, if an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the Parties.

Notwithstanding the foregoing, either Party hereto may resort to a court by applying for interim relief, without the requirement to post a bond or security, if such Party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party. The venue for any such proceeding shall be in Evansville, Indiana.

26. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Indiana, without reference to its choice of law principles.

27. Waiver. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment of its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

28. Jointly Drafted. No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

29. No Third Party Rights. Nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement.

30. No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section 30 and shall be entitled to enforce the obligations of this Section 30.

31. Relationship of the Parties. The relationship between CMN and KDL shall not be that of partners, agents, or joint venture.

32. Interpretation. The captions or headings in this Agreement are for convenience or reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement. Where context requires, singular terms shall include references to the plural and vice versa. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular article, section or provision of this

Agreement. The format, words and phrases used in this Agreement shall have the meaning generally understood in the broadband and communications industries.

33. Survival. The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.

34. Entire Agreement. This Agreement and Exhibit A, Schedule A and Exhibit B sets forth the entire understanding and supersedes all prior agreements and understanding between the Parties relating to the subject matter hereof. This Agreement may not be amended or otherwise modified except by an instrument in writing signed by an authorized representative of each Party. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise regarding the subject matter hereto other than as expressly stated in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written above.

Kentucky Data Link, Inc.

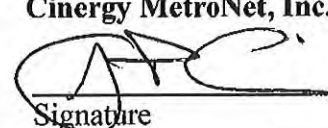

Signature

John Greenbank
Name

Pres
Title

8/15/10
Date

Cinergy MetroNet, Inc.


Signature

John Cinelli
Name

as its President
Title

8/15/10
Date

EXHIBIT A

SERVICE ACKNOWLEDGEMENT

This Service Acknowledgment is made and entered into as of this ____ day of ____, by and between Cinergy MetroNet, Inc. ("CMN") and Kentucky Data Link, Inc. ("KDL"), pursuant and subject to that certain Fiber Transport Services/Dark Fiber Exchange Agreement dated ____, by and between the parties hereto ("Agreement"). All capitalized terms not defined herein shall have the same meaning as ascribed in the Agreement.

1. Transport Service Location Information. KDL shall provide the Transport Service between the "A" and "Z" locations listed below.

"A" Location Address: _____

"B" Location Address: _____

2. Eligible System. KDL shall receive four (4) IRU Fibers throughout the Eligible System illustrated on the map attached hereto as Schedule A. Upon request, CMN shall provide KDL with "as built" drawings of the Eligible System.

3. Commencement Date. The Commencement Date of this Service Acknowledgment is _____.

4. Term. The initial term of this Service Acknowledgment shall be forty (40) years commencing on the Commencement Date. Upon the expiration of the initial term this Service Acknowledgment shall automatically renew on a year-to-year basis until terminated by either Party with one hundred eighty (180) days prior written notice.

5. Miscellaneous. In case of any conflict between the terms of this Service Acknowledgment and the terms of the Agreement, the terms of this Service Acknowledgment shall prevail.

IN WITNESS WHEREOF, the Parties have executed this Service Acknowledgment the day and year written above.

Kentucky Data Link, Inc.

Cinergy MetroNet, Inc.

Signature

Signature

Title

Title

Date

Date

SCHEDULE A

ELIGIBLE SYSTEMS

INDIANA

Chesterton
Crown Point
Dyer
Franklin
Greenfield
Hobart
Huntingburg/Jasper
Jeffersonville
Lafayette
W Lafayette
Lebanon
Merrillville
New Whiteland
Portage
Saint Johns
Schereville
Valparaiso
Whiteland

KENTUCKY

Florence
Georgetown
Independence
Richmond

OHIO

Hamilton
Lebanon
Mason
Springboro
Xenia

TENNESSEE

Gallatin

Goodletsville

Hendersonville

Lebanon

Mount Juliet

Springfield

EXHIBIT B

COLLOCATION

1. GRANT OF LICENSE ("License"): For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, CMN hereby grants to KDL, an irrevocable and indefeasible right to occupy, use and maintain however much space and power at each CMN Location as KDL reasonably requires in order to provide the Transport Service to CMN (the "Licensed Space"), for the term of this Agreement or any then-existing Service Acknowledgment as long as such Service Acknowledgment is in effect. From and after the date efforts to ready the Licensed Space for KDL's occupancy are commenced, CMN may not relocate, or cause KDL to relocate, any of KDL's equipment or facilities from any CMN Location during the term. As a part of this License, CMN shall provide heat, ventilation and air conditioning ("HVAC") to the Licensed Space sufficient to maintain an ambient temperature of the Licensed Space between fifty (50) and eighty (80) degrees Fahrenheit and to maintain the level of relative non-condensing humidity in the Licensed Space between five percent (5%) and ninety-five percent (95%). KDL shall have 24 hour / 7 day per week unescorted access to such space and shall have an easement of ingress and egress for its personnel and its facilities to access such space, including any necessary easement and building entrance rights to extend KDL's network from the public rights of way into the CMN Location. No fees or charges shall be imposed on KDL in connection with, or related to, the License. CMN agrees that its failure to provide the space and services described in this Section 1 of Exhibit B may adversely impact the Transport Service, and KDL shall not be responsible for any such adverse impact.

2. TITLE TO EQUIPMENT: Title to KDL's equipment and other facilities located in or at each CMN Location shall remain with KDL and its subtenants, sublicensees, successors and assigns, as applicable. From time to time throughout the term, KDL may remove, or cause to be removed, from any CMN Location, any or all of KDL's equipment or other facilities. Upon expiration or termination of the License, KDL shall remove, or cause to be removed, from each CMN Location, any and all of KDL's equipment and other facilities. CMN hereby acknowledges and agrees that only KDL authorized personnel shall be allowed to access the KDL equipment and other facilities.

EXHIBIT A-1

Service Acknowledgment

This Service Acknowledgment is made and entered into as of this _____ day of _____, 2011 by and between Cinergy MetroNet, Inc. ("CMN") and Windstream KDL, Inc., formerly Kentucky Data Link, Inc. ("KDL"), pursuant and subject to the Fiber Transport Services/Dark Fiber Exchange Agreement dated August 15, 2010 by and between the parties hereto ("Agreement"). All capitalized terms not defined herein shall have the same meaning as ascribed in the Agreement.

1. Transport Services Location Information. KDL shall provide the Transport Service between the "A" and "Z" locations listed below:

A Location:	Z Location:
IPL WIN75 701 W. Henry Street Indianapolis IN 46225	LBNNNAA Location at or near 302 W. Washington Street Lebanon IN 46052
Z Location:	A Location:
LBNNNAA Location at or near 302 W. Washington Street Lebanon IN 46052	IPL WIN75 701 W. Henry Street Indianapolis IN 46225 (via Lafayette IN for diversity)

2. Eligible System. KDL shall receive four IRU Fibers throughout the Lebanon, Indiana System ("Eligible System") illustrated on the map attached hereto as Schedule A-1, and including any additions thereto that utilize the Transport Service set forth in this Service Acknowledgment. Upon request, CMN shall provide KDL with "as built" drawings of the Eligible System.
3. Commencement Date. The Commencement Date of this Service Acknowledgment is July 16, 2011.
4. Term. The initial term of this Service Acknowledgment shall be 40 years commencing on the Commencement Date. Upon the expiration of the initial term, this Service Acknowledgment shall automatically renew on a year-to-year basis until terminated by either Party with 180 days prior written notice.

5. Miscellaneous. In case of any conflict between the terms of this Service Acknowledgment and the term of the Agreement, the terms of this Service Acknowledgment shall prevail.

IN WITNESS WHEREOF, the Parties have executed this Service Acknowledgment on the day and year written above.

Windstream KDL, Inc.

Cinergy MetroNet, Inc.

By: 

By: 



Its: SVP Fiber Transport Svcs.

Its: as President



Schedule A-1
Lebanon, Indiana System



SHEET NO. 1 OF 1	DATE 10/1/2010	PROJECT FTTP Project	LOCATION Lebanon, Boone County, Indiana	ROUTE LBNON	FIBER MAP Fiber Map	THIS PRINT AND DESIGN ARE THE SOLE PROPERTY OF CINERGY METRONET AND SHALL BE CONSIDERED CONFIDENTIAL. THIS PRINT MAY NOT BE REPRODUCED IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF CINERGY METRONET, AND SHALL BE RETURNED UPON REQUEST.		
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