

AGENDA REQUEST

FOR: COUNCIL MEETING OF MAY 15, 2012

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FROM:

KIT WILLIAMS, CITY ATTORNEY

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ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Approve The Telecommunications Franchise Application Of Windstream Communications, Inc. And To Approve The Non-Exclusive Telecommunications Franchise Agreement With Windstream Communications, Inc.


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APPROVED FOR AGENDA:

  
\_\_\_\_\_  
City Attorney

5-2-2012  
Date

  
\_\_\_\_\_  
Chief of Staff

5-2-12  
Date

  
\_\_\_\_\_  
Mayor

5/2/12  
Date

05-02-12P01:34 RCVD





**Kit Williams**  
*City Attorney*

**Jason B. Kelley**  
*Assistant City Attorney*

**TO: Mayor Jordan**  
**City Council**

**CC: Don Marr**, Chief of Staff  
**Chris Brown**, City Engineer  
**Terry Gulley**, Transportation Services Director

**FROM: Kit Williams**, City Attorney

A handwritten signature in blue ink, appearing to read 'Kit Williams', written over a horizontal line.

**DATE: May 3, 2012**

**RE: Telecommunications Agreement with Windstream Communications, Inc.**

Windstream Communications, Inc. needs to obtain a Telecommunications Franchise Agreement in order to provide fiber optic telecommunication services to the University of Arkansas Medical Sciences institution in Fayetteville. This provision of new broadband services in Arkansas for UAMS is funded by a \$102 million grant from the National Telecommunication Information Administration of the Department of Commerce to support a \$128 million broadband infrastructure that will serve community institutions across Arkansas. Windstream will also provide some retail telecommunications services to businesses or persons in Fayetteville for which it should be assessed the same 4% franchise fee paid by AT&T and the Prairie Grove Telephone Company.

The proposed Non-Exclusive Telecommunications Franchise Agreement is authorized by §110.02 **Telecommunication Franchises** of the Fayetteville Code which you passed a year ago. Representatives of Windstream Communications, Inc. should be at your City Council meeting and probably also at your Agenda Session to explain their proposed project and their request for a Franchise Agreement.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION TO APPROVE THE TELECOMMUNICATIONS FRANCHISE APPLICATION OF WINDSTREAM COMMUNICATIONS, INC. AND TO APPROVE THE NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH WINDSTREAM COMMUNICATIONS, INC.

**WHEREAS**, the City Council enacted §110.02 **Telecommunication Franchises** a year ago to accommodate the entry into Fayetteville of telecommunication companies to serve our citizens, businesses, and/or institutions; and

**WHEREAS**, Windstream Communications, Inc. desires to serve the University of Arkansas Medical Science institution from the University of Arkansas Research and Technology Park's hub site with fiber optic connections to many other Arkansas institutions for distance learning medical consultation, etc. funded by a grant from the National Telecommunications Information Administration; and

**WHEREAS**, Windstream Communications, Inc. also wishes to serve retail consumers of telecommunication services within Fayetteville.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the application of Windstream Communications, Inc. to provide telecommunications services within Fayetteville and approves the Non-Exclusive Telecommunications Franchise Agreement with Windstream Communications, Inc. authorizing its use of the City's rights-of-way and public utility easements for the stated franchise fee.

**PASSED and APPROVED** this 15<sup>th</sup> day of May, 2012.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

**NON-EXCLUSIVE  
TELECOMMUNICATIONS  
FRANCHISE AGREEMENT**

This Agreement is entered into this 15<sup>th</sup> day of May, 2012, between the City of Fayetteville, AR, a municipal corporation duly organized pursuant to the laws of the State of Arkansas, and Windstream Communications, Inc. a corporation authorized to do business in the State of Arkansas.

**WITNESSETH**

**WHEREAS**, Fayetteville recognizes that fiber optic telecommunications services for the purpose of providing information services is essential to the creation and maintenance of an information network within the City of Fayetteville that can connect to the information superhighway; and

**WHEREAS**, Windstream Communications has requested a franchise to use public rights-of-way, which may include streets, alleys, sidewalks and public utility easements available for telecommunications purposes that belong to or are controlled by the City or which are held in trust for the public by the City, hereinafter referred to as the “public rights-of-way,” to install conduit, aerial or other cased fiber optic facilities which may be used by Windstream Communications to offer services to UAMS and to the general public within the City; and

**WHEREAS**, the parties agree that these information services are a telecommunications service and, therefore, a utility for which a written franchise agreement may be entered pursuant to Ark. Code Ann. §14-200-101 pursuant to the rights of the City to control the subject public rights-of-way in accordance with §110.02 **Telecommunication Franchises** of the Fayetteville Code; and

**WHEREAS**, the City intends to exercise the full scope of its municipal powers, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of the City.

**NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS SET FORTH BELOW, THE PARTIES DO HEREBY CONTRACT AND AGREE AS FOLLOWS:**

**Section 1:** (a) Subject to the provision of this Agreement and §110.02 of the Fayetteville Code, a non-exclusive Telecommunications Franchise is hereby granted to Windstream Communications, Inc. for the placement and maintenance of buried and aerial fiber optic communications cable in the public rights-of-way at the locations

specified in Exhibit "A" attached hereto to service an institution and elsewhere in Fayetteville to serve other customers.

(b) It is agreed by the parties that this franchise shall have a limited term commencing May 15, 2012 and shall expire on May 14, 2032, unless the Agreement is renewed by written agreement of the parties at least 120 days prior to the end of the primary term, or unless the Franchise is earlier terminated by abandonment or due to breach by Windstream Communications.

(c) The failure of Windstream Communication to meet any of the terms of this Agreement shall, after ninety (90) days notice and opportunity to cure, constitute cause for termination of this franchise by the City. Any termination will be declared in writing by the Mayor of the City of Fayetteville and shall be subject to due process review by the Fayetteville City Council.

(d) This franchise is non-exclusive and nothing in this Agreement shall limit or otherwise impact the right of the City to enter into other franchise agreement with other parties.

(e) All references to the City Engineer shall be deemed to refer to the City Engineer or the employees of the City designated by the City Engineer.

**Section 2:** (a) All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the fiber optic communications cable shall be performed by Windstream Communications in a manner and using material in accordance with City standards as determined by the City Engineer. Windstream Communications shall bore streets whenever possible. Where street cuts are unavoidable, as determined by the City Engineer, they shall be approved by the City Engineer and performed in accordance with the City's Unified Development Code.

(b) Any construction project, including initial installation pursuant to this franchise, will be completed by Windstream Communications within ninety (90) day from the date of commencement (if any City permit is necessary, the date of the permit shall be the "date of commencement"), provided the City Engineer may allow reasonable extension due to unexpected weather, acts of God or other reasonable circumstances that in the sole discretion of the City Engineer justify an extension of the project target completion date. Failure to complete the project by the completion date will result in the assessment of liquidated damages in an amount determined in writing by the City Engineer at the time the City issues any permit or authorizations for the construction project (or the sum of \$100.00 per day if other sum is not so established).

**Section 3:** The City Shall have no responsibility for the maintenance of the said buried or aerial fiber optic communications cable. If the same is damaged so as to be

inoperable in any manner, it shall be removed by Windstream Communications at Windstream Communications' sole cost and expense and in a manner meeting with the approval of the City Engineer. The City Engineer may allow abandonment rather than removal if removal would cause undue hardship to Windstream Communications and is not necessary for the public good.

**Section 4:** Windstream Communications shall hold the City harmless from and indemnify the City from all expenses, losses, costs, causes of action and judgments, including legal fees and expenses arising from the placement, maintenance operation, repair and removal of said fiber optic communication cable.

**Section 5:** Windstream Communications shall be a member of and shall conform to the requirements of the Arkansas One Call system for all purposes including field locations of utilities prior to placement of the fiber optic communication cable and any maintenance or repair work thereto.

**Section 6:** Windstream Communications shall place a \$25,000.00 performance bond with the City to cover the cost of repairs or other incidental costs to the City associated with service interruption to the City's utility facilities resulting from the installation of the initial fiber optic communications cable by Windstream Communications. A similar bond shall be required for subsequent construction projects utilizing the subject public rights-of-way.

**Section 7:** Windstream Communications shall procure and maintain in effect the following insurance policies in amounts determined appropriate by the City Engineer at the time of issuance of permits or authorizations for construction activities: Commercial General Liability Insurance, Automobile Liability Insurance, and Workers Compensation Insurance.

**Section 8:** The franchise fee for the fiber optic cable providing broadband service to the institution as shown on Exhibit A is \$3,360.00 per year to be paid monthly on the first day of each month in the amount of \$280.00. This amount shall be reviewed by the City every five years and can be adjusted not to exceed the CPI inflation for that five year period. The Franchise Fee for all retail telecommunication services is set at **four percent (4%)** of Windstream Communications, Inc.'s Gross Revenues received for its services within Fayetteville during the preceding month pursuant to State law, and §110.02 (G) of the Fayetteville Code. Windstream Communications, Inc. as the franchisee may, to the extent allowed by law, bill its subscribers within the corporate limits of the City the franchise fee and reflect such charge on its invoices to subscribers within the corporate limits of the City.

**Section 9:** Windstream Communications shall, at its expense, protect, support, temporarily disconnect, relocate or remove from the subject public rights-of-way any

property of Windstream Communications when required at the sole discretion of the City by reason of the installation or construction of any type of structures or improvements by the City within its police powers or by reason of traffic conditions, public safety, street vacation, freeway and street construction, a change or establishment of street grade, installation or construction of sewers, drains or water pipes. In such case Windstream Communications shall have the right of abandonment of its property, subject to prior written approval of the City Engineer. If federal or state funds are available at no expense to the City (including actual cost or the cost of a pro-rata obligation of the City where a project is funded partially by the State or federal funds and partially by the City funds) for the purpose of defraying the costs of any utility company of any of the foregoing, such funds shall also be made available to Windstream Communications if the federal or state regulations permit.

**Section 10:** Neither the City nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to Windstream Communications, Inc. as a result of any disruption or damage to Windstream Communications' network that occurs as a result of, or in connection with, any breaking through, movement, removal, alteration, or relocation of any part of the network by or on behalf of or the City in connection with construction, relocations, improvement to or alteration of any city structure built pursuant to its police powers or to any city sidewalk, trail, water main, sewer main, street or utility facility. The City shall reasonably attempt to avoid any damage to Windstream Communications' network and shall, except in any emergency situation, provide reasonable notice to Windstream Communications so as to allow Windstream Communications to protect its network.

**Section 11:** Any notice of communications required in the administration of this Agreement shall be sent by first class mail and shall be addressed as follows:

City of Fayetteville  
Mayor's Office  
113 W. Mountain Street  
Fayetteville, AR 72701

Notice shall also be sent by e-mail to [mayor@ci.fayetteville.ar.us](mailto:mayor@ci.fayetteville.ar.us) and to [cityattorney@ci.fayetteville.ar.us](mailto:cityattorney@ci.fayetteville.ar.us).

Notice to Windstream Communications in regards to Engineering will be sent to:

Windstream Communications, Inc.  
4001 Rodney Parham Road  
Little Rock, AR 72212  
ATTN: Mike Skudin  
V.P. Planning & Engineering

Notice to Windstream in regard to invoices, payment of fees and all other subjects to:

Windstream Communications, Inc.  
4001 Rodney Parham Road  
Little Rock, AR 72212  
ATTN: Vicki Anger, Staff Manager, Tax Accounting

Notice shall also be sent by e-mail to Bruce.Hurlbut@Windstream.com. and to Vicki.Anger@Windstream.com

or to such other address as Windstream Communications and the City of Fayetteville may, in writing, designate from time to time, provided that notice is accomplished by delivery to only one designated person for the City or Windstream Communications, Inc.

WHEREUPON, the City and Windstream Communications, Inc., acting through their duly authorized officers and pursuant to appropriate authority granted by their respective City Council or Board of Directors, do hereby execute this Franchise Agreement.

**CITY OF FAYETTEVILLE,  
ARKANSAS**

**WINDSTREAM  
COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
**LIONELD JORDAN**  
Mayor

By:   
**BILL BELLANDO**  
Vice President Networks Engineering

Date: \_\_\_\_\_

Date: May 2, 2012

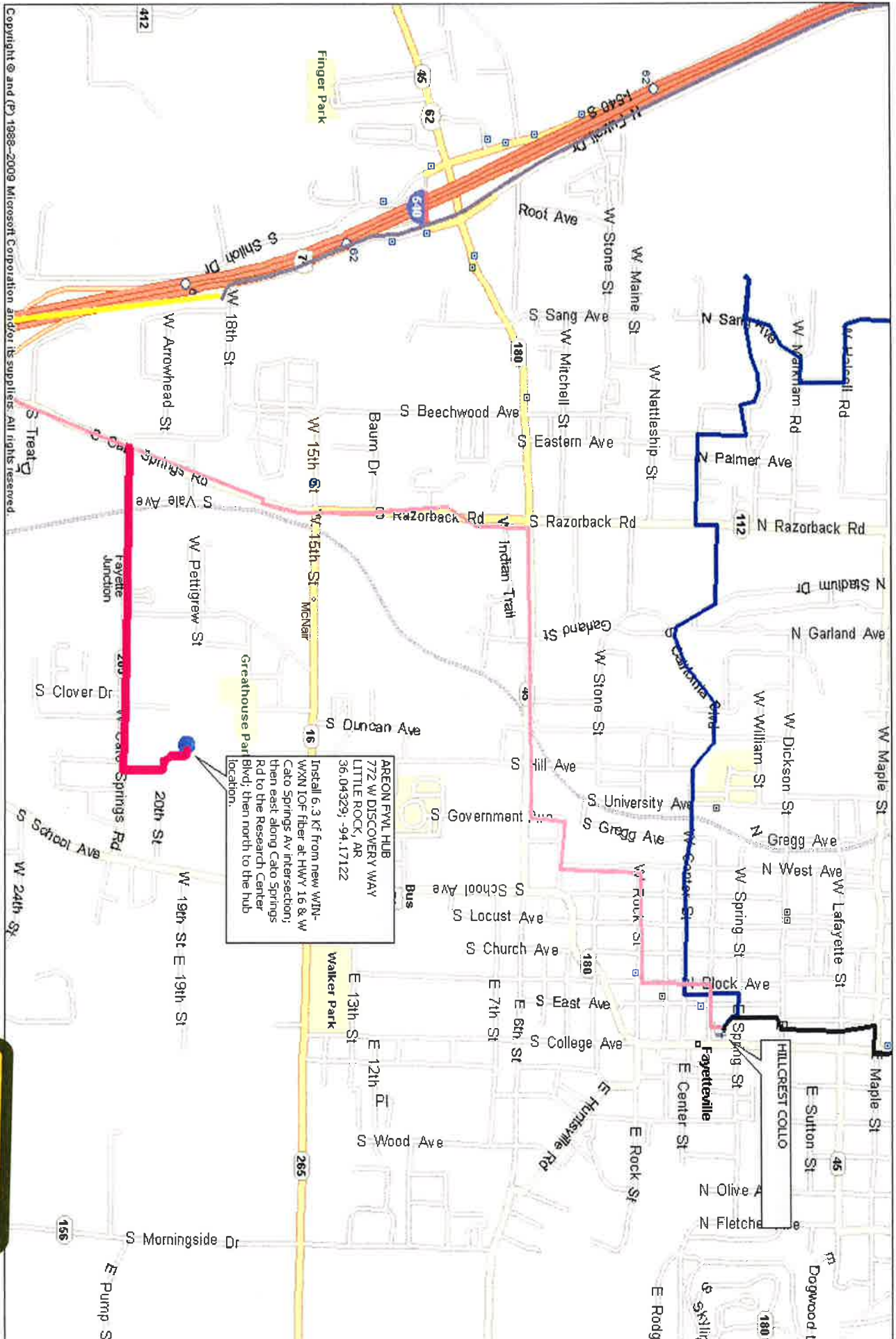
Attest:

Witness:

By: \_\_\_\_\_  
**Sondra E. Smith, City Clerk**

By:   
Name and Title Regulatory Council







The University of Arkansas for Medical Sciences (UAMS) was awarded \$102 million by the National Telecommunications Information Administration (NTIA) in the Department of Commerce to support a \$128-million broadband infrastructure that will serve community institutions across Arkansas.

The UAMS Center for Distance Health will expand, integrate, and enhance the capabilities of two major existing community-serving networks: the *Arkansas Tele-health Network* as overseen by Arkansas Telehealth Oversight and Management (ATOM), and the *Arkansas Research and Education Optical Network (ARE-ON)*. The Arkansas e-Link initiative will touch every county in Arkansas through its extensive partnership of healthcare, higher education, public safety, and research organizations that are united in their needs for improved bandwidth and broadband-enabled equipment to better serve their communities.

More than 470 Arkansas locations will use increased bandwidth and new equipment to offer new and enhanced community services.

**Rural patients will be able to...**

- See specialty doctors through video without traveling to large cities.
- Access health care research and educational materials through publicly available computers at certain libraries, health care facilities and higher education locations.

**Rural health-care providers will be able to...**

- Keep more local patients because they will be able to work with urban doctors through video in cases where referrals might not be necessary.
- Stay on top of the latest research through online educational programs made especially for health care professionals.

**Students and teachers will be able to...**

- Use broadband connectivity at computers on public college or university campuses.
- Take or teach online courses and access other educational tools.

**Librarians at certain public libraries will be able to...**

- Help the surrounding communities by providing public access to computers with high-speed broadband connectivity.
- Involve the public in health care and education provided by larger hospitals or colleges through video.

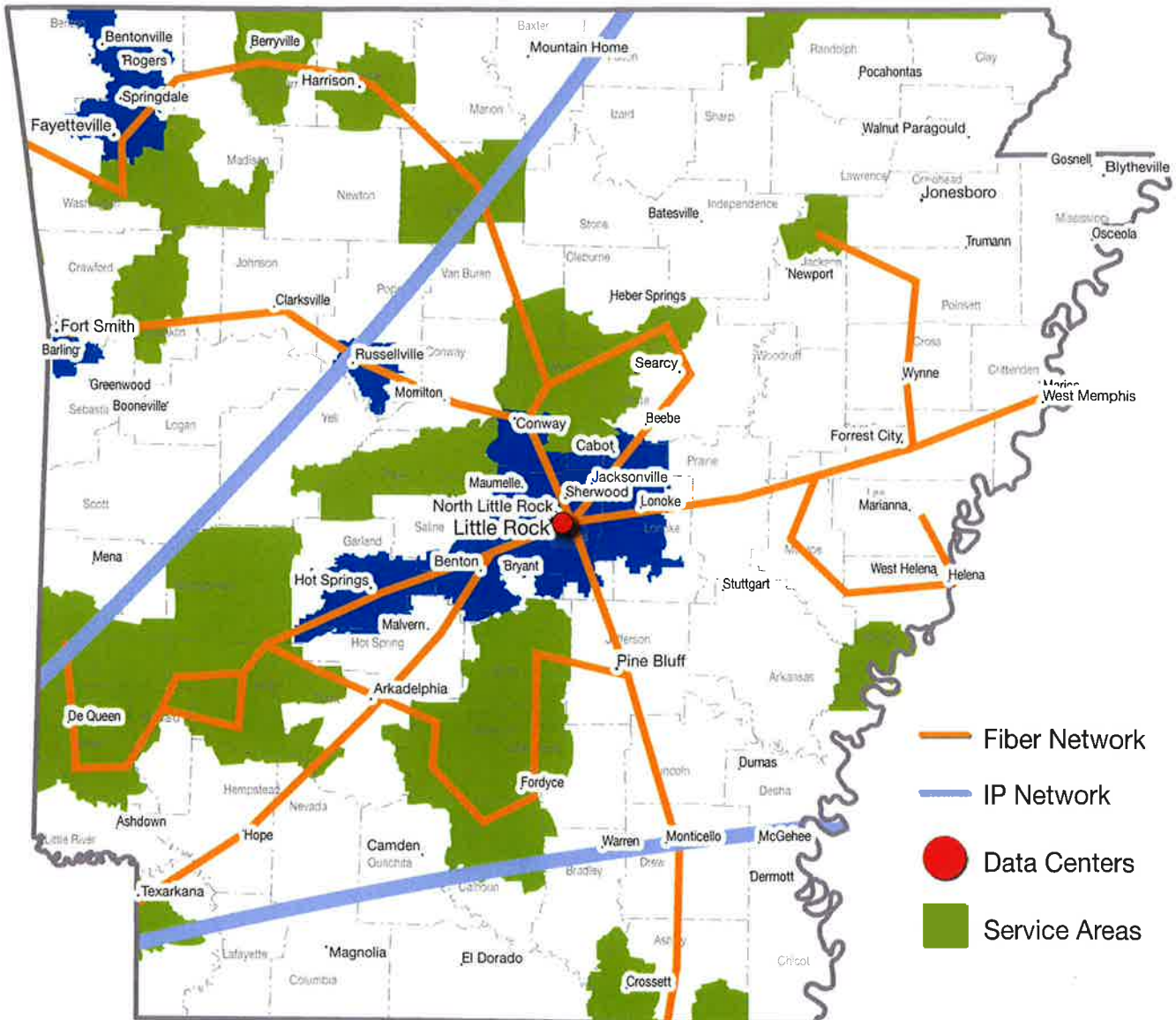
# Arkansas

Windstream Corp. (Nasdaq: WIN) is a leading provider of advanced network communications, including cloud computing and managed services, to businesses nationwide. The company also offers broadband, phone and digital TV services to consumers primarily in rural areas. Windstream has more than \$6 billion in annual revenues and is listed on the S&P 500 index. For more information, visit [www.windstream.com](http://www.windstream.com).

## Arkansas Overview

<b>Employees:</b>	<b>1,300</b>
<b>Payroll:</b>	<b>\$98M</b>
<b>Capital expenditures:</b>	<b>\$24.7M</b>
<b>State and local taxes paid:</b>	<b>\$14.6M</b>

*Employee count is as of April 2012.  
All other numbers are as of December 2011.*



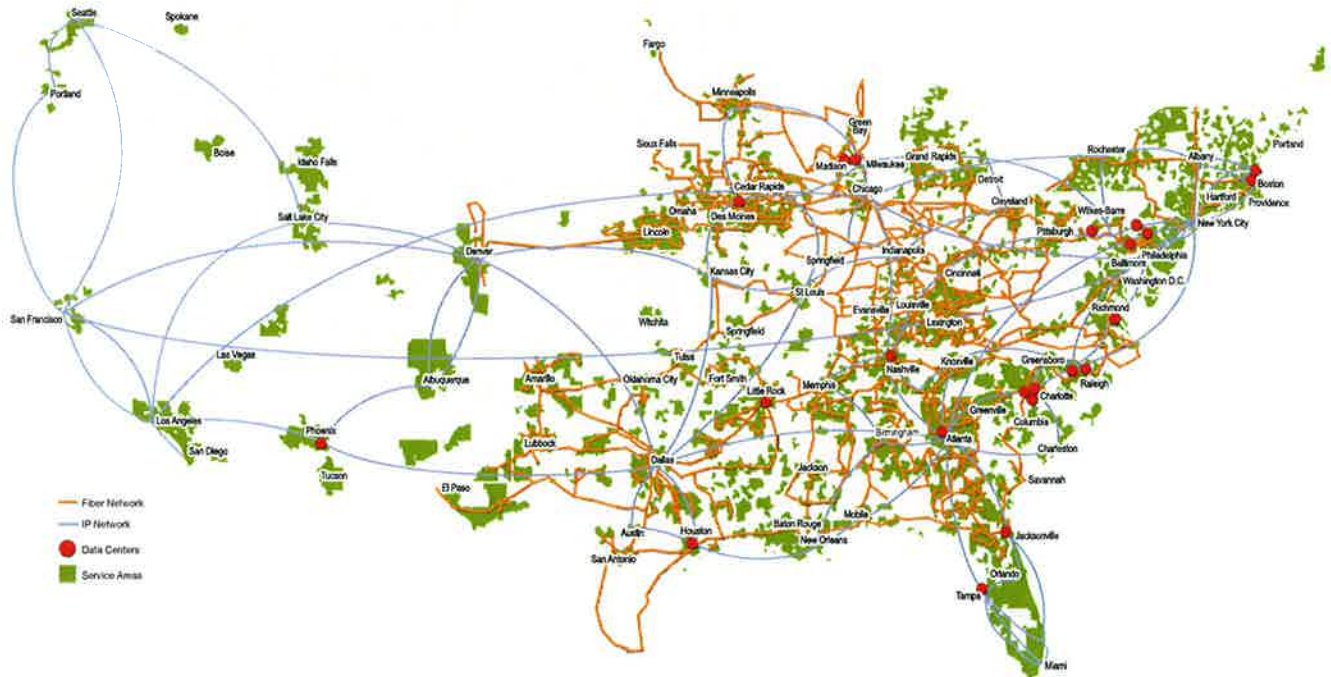


windstream

# National Overview

- **S&P 500 company with \$6 billion in annual revenue**
- **More than 450,000 business customers nationwide**
- **Over 150 offices across the U.S.**
- **Approximately 14,500 employees**
- **More than 100,000 miles of fiber**
- **6 network operations centers**
- **Enterprise-class data centers**

Windstream Corp. (Nasdaq: WIN) is a leading provider of advanced network communications, including cloud computing and managed services, to businesses nationwide. The company also offers broadband, phone and digital TV services to consumers primarily in rural areas. For more information, visit [www.windstream.com](http://www.windstream.com).



— Fiber Network  
— IP Network  
● Data Centers  
■ Service Areas

