

1 RACHEL H. MITCHELL  
MARICOPA COUNTY ATTORNEY

2 By: Peter Muthig  
3 Deputy County Attorney  
4 State Bar No. 018526  
MCAO Firm No. 00032000  
E-mail: muthigk@mcao.maricopa.gov

**FILED**  
JEANNE A. NAUGHTON, CLERK  
NOV 09 2023  
U.S. BANKRUPTCY COURT  
NEWARK, N.J.  
BY D. [Signature] DEPUTY

5 CIVIL SERVICES DIVISION  
6 225 W. Madison Street  
Phoenix, Arizona 85003  
Telephone (602) 506-1923

7 *Attorneys for Maricopa County Treasurer*

8 **UNITED STATES BANKRUPTCY COURT**  
9 **DISTRICT OF NEW JERSEY**

10 In Re:  
11 Cyxtera Technologies, Inc., *et al.*,  
12 Debtors.

Case No. 23-14853 (JKS)  
Chapter 11  
(Jointly Administered)  
Hearing Date: November 16, 2023  
Hearing Time: 2:00 p.m. (ET)  
**[Relates to Docket No. 551 and 648]**

13  
14  
15  
16  
17 **MARICOPA COUNTY TREASURER’S OBJECTION TO SECOND AMENDED JOINT**  
18 **PLAN OF REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS**  
**DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

19 Maricopa County Treasurer (“MCT”), a secured tax lien creditor, by and through  
20 its undersigned counsel, hereby objects to the *Second Amended Joint Plan of*  
21 *Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to*  
22 *Chapter 11 of the Bankruptcy Code*. (DE 551) (the “Plan”). MCT objects to the Plan for  
23 the reasons set forth below.  
24

1 **1. MCT's Claims**

2 On August 30, 2023, MCT filed Secured Tax Proof of Claim, Claim #485<sup>1</sup>, (the  
3 "MCT Claim") in the joint case of Cyxtera Communications, LLC in the amount of  
4 \$142,682.56 representing the 2023 personal property taxes on Debtors' property located  
5 in Maricopa County, Arizona and identified by parcel number 994-58-193. Interest  
6 accrues, or will accrue, at the statutory rate of 16% per year simple, if not timely paid,  
7 until paid in full. See 11 U.S.C. § 511 and Arizona Revised Statutes ("A.R.S.") § 42-18053.

8 Arizona law provides the following.

- 9 a. The personal property tax liens attached on January 1 of the respective tax  
10 year and the taxes are not discharged until the taxes and interest are paid in  
11 full or title to the property vests in a purchaser of the property for taxes. A.R.S.  
12 §§ 42-17153 and 42-19106. Accordingly, the liens for personal property taxes  
13 encumbering the property cannot be removed until the personal property taxes  
14 are paid in full.
- 15 b. The tax liens are "prior and superior to any other liens of every kind and  
16 description regardless of when another lien attached." A.R.S. § 42-17153 and  
17 42-19106.
- 18 c. Interest accrues at the statutory rate of 16% per annum until the taxes are paid  
19 in full. 11 U.S.C. § 511 and A.R.S. § 42-18053.
- 20 d. "If the tax has not been paid on property sold at judicial sale, or sold by an  
21 executor, administrator, guardian or trustee, the person making the sale shall  
22 pay the taxes, penalties and costs from the proceeds of the sale." A.R.S. § 42-

23  
24 <sup>1</sup> MCT's original Proof of Claim, Claim #12, was filed on June 20, 2023.

1 18059.

2 e. "It is unlawful for the owner, a lienholder, a conditional vendor or any other  
3 person to knowingly sell or transfer personal property or remove it from its  
4 location until the taxes on the property are paid." A.R.S. § 42-19107.

5 f. Arizona law provides that "[t]he tax on personal property is a debt against the  
6 owner to whom the property is assessed and against the owner's successors  
7 and assigns." A.R.S. § 19117(A). In the event the taxes and any statutory  
8 interest are not paid in full from the sale proceeds, MCT may pursue collection  
9 of the unpaid taxes and interest due from the Buyer. A.R.S. § 42-19117. MCT  
10 also requests that the Buyer provide MCT with the correct address to mail tax  
11 bills.

12 **2. Objections**

13 MCT objects to the Plan and the related Sale Transaction (DE 648) to the extent  
14 that Debtors seek to sell, transfer or remove the personal property in Maricopa County  
15 prior to payment in full of the 2023 personal property taxes. The second half 2023 taxes  
16 remain due and payable in the amount of \$75,689.91. However, the Plan and Sale  
17 Transaction are not clear as to who will pay the remainder of the 2023 taxes and when.  
18 Will the Debtors and/or Buyer pay the second half 2023 taxes in full upon closing of the  
19 sale, or will the Buyer pay the second half 2023 taxes when they become due under  
20 Arizona law? Further, it is not clear if the full amount owed for the second half 2023 taxes  
21 is an Assumed Liability of the Purchaser.


22 MCT further objects to the Plan and the related Sale Transaction to the extent that  
23 Debtors seek to sell, transfer or remove the personal property in Maricopa County without  
24 retention of the tax liens on the property until the taxes and any interest are paid in full.

1 Pursuant to the Sale Transaction, the second half 2023 tax liens qualify as Permitted  
2 Encumbrances. However, as stated above, it is not clear if the 2023 taxes will be paid in  
3 full upon closing of the sale, or if the Purchaser is assuming liability for payment of the  
4 second half 2023 taxes. Therefore, MCT requests clarification on the issue of when and  
5 by whom the taxes will be paid, and adequate protection of its tax liens by including a  
6 provision that the states the MCT tax liens shall be retained on the property until the taxes  
7 and interest are paid in full.

8 WHEREFORE, MCT objects to the Plan and related Sale Transaction unless the  
9 Debtors and/or Purchaser pay the second half 2023 taxes or include agreed upon  
10 language in the confirmation order to resolve MCT's objections.

11 RESPECTFULLY SUBMITTED this 3rd day of November, 2023.

12  
13 RACHEL H. MITCHELL  
MARICOPA COUNTY ATTORNEY

14 BY:   
15 PETER MUTHIG  
Deputy County Attorney  
16 Attorney for Maricopa County Treasurer

17 ORIGINAL of the foregoing filed by overnight mail  
18 this 3rd day of November, 2023, with:

19 Clerk, United States Bankruptcy Court  
20 District of New Jersey  
MLK Jr Federal Building  
21 50 Walnut Street  
Newark, NJ 07102

22 COPY of the foregoing mailed/e-mailed,  
this 3rd day of November, 2023, to:

23 Alexandria Nikolinos  
24 Fran B. Steele  
U.S. Department of Justice

1 Office of the US Trustee  
One Newark Center, Suite 2100  
2 Newark, NJ 07102-5504  
Email: [alexandria.nikolinos@usdoj.gov](mailto:alexandria.nikolinos@usdoj.gov)  
3 Email: [Fran.B.Steele@usdoj.gov](mailto:Fran.B.Steele@usdoj.gov)

4 Christopher Marcus, P.C.  
Derek I. Hunter  
5 Kirkland & Ellis LLP  
601 Lexington Avenue  
6 New York, NY 10022  
Email: [Christopher.marcus@kirkland.com](mailto:Christopher.marcus@kirkland.com)  
7 Email: [derek.hunter@kirkland.com](mailto:derek.hunter@kirkland.com)  
*Co-Counsel for Debtors*

8 Michael D. Sirota  
Warren A. Usatine  
9 Felice R. Yudkin  
Cole Schotz P.C.  
25 Main Street  
10 Hackensack, NJ 07601  
Email: [msirota@coleschotz.com](mailto:msirota@coleschotz.com)  
11 Email: [wusatine@coleschotz.com](mailto:wusatine@coleschotz.com)  
Email: [fyudkin@coleschotz.com](mailto:fyudkin@coleschotz.com)  
12 *Co-Counsel for Debtors*

13 Edward T. Ackerman  
Jacob A. Adlerstein  
14 Brian S. Hermann  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
15 1285 Avenue of the Americas  
New York, NY 10019-6064  
16 Email: [eackerman@paulweiss.com](mailto:eackerman@paulweiss.com)  
Email: [adlerstein@paulweiss.com](mailto:adlerstein@paulweiss.com)  
17 Email: [bhermann@paulweiss.com](mailto:bhermann@paulweiss.com)  
*Counsel to Purchaser*

18 *Tyna Garcia*

19

20

21

22

23

24

fedex.com 1.800.GoFedEx 1.800.463.3339



**FedEx Express**  
 NEW  
 8037 9455 5611

**1 From**  
 Date \_\_\_\_\_ Phone \_\_\_\_\_  
 Sender's Name \_\_\_\_\_  
 Company \_\_\_\_\_ Dept./Floor/Suite/Room \_\_\_\_\_  
 Address \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

**2 Your Internal Billing Reference**  
 City \_\_\_\_\_ Phone \_\_\_\_\_

**3 To**  
 Recipient's Name \_\_\_\_\_  
 Company \_\_\_\_\_ Dept./Floor/Suite/Room \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Use this line for the HOLD location address or for continuation of your shipping address.

**4 Express Package Service** \*To most locations.  
 Form ID No. **0200**  
 NOTE: Service order has changed. Please select carefully.  
 **FedEx First Overnight**  
 **FedEx Priority Overnight**  
 **FedEx Standard Overnight**  
 **FedEx 2Day A.M.**  
 **FedEx 2Day**  
 **FedEx Express Saver**

**5 Packaging** \*Declared value limit \$50.  
 FedEx Envelope\*  
 FedEx Pak\*  
 Box  
 Tube  
 Other

**6 Special Handling and Delivery Signature Options**  
 **SATURDAY Delivery**  
 **No Signature Required**  
 **Direct Signature**  
 **Indirect Signature**  
 **Signature Required**  
 **Signature Declaration**  
 **Dry Ice**  
 **Cargo Aircraft Only**

**7 Payment Bill for:** Enter FedEx Acct. No. or Credit Card No. below.  
 Sender's Account  
 Recipient  
 Third Party  
 Credit Card  
 Cash/Check  
 Other recp. Acct. No. \_\_\_\_\_

Total Packages \_\_\_\_\_ Total Weight \_\_\_\_\_  
 Packages up to 150 lbs.  
 For packages over 150 lbs., see 5611.  
 For FedEx Express Freight 03, see 5611.

Rev Date 1/12 Part #10992 • ©2012 FedEx • PRINTED IN U.S.A. 58F

644

fedex.com 1.800.GoFedEx 1.800.463.3339