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Proposed Counsel to the Debtors and Debtors in Possession

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

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

**DEBTORS’ MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS AUTHORIZING
THE DEBTORS TO (I) PAY THEIR OBLIGATIONS UNDER
PREPETITION INSURANCE POLICIES, (II) CONTINUE TO
PAY CERTAIN BROKERAGE FEES, (III) RENEW, SUPPLEMENT,
MODIFY, OR PURCHASE INSURANCE COVERAGE, AND (IV) ENTER INTO
NEW FINANCING AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS**

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 interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”), authorizing the Debtors to: (a) pay their obligations under prepetition insurance policies; (b) continue to pay certain brokerage fees; (c) renew, supplement, modify, or purchase insurance coverage in the ordinary course; and (d) enter into new premium financing agreements in the ordinary course of business. In addition, the Debtors request a final hearing be scheduled by the Bankruptcy Court (as defined below) within approximately 25 days of the Petition Date to consider approval of this Motion on a final basis.

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 are sections 105(a), 363(b), and 364 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, 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 term loan and revolver credit facilities. 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 and to gain access to much-needed liquidity in the form of debtor-in-possession financing, the Debtors commenced these chapter 11 cases.

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.

The Debtors’ Insurance Policies

8. As of the Petition Date, the Debtors maintained approximately 52 insurance policies (collectively, the “Insurance Policies”) administered by multiple third-party insurance carriers (collectively, the “Insurance Carriers”). A schedule of the Insurance Policies is attached hereto as **Exhibit C**.² The Insurance Policies provide coverage for, among other things, director and officer liability (including runoff coverage), property, general liability, commercial automobile liability, underground storage tank liability, lawyers’ professional liability, special risk, commercial crime, employment practices liability, and media errors and omissions liability. As of the Petition Date, the aggregate annual premium for the Insurance Policies totaled approximately \$10 million, plus applicable taxes and surcharges. These payments come due either on an annual or quarterly basis depending on the policy. The Debtors through acquisitions have retained certain policies existing at the time of the acquisitions, these policies (the “Run-Off Acquisition Policies”) do not require future payment of premiums by the Debtor.

9. While none of the premiums for the Insurance Policies are financed pursuant to a premium financing agreement as of the Petition Date, the Debtors seek authority to enter into new

² In addition to the Insurance Policies listed in **Exhibit C** to this Motion, the Debtors maintain insurance policies with respect to, among other things, workers’ compensation. These programs are described, and relief is requested with respect to such programs, in the *Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (II) Continue Employee Benefits Programs*, filed contemporaneously herewith. Furthermore, although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted one or more Insurance Policies. By this Motion, the Debtors request relief applicable to all Insurance Policies, regardless of whether such Insurance Policy is specifically identified on **Exhibit C**.

premium financing agreements as necessary or appropriate in the course of their business, without further Court approval.

10. Continuation of the Insurance Policies and entry into new insurance policies and premium financing agreements, as applicable, in the ordinary course, are essential to the preservation of the value of the Debtors' properties and assets. Moreover, in many cases, coverage provided by the Insurance Policies is required by the regulations, laws, and contracts governing the Debtors' commercial activities, including the requirement of U.S. Trustee that a debtor maintain adequate coverage given the circumstances of their chapter 11 cases. Accordingly, the Debtors request authority to maintain their existing Insurance Policies, pay prepetition obligations related thereto, and enter into new insurance policies and premium financing agreements, as applicable, in the ordinary course of business on a postpetition basis.

Brokerage Fees

11. Lockton Companies and JLT Specialty USA (collectively, the "Insurance Brokers") assist the Debtors with: (a) obtaining comprehensive insurance coverage for their operations; (b) negotiating policy terms, provisions, and premiums; (c) assisting the Debtors with claims; and (d) providing ongoing support throughout policy periods. The Debtors pay Lockton Companies brokerage fees in the aggregate amount of approximately \$328,100 per year. JLT Specialty USA is paid a commission for their services from the Insurance Carriers out of the premium. As of the Petition Date, the Debtors do not believe they owe any amounts to Lockton Companies or JLT Specialty USA on account of fees or any other prepetition obligations. The Insurance Brokers' services are necessary to the Debtors ability to obtain Insurance Policies on advantageous terms and at competitive rates. The Insurance Brokers' services will also facilitate the proper maintenance of the Debtors' Insurance Policies postpetition and ensure adequate

protection of the Debtors' property. Accordingly, the Debtors request authority to continue paying amounts owed to the Insurance Brokers in the ordinary course of business on a postpetition basis.

Basis for Relief

I. The Bankruptcy Code and U.S. Trustee Guidelines Require the Debtors To Maintain Insurance Coverage and Satisfy their Insurance Obligations.

12. As discussed above, the Debtors' existing Insurance Policies provide a comprehensive range of protection for the Debtors' business, properties, and assets. As such, it is essential that the Debtors' insurance coverage continues in full force and effect during the course of these chapter 11 cases. Under section 1112(b)(4)(C) of the Bankruptcy Code, "failure [of a debtor] to maintain appropriate insurance [where such failure] poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Similarly, certain of the Insurance Policies are required by various state and federal regulations. In addition, the Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees (the "U.S. Trustee Guidelines")³ require that a debtor "shall maintain" certain types of insurance coverage following the Petition Date. *See* U.S. Trustee Guidelines, § 6.

13. To ensure that the Debtors comply with section 1112(b)(4)(C) of the Bankruptcy Code, applicable state and federal regulations, and the U.S. Trustee Guidelines, the Debtors respectfully request the authority to: (a) pay the prepetition amounts currently due and owing under the Insurance Policies in the ordinary course of business, including those prepetition amounts due in connection with pay their prepetition insurance policies including the Insurance Brokers' brokerage fees; (b) continue to honor obligations arising under the Insurance Policies; and; (c) to renew, supplement, modify, or purchase insurance coverage in the ordinary course.

³ The U.S. Trustee Guidelines are available at https://www.justice.gov/ust-regions-r02/file/region_2_operating_guidelines.pdf/download.

II. Renewing, Supplementing, Entering into New Policies, and Paying Obligations Under the Insurance Policies in the Ordinary Course of Business are Each Warranted.

14. The Bankruptcy Court may also authorize the Debtors to maintain the Insurance Policies and even renew or enter into new policies on a postpetition basis because the relief requested will preserve the value of these chapter 11 estates. Courts in this district and other districts generally acknowledge that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In doing so, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

15. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See In re Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the pre-plan satisfaction of a prepetition claim." *In re CoServ*, 273 B.R. at 497.

16. In addition, courts may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate

to carry out the provisions of this title.” Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization). Specifically, the Bankruptcy Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *In re Ionosphere Clubs*, 98 B.R. at 176.

17. Several courts apply the doctrine of necessity where payment of a prepetition claim (a) is “necessary for the successful reorganization of the debtor,” (b) falls within “the sound business judgment of the debtor,” and (c) will not “prejudice other unsecured creditors.” *In re United Am., Inc.*, 327 B.R. 776, 782 (Bankr. E.D. Va. 2005) A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175. That is because the rehabilitation of a debtor in reorganization cases remains “the paramount policy and goal of Chapter 11.” *Id.* at 175-76; *see also In re Just For Feet*, 242 B.R. 821, 826 (D. Del 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”).

18. Implicit in the fiduciary duties of any debtor-in-possession is the obligation to “protect and preserve the estate, including an operating business’s going concern value.” *In re CoServ*, 273 B.R. at 497. Some courts note that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The court in

CoServ specifically noted the pre plan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate" *Id.* Consistent with a debtor's fiduciary duties, courts have also authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175.

19. The failure to pay premiums, brokerage fees, and related insurance expenses when due may harm the Debtors' estates in a number of ways. Specifically, the Insurance Carriers may refuse to renew the Debtors' Insurance Policies, which will require the Debtors to obtain replacement policies and possibly reconfigure their risk management program. That scenario would require the commitment of significant resources and could result in less favorable coverage or terms from the Debtors' insurers. Additionally, the Insurance Carriers could attempt to terminate the Debtors' existing policies, which could threaten the Debtors' ability to continue operating their businesses given the Debtors' myriad regulatory and contractual obligations to maintain specific amounts and types of insurance coverage.

20. The Debtors submit that it is also in the best interests of their estates to have the ability to revise, extend, supplement, or change insurance coverage, as necessary, on a postpetition basis. Indeed, the Debtors' Insurance Policies are essential to the preservation of the value of the Debtors' businesses, properties, and assets and their ability to successfully administer these chapter 11 cases. Accordingly, if any of the Insurance Policies lapse or new coverage is required or necessary, it is imperative that the Debtors are able to renew, supplement, or purchase insurance coverage on a postpetition basis in the ordinary course of business. The Insurance Policies protect the Debtors and other parties in interest from losses caused by casualty, natural disaster, fraud, or other unforeseen events.

21. Courts in this district have routinely granted relief similar to that requested herein. *See, e.g., In re Aegean Marine Petrol. Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 8, 2018) (granting relief to continue insurance policies); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (same); *In re Cenveo Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re 21st Century Oncology Holdings, Inc.*, Case No. 17-22770 (RDD) (Bankr. S.D.N.Y. June 20, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) (same); *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (same).⁴

III. The Court Should Allow the Debtors to Enter into Premium Financing Agreements.

22. Flexibility to enter into premium financing agreements is appropriate and should be authorized under sections 105(a) and 363(b) of the Bankruptcy Code. Moreover, pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured postpetition debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. In light of the Debtors' financial circumstances, insurance premium finance companies may not be willing to provide insurance premium financing to the Debtors on attractive market terms on a postpetition basis. As a result, the Debtors request the flexibility to enter into premium financing agreements in the ordinary course of business.

23. Courts in this jurisdiction and in others have recognized the importance of a debtor entering into premium financing agreements and have granted relief similar to the relief requested in this motion. *See, e.g., In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (stating that with respect to postpetition credit, courts "permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties"); *In re Simasko Prod. Co.*, 47

⁴ Because of the voluminous nature of these orders, such orders have not been attached to this Motion. Copies of these orders are available upon request to the the Debtors' proposed counsel.

B.R. 444, 448–49 (D. Colo. 1985) (authorizing interim financing agreement where debtor’s business judgment indicated financing was necessary and reasonable for benefit of estate); *In re Cenveo Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (authorizing debtors to renew and honor obligations under their premium financing agreements); *In re 21st Century Oncology Holdings, Inc.*, Case No. 17-22770 (RDD) (Bankr. S.D.N.Y. June 20, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) (same); *In re DACCO Transmission Parts (NY), Inc.*, Case No. 16-13245 (MKV) (Bankr. S.D.N.Y. Dec. 22, 2016) (same); *In re MPM Silicones, LLC*, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 16, 2014) (same).

Processing of Checks and Electronic Fund Transfers Should Be Authorized

24. The Debtors have sufficient funds to pay the amounts described in this Motion by virtue of expected cash flows during the chapter 11 cases and anticipated access to cash collateral. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment with regard to the Insurance Policies. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors’ instructions.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

25. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture and imperil the Debtors’ restructuring. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

26. To successfully implement the foregoing, the Debtors request that the Bankruptcy Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

27. Nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an admission as to the validity of any particular claim against the Debtors, (b) a waiver of the Debtors’ rights to dispute any particular claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion, (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law,

or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Bankruptcy Court grants the relief sought herein, any payment made pursuant to the Bankruptcy Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Motion Practice

28. 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

29. 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; (n) Lockton Companies; and

(o) 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

30. 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 Interim Order and Final 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

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim 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-_____ (RDD)
)	
Debtors.)	(Joint Administration Requested)
)	

**INTERIM ORDER AUTHORIZING THE
DEBTORS TO (I) PAY THEIR OBLIGATIONS UNDER
PREPETITION INSURANCE POLICIES, (II) CONTINUE TO
PAY CERTAIN BROKERAGE FEES, (III) RENEW, SUPPLEMENT,
MODIFY, OR PURCHASE INSURANCE COVERAGE, AND (IV) ENTER INTO
NEW FINANCING AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), authorizing the Debtors to (a) pay their obligations under the insurance policies entered into prepetition, (b) continue to pay certain brokerage fees, (c) renew, supplement, modify, or purchase insurance coverage in the ordinary course, (d) enter into new financing agreements in the ordinary course of business, and (e) scheduling a final hearing to consider approval of the Motion on a final basis, 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

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.kcellc.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.

the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper 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 on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2019, at __: __ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2019, and shall be served on: (a) the Debtors, Windstream Holdings, Inc., 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, Attn.: Kristi M. Moody; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Stephen E. Hessler, P.C., and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: Ross M. Kwasteniet, P.C., Brad Weiland, and John R. Luze; (c) counsel to any statutory committee appointed in these cases; and (d) the Office of The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Paul K. Schwartzberg and Serene Nakano. In the event no objections to entry of a final order on the

Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized to continue the Insurance Policies, including the Insurance Policies identified on **Exhibit C** to the Motion, and, in their sole discretion, pay any prepetition or postpetition obligations related to the Insurance Policies, including any amounts owed to the Insurance Brokers and any other related expenses, including those amounts that would come due in the ordinary course within the 21 days after the Petition Date.

4. The Debtors are authorized in their sole discretion to renew, amend, supplement, extend, or purchase existing or additional insurance policies in the ordinary course of business on a postpetition basis. The Debtors are authorized to enter into new premium financing agreements in the ordinary course of business.

5. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

6. The Debtors are authorized to honor any amounts owed on account of any audits that take place in the ordinary course of business.

7. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors

that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty to inquire otherwise and without liability for following the Debtors' instructions.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Insurance Policies.

10. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all other rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or post-petition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (ii) the other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders).

11. To the extent there is any inconsistency between the terms of any of the DIP Orders and this Interim Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

14. Notwithstanding anything to the contrary, the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

White Plains, New York
Dated: _____, 2019

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final 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-_____ (RDD)
)	
Debtors.)	(Joint Administration Requested)
)	

**FINAL ORDER AUTHORIZING THE
DEBTORS TO (I) PAY THEIR OBLIGATIONS UNDER
PREPETITION INSURANCE POLICIES, (II) CONTINUE TO
PAY CERTAIN BROKERAGE FEES, (III) RENEW, SUPPLEMENT,
MODIFY, OR PURCHASE INSURANCE COVERAGE, AND (IV) ENTER INTO
NEW FINANCING AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), authorizing the Debtors to (a) pay their obligations under the insurance policies entered into prepetition, (b) continue to pay certain brokerage fees, (c) renew, supplement, modify, or purchase insurance coverage in the ordinary course, and (d) enter into new financing agreements in the ordinary course of business, 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

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.kcellc.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.

Motion in this district is proper 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 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 on a final basis as set forth herein.
2. The Debtors are authorized to continue the Insurance Policies, including the Insurance Policies identified on Exhibit C to the Motion, and, in their sole discretion, pay any prepetition or postpetition obligations related to the Insurance Policies, including any amounts owed to the Insurance Brokers and any other related expenses.
3. The Debtors are authorized in their sole discretion to renew, amend, supplement, extend, or purchase existing or additional insurance policies in the ordinary course of business on a postpetition basis. The Debtors are authorized to enter into new premium financing agreements in the ordinary course of business.
4. The Debtors are authorized to honor any amounts owed on account of any audits that take place in the ordinary course of business.
5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute

any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty to inquire otherwise and without liability for following the Debtors' instructions.

7. Notwithstanding anything in the Motion, the Interim Order, or this Final Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all other rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or post-petition debtor-in-possession financing facilities

(collectively, the “DIP Orders”); (ii) the other documentation governing the Debtors’ use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders).

8. To the extent there is any inconsistency between the terms of any of the DIP Orders and this Final Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Insurance Policies.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding anything to the contrary, the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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

White Plains, New York
Dated: _____, 2019

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit C

Schedule of Insurance Policies

Type of Coverage	Insurance Carrier(s)	Policy Numbers	Term	Annual Gross Premium
Foreign	Chubb	PHF D37558357 005	One Year	\$6,375
Cargo	Markel	MKLM5OMC0002168	One Year	\$2,103
Pollution - City of Memphis Contracts	Allied World Assurance	0308-4865	One Year	\$9,910
Underground Storage Tanks	Nautilus Insurance Co.	CST1520931-18	One Year	\$14,773
RR Protective Liability - Norfolk Southern	Chubb	G28281523 001	One Year	\$4,080
Auto	Chubb	ISAH25159688	One Year	\$735,013
Work Comp - All Other States	Chubb	WLR C65224835	One Year	\$824,187
Work Comp - Wisconsin	Chubb	SCFC65224999	One Year	included
Work Comp - AZ, CA, MA	Chubb	WLRC65224872	One Year	included
Work Comp - TN	Chubb	WLRC65224914	One Year	included
Excess Work Comp - Ohio	Chubb	WCUC65224951	One Year	included
General Liability	Chubb	HDO G71096610	One Year	\$254,182
New York OCIP	Chubb	OCP G71096658	One Year	\$2,500
Umbrella	Chubb	XOO G28134800 003	One Year	\$438,711
Excess Umbrella	Great American	EXC 2275490	One Year	\$117,000
Excess Umbrella	Travelers	ZUP-10T94152-18-NF	One Year	\$59,500
Excess Umbrella	XL	US00010455L18A	One Year	\$43,000
Primary Directors & Officers Liability	HCC (A,B,C)	14-MGU-18-A44404	One Year plus 6 years of runoff	\$750,000

Type of Coverage	Insurance Carrier(s)	Policy Numbers	Term	Annual Gross Premium
Excess Directors & Officers Liability	XL	ELU156682-18	One Year plus 6 years of runoff	\$480,000
Excess Directors & Officers Liability	Beazley	V13F2D180601	One Year plus 6 years of runoff	\$265,000
Excess Directors & Officers Liability	AWAC	0304-8015	One Year plus 6 years of runoff	\$185,500
Excess Directors & Officers Liability	Sompo	DOX10011478001	One Year plus 6 years of runoff	\$112,000
Excess Directors & Officers Liability	Starr	1000059314181	One Year plus 6 years of runoff	\$100,000
Excess D&O Lead Side A DIC	AIG BDA (A DIC)	17206108	One Year plus unlimited runoff	\$65,044
Excess D&O Side A DIC	CNA	652017546	One Year plus unlimited runoff	\$38,000
Excess D&O Side A DIC	Chubb	8210-4531	One Year plus unlimited runoff	\$38,000
Excess D&O Side A DIC	AIG	01-641-19-48	One Year plus unlimited runoff	\$30,500

Type of Coverage	Insurance Carrier(s)	Policy Numbers	Term	Annual Gross Premium
Excess D&O Side A DIC	Berkeley	BPRO8041259	2/25/19 – 7/17/2020 plus 6 years of runoff	\$1,000,000
Excess E&O/Cyber Liability	AIG	01-701-24-91	One Year	\$75,181
Employment Practices Liability	HCC	14-MG-18-A44412	One Year	\$173,303
Crime	Chubb	8210-4461	One Year	\$45,224
Special Risk	Chubb	8212-0079	7/17/2018- 2021	\$11,598
Aviation	AIG	GM 001856852-13	One Year	\$24,631
Property	AIG	15909397	3/17/2017- 2020	\$1,540,547 (paid annually over the three-year term)
Canada Commercial General Liability	Chubb of Canada	CGL325484	One Year	\$2,500
Canada Property	AIG Ins of Canada	4473026	One Year	\$1,609

Type of Coverage	Insurance Carrier(s)	Policy Numbers	Term	Annual Gross Premium
Run-Off Acquisition Policies				
Primary Directors & Officers Liability	AIG	01-245-78-71	2/27/2017-2023	\$0
Excess Directors & Officers Liability	AWAC	0310-5790	2/27/2017-2023	\$0
Excess Directors & Officers Liability	Nationwide	XMF1601133	2/27/2017-2023	\$0
Excess Directors & Officers Liability	Endurance	DOX10010748000	2/27/2017-2023	\$0
Excess Directors & Officers Liability	XL	ELU148786-17	2/27/2017-2023	\$0
Excess Directors & Officers Liability	AIG - Side A	01-245-79-91	2/27/2017-2023	\$0
Excess Directors & Officers Liability	Chubb - Side A	8249-2788	2/27/2017-2023	\$0
Primary Directors & Officers Liability	ACE	G25033504006	8/1/2017-2023	\$0
Excess Directors & Officers Liability	AIG	61894244	8/1/2017-2023	\$0
Excess Directors & Officers Liability	XL	ELU14267316	8/1/2017-2023	\$0
Excess Directors & Officers Liability	ACE	G23669158004	8/1/2017-2023	\$0
Employed Lawyers	AIG	8207-7581	8/1/2017-2023	\$0
Directors & Officers Liability - Including EPL	HCC	14-MGU-18-A43357	3/27/2018-2024	\$0
Approximate total of annual gross premiums				\$7,449,971.00 ¹

¹ These approximate annual gross premiums do not include potential Insurance Brokers' commissions related to the renewal of these policies.