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Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

WINDSTREAM HOLDINGS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 19-22312 (RDD)
)

) (Joint Administration Requested)
)

**DEBTORS' MOTION FOR
ENTRY OF AN ORDER (I) EXTENDING
TIME TO FILE SCHEDULES OF ASSETS AND
LIABILITIES, SCHEDULES OF CURRENT INCOME
AND EXPENDITURES, SCHEDULES OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, STATEMENTS
OF FINANCIAL AFFAIRS, AND RULE 2015.3 FINANCIAL REPORTS,
AND (II) WAIVING REQUIREMENTS TO FILE LISTS OF EQUITY HOLDERS**

Windstream Holdings, Inc. and its debtor affiliates as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") respectfully state the following in support of this motion (this "Motion"):

¹ The last four digits of Debtor Windstream Holdings, Inc.'s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, 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 Debtors' proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) extending the deadline by which the Debtors must file their schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the “Schedules and Statements”) by 30 days, for a total of 44 days from the Petition Date, without prejudice to the Debtors’ ability to request additional extensions; (b) extending the deadline by which the Debtors must file their initial reports of financial information with respect to entities in which the Debtors hold a controlling or substantial interest as set forth in Federal Rule of Bankruptcy Procedure 2015.3 (the “2015.3 Reports”), or to file a motion with the Bankruptcy Court (as defined below) seeking a modification of such reporting requirements for cause, to the later of: (i) 30 days after the meeting of creditors to be held pursuant to section 341 of the Bankruptcy Code (the “341 Meeting”) and (ii) 44 days from the Petition Date, each without prejudice to the Debtors’ ability to request additional extensions; and (c) waiving the requirements to file lists of equity security holders, as set forth in Fed. R. Bankr. P. 1007(a)(3).

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Bankruptcy Court in connection with this Motion to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final

orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein is section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 1007, 2015.3(d), and 9006, and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Background

5. The Debtors are a leading provider of advanced network communications and technology solutions for businesses across the United States. The Debtors also offer broadband, entertainment and security solutions to consumers and small businesses primarily in rural areas in 18 states. Additionally, the Debtors supply core transport solutions on a local and long-haul fiber network spanning approximately 150,000 miles. As of the date hereof, the Debtors had approximately 11,600 employees.

6. As set forth in greater detail in the *Declaration of Tony Thomas, Chief Executive Officer and President of Windstream Holdings, Inc., (I) in Support of Debtors’ Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* (the “First Day Declaration”), on February 15, 2019, the United States District Court for the Southern District of New York entered a *Memorandum Decision and Order* against Debtor Windstream Services, LLC after trial in the matter styled *U.S. Bank National Association v. Windstream Services, Inc. v. Aurelius Capital Master, Ltd.*, Case No. 17-cv-7857 (JMF), that recognized an event of default under the Debtors’ prepetition unsecured bond indentures, which in turn resulted in a cross-default under the Debtors’ secured credit facilities and certain other material agreements. As of the date hereof, the Debtors are obligated for approximately \$5.6 billion in funded debt obligations. To

avoid any precipitous action against the Debtors' assets that would have harmed the Debtors' businesses, the Debtors commenced these chapter 11 cases to obtain the protection of the automatic stay and preserve value for stakeholders enterprise wide.

7. On February 25, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in these chapter 11 cases. Additional information regarding the Debtors' business, their capital structure, and the circumstances leading to these chapter 11 filings is contained in the First Day Declaration.

Basis for Relief

I. Cause Exists to Extend the Time to File the Schedules and Statements.

8. Pursuant to Bankruptcy Rules 1007(c) and 9006(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Bankruptcy Court has authority to extend the time required for filing of the Schedules and Statements "for cause." *See* Fed. R. Bankr. P. 1007(c) and 9006(b). The Debtors submit that ample cause exists to grant the relief requested herein. To prepare their Schedules and Statements, the Debtors will have to compile information from books, records, and documents relating to thousands of claims, assets, and contracts from the Debtors. The collection of this necessary information will require a significant expenditure of time and effort on the part of the Debtors, their employees, and the Debtors' advisors. Additionally, because numerous invoices related to prepetition goods and services have not yet been received and entered into the Debtors' accounting system, it will take some time before the Debtors have access to all of the information required to prepare the Schedules and Statements.

9. Given the size and complexity of the Debtors' business and financial affairs, and the critical matters that the Debtors' management and professionals were required to address prior to the commencement of these chapter 11 cases, the Debtors were not in a position to complete the Schedules and Statements as of the Petition Date.

10. In the days leading up to the Petition Date, the Debtors' primary focus has been preparing for these chapter 11 cases, including securing financing to operate their business post-petition and negotiating with certain creditor constituencies. Focusing the attention of key personnel on critical operational and chapter 11 compliance issues during the early days of these chapter 11 cases will facilitate the Debtors' smooth transition into chapter 11, thereby maximizing value for their estates, their creditors, and all parties in interest. Moreover, preserving an extension will not harm creditors or other parties in interest because, even under the extended deadline, the Debtors will file the Schedules and Statements in advance of any deadline for filing proofs of claim in these chapter 11 cases.

11. As explained above, the Debtors' business operations are complex and vast, and preparing the Schedules and Statements accurately and in appropriate detail will require significant attention from the Debtors' personnel and advisors. Engaging in such preparation immediately before or after the commencement of these chapter 11 cases would distract such personnel and advisors from the Debtors' business operations at this juncture. Accordingly, the Debtors submit that a 30-day extension of time to file the Schedules and Statements, without prejudice to their ability to request additional extensions, is appropriate and warranted under the circumstances.

12. Courts in this district regularly have found "cause" to extend the deadline for filing schedules and statements in chapter 11 cases for a duration much longer than the Debtors seek, especially when the case involves business operations of comparable size, complexity, and

geographic scope. *See, e.g., In re Aegean Marine Petrol. Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Nov. 16, 2018) (granting debtors a 30-day extension from the petition date); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 9, 2018) (same); *In re 21st Century Oncology Holdings, Inc.*, Case No. 17-22770 (RDD) (Bankr. S.D.N.Y. May 26, 2017) (same); *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (granting debtors a 61-day extension from the petition date); *In re Breitburn Energy Partners LP*, Case No. 16-11390 (SMB) (Bankr. S.D.N.Y. May 17, 2016) (granting debtors a 30-day extension from the petition date).²

II. Cause Exists to Extend the Time to File the 2015.3 Reports.

13. Pursuant to Bankruptcy Rule 2015.3, a chapter 11 debtor must file, no later than seven days before the date set for the 341 Meeting and no less than every six months thereafter, periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in the chapter 11 cases, and in which the estate holds a substantial or controlling interest. *See* Fed. R. Bankr. P. 2015.3(a)–(c). Bankruptcy Rule 9006(b)(1) provides the Bankruptcy Court with authority to extend the period of time to file the 2015.3 Reports “for cause.” Additionally, Bankruptcy Rule 2015.3(d) provides the Bankruptcy Court with the ability, after notice and a hearing, to modify the reporting requirements for cause, including that the debtor is “not able, after a good faith effort, to comply with those reporting requirements, or that the information . . . is publicly available.” *See* Fed. R. Bankr. P. 2015.3(d).

14. The Debtors directly and indirectly own non-debtor subsidiaries that are subject to Bankruptcy Rule 2015.3 and, as such, are required to file 2015.3 Reports. Cause exists to extend

² Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

the deadline for filing the 2015.3 Reports as requested herein based on: (a) the size, complexity, and geographic scope of the Debtors' business; and (b) the substantial burdens imposed by complying with Bankruptcy Rule 2015.3 in the early days of these chapter 11 cases. For the reasons set forth above, the Debtors are not in a position to complete the initial 2015.3 Reports within the time required under Bankruptcy Rule 2015.3.

15. Extending the deadline to file the initial 2015.3 Reports will provide the Debtors with the necessary time to examine the books and records of their non-debtor subsidiaries that are subject to Bankruptcy Rule 2015.3. The additional time will also enable the Debtors to work with their financial advisors and the U.S. Trustee to determine the appropriate nature and scope of the reports and any proposed modifications to the reporting requirements established by Bankruptcy Rule 2015.3. Accordingly, the Debtors respectfully request that the Bankruptcy Court grant an extension of the time by which the Debtors must file their initial 2015.3 Reports to the later of (a) 30 days after the 341 Meeting and (b) 44 days from the Petition Date pursuant to Bankruptcy Rule 2015.3(d).

16. The relief requested herein will not prejudice any party in interest. The Debtors will work cooperatively with the U.S. Trustee and any other necessary parties in these chapter 11 cases to provide access to relevant information regarding the business and financial affairs of the Debtors and their non-debtor subsidiaries.

17. Courts in this district regularly have found "cause" to extend the deadline for filing 2015.3 reports in chapter 11 cases of comparable size, complexity, and geographic scope. *See, e.g., In re Aegean Marine Petrol. Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 17, 2018) (granting debtors a 44 day extension from the petition date to file 2015.3 reports); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 9, 2018) (granting

debtors the later of 30 days after the 341 meeting and 44 days after the petition date to file 2015.3 reports); *In re 21st Century Oncology Holdings, Inc.*, Case No. 17-22770 (RDD) (Bankr. S.D.N.Y. May 26, 2017) (granting debtors the later of 30 days after the 341 meeting and 90 days after the petition date to file 2015.3 reports); *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (granting debtors the later of 30 days after the 341 meeting and 61 days after the petition date to file 2015.3 reports).

III. It is Appropriate to Waive the Requirements to File a List of and to Provide Notice Directly to the Equity Security Holders Under the Circumstances of These Chapter 11 Cases.

18. In addition to the Schedules and Statements, the Bankruptcy Rules also contain certain requirements with respect to a debtor's equity security holders. Bankruptcy Rule 1007(a)(3) requires a debtor to file, within 14 days after the petition date, a list of the debtor's equity security holders. Bankruptcy Rule 2002(d), in turn, requires that equity security holders be provided notice of, among other things, the commencement of the bankruptcy case and the confirmation hearing. Bankruptcy courts have authority to modify or waive the requirements under both rules. Fed. R. Bankr. P. 1007(a)(3) ("[U]nless the court orders otherwise, the debtor shall file . . . a list of the debtor's equity security holders"); Fed. R. Bankr. P. 2002(d) ("[U]nless the court orders otherwise, the clerk . . . shall in the manner and form directed by the court . . . give notice to all equity security holders"); *see also* 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."); Fed. R. Bankr. P. 9007 ("When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.").

19. The Debtors submit that the requirements to file a list of, and to provide notice directly to, equity holders should be waived in this case as to Windstream Holdings, Inc. ("WIN").

As of December 31, 2018, WIN had 42,935,334 shares of common stock outstanding. The Debtors submit that preparing and submitting such a list with the last known addresses for each such equity security holder and sending notices to all such parties will be expensive and time consuming and will serve little or no beneficial purpose. Moreover, WIN filed with its petition a list of significant holders of their outstanding common stock. Further, as soon as is practicable following the date hereof, the Debtors intend to cause the notices required under Bankruptcy Rule 2002(d) to be served on registered holders of WIN's common stock. Accordingly, the Debtors respectfully request that the requirements to file a list of and to provide notice directly to WIN's equity security holders be waived.

20. Courts in this district routinely grant substantially similar relief in cases involving publicly-traded debtors. *See, e.g., In re Cenveo Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Feb. 6, 2018) (waiving the requirement to file list of equity security holders); *In re Cumulus Media Inc.*, Case No. 17-13381 (SCC) (Bankr. S.D.N.Y. Dec. 1, 2017) (same); *In re SunEdison, Inc.*, Case No. 16-10992 (SMB) (Bankr. S.D.N.Y. Apr. 25, 2016) (waiving requirement to file list of equity security holders and modifying requirement to mail the notice of commencement to all equity security holders); *In re Republic Airways Holdings Inc.*, Case No. 16 -10429 (SHL) (Bankr. S.D.N.Y. Feb. 29, 2016) (same); *In re NII Holdings, Inc.*, Case No. 14-12611 (SCC) (Bankr. S.D.N.Y. Sept. 16, 2014) (same). Accordingly, the Debtors respectfully submit that ample cause exists for the Bankruptcy Court to waive the requirement under Fed. R. Bankr. P. 1007(a)(3) to file lists of equity holders.

Motion Practice

21. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of its application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Notice

22. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the agent under the proposed postpetition debtor in possession financing facility; (d) the administrative agents and indenture trustees under the Debtors' prepetition credit agreement and note indentures; (e) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (f) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (g) Shearman & Sterling LLP, counsel to the Midwest noteholders; (h) the Pension Benefit Guaranty Corporation; (i) the United States Attorney's Office for the Southern District of New York; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the attorneys general in the states where the Debtors conduct their business operations; (m) the Federal Communications Commission; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

23. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court enter the Order granting the relief requested herein and such other relief as the Bankruptcy Court deems appropriate under the circumstances.

Dated: February 25, 2019
New York, New York

/s/ Stephen E. Hessler

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)	
In re:)	Chapter 11
)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 19-22312 (RDD)
)	
Debtors.)	(Joint Administration Requested)
)	

**ORDER (I) EXTENDING TIME TO
FILE SCHEDULES OF ASSETS AND
LIABILITIES, SCHEDULES OF CURRENT INCOME
AND EXPENDITURES, SCHEDULES OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, STATEMENTS
OF FINANCIAL AFFAIRS, AND RULE 2015.3 FINANCIAL REPORTS,
AND (II) WAIVING REQUIREMENTS TO FILE LISTS OF EQUITY HOLDERS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”): (a) extending the time period to file their Schedules and Statements; (b) extending the time period to file their 2015.3 Reports; and (c) waiving the requirement to file lists of equity security holders; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, 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 Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The time within which the Debtors must file the Schedules and Statements is extended for an additional 30 days (for a total of 44 days after the Petition Date), without prejudice to the Debtors' right to seek additional extensions.
3. The time within which the Debtors must file the 2015.3 Reports or otherwise file a motion in the Bankruptcy Court seeking a modification of such reporting requirements for cause is extended to the later of (a) 30 days after the 341 meeting and (b) 44 days from the Petition Date, in each case without prejudice to the Debtors' right to seek additional extensions.
4. The requirement under Fed. R. Bankr. P. 1007(a)(3) that the Debtors file lists of equity security holders is waived.
5. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

White Plains, New York
Dated: _____, 2019

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE