



IN THE DISTRICT COURT OF TULSA COUNTY FOR THE
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v.

WINDSTREAM CORPORATION,
a Delaware Corporation,

Defendant.

Case No. CF-2012-3841

**DISTRICT COURT
FILED**

OCT 26 2012

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

**WINDSTREAM'S BRIEF IN RESPONSE
TO STATE'S MOTION TO CONSOLIDATE
CASES FOR PRELIMINARY HEARING AND TRIAL**

Defendant Windstream Corporation does not oppose the State's motion to consolidate the captioned case with *State v. James David Sisney*, Case No. CF-2012-3842 for purposes of a preliminary hearing. Windstream opposes the State's motion to consolidate for purposes of trial on the grounds that the motion is premature and should be re-urged, if necessary, after a preliminary hearing.

Windstream does not know at this stage of the litigation whether joinder of the two cases would be prejudicial at the trial stage. Title 22, Section 439 "permits relief on motion of either the defendant or the State if the joinder of offenses in the same indictment or information, the joinder of defendants in the same indictment or information, or the joinder of indictments or informations, or indictments or informations for trial is prejudicial." *Dodson v. Oklahoma*, 562 P.2d 916, 925 (Okla. Cr. App. 1977). It is too soon to know whether joinder of the indictments for trial will be prejudicial to either Windstream or Dr. Sisney. The Court of Criminal Appeals has held that when the trial court has addressed the prejudicial effect of joining several indictments, and found joinder proper, the trial court

has not determined whether one party may be prejudiced by the presentation of evidence against two defendants in one trial. *Id.*

Windstream has not yet seen any of the grand jury testimony, and the State has not completed its discovery obligations to Windstream. Windstream will not be able to evaluate the testimony against it, and its potential defenses, until after the preliminary hearing. Only then, after evaluating its defenses, particularly in relation to the potential defenses Dr. Sisney might raise, will Windstream be able to know whether the consolidation of the cases for trial will be prejudicial.

Windstream therefore does not oppose the State's motion to consolidate the cases for preliminary hearing, but it opposes the consolidation of the cases for trial until the parties have an opportunity to review the grand jury testimony and discovery.

Dated: October 26, 2012.

Respectfully submitted,



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**COUNSEL FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2012, a full, true, and correct copy of "WINDSTREAM'S BRIEF IN RESPONSE TO STATE'S MOTION TO CONSOLIDATE CASES FOR PRELIMINARY HEARING AND TRIAL" was transmitted by electronic mail and deposited in the U.S. Mail with proper first-class postage, to the following counsel of record at the following address:

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