

Hearing Date: April 16, 2019, at 10:00 a.m. (prevailing Eastern Time)
Objection Deadline: April 9, 2019, at 4:00 p.m. (prevailing Eastern Time)

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Proposed Counsel to the Debtors and Debtors in Possession

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

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

**NOTICE OF FILING OF SUPPLEMENT
TO 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**

PLEASE TAKE NOTICE that on February 25, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed 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* (the “Wages Motion”), and on March 26, 2019, the Debtors filed the *Supplement to*

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, 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.



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 (the "Supplement"). A hearing (the "Hearing") on the Wages Motion and the Supplement will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, on **April 16, 2019, at 10:00 a.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that the Wages Motion was granted on an interim basis after a hearing held on February 26, 2019, pursuant to an interim order entered by this Court on February 28, 2019 [Docket No. 60] (the "Interim Wages Order").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Supplement shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, and the *Interim Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Docket No. 57] (the "Case Management Order") approved by this Court; (c) be filed electronically with this Court on the docket of *In re Windstream Holdings, Inc.*, Case 19-22312 (RDD) by registered users of this Court's electronic filing system and in accordance with the General Order M-399 (which is available on this Court's website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **April 9, 2019, at 4:00 p.m., prevailing Eastern Time**, by (i) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at

<http://www.kcellc.net/windstream>) and (ii) any person or entity with a particularized interest in the subject matter of the Supplement.

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Supplement, the Debtors shall, on or after the Objection Deadline and in advance of the Hearing, submit to this Court an order granting the Wages Motion and the Supplement on a final basis, which order this Court may enter with no further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned thereafter from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing. The Debtors will file an agenda before the Hearing, which may modify or supplement the Wages Motion and the Supplement to be heard at the Hearing.

PLEASE TAKE FURTHER NOTICE that a copy of the Wages Motion may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at <http://www.kcellc.net/windstream>. You may also obtain copies of any pleadings by visiting this Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

[Remainder of page intentionally left blank.]

Dated: March 26, 2019
New York, New York

/s/ Stephen E. Hessler

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

In re:)	Chapter 11
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WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ²)	Case No. 19-22312 (RDD)
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Debtors.)	(Jointly Administered)
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**SUPPLEMENT TO 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**

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 supplemental motion (the “Supplement”):

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing*

² 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.

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 this Court in connection with this Supplement to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

3. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) 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”).

Supplement to the Relief Requested by the Wages Motion.

4. On February 25, 2019 (the “Petition Date”), the Debtors filed 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* [Docket No. 18] (the “Wages Motion”) seeking, among other things, authority to continue the Debtors’ employee wages and benefits programs in the ordinary course of business and honor prepetition obligations related thereto. The Wages Motion stated that the Debtors did not believe that they owed any obligations on account of prepetition Wage Obligations in excess of the statutory cap of \$12,850 set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. Wages Motion, ¶ 17. Since the Petition Date and the filing of the Wages Motion, the Debtors, through their ordinary course reconciliation and calculation process, have discovered that there are in fact certain non-insider employees to whom the Debtors owe prepetition amounts in excess of \$12,850 as of the Petition Date. These amounts relate to

commissions, wages, incentive pay, and related compensation earned during the month of February 2019. Final calculations concerning some of these amounts, particularly commissions, are performed at the end of each month (with month-end performance data), and were therefore difficult to ascertain as of the Petition Date. In total, there are approximately 50 non-insider employees who are owed approximately \$990,000 on account of accrued but unpaid commissions, wages, and related incentive compensation and benefits as of the Petition Date. For the avoidance of doubt, in compliance with the order granting the Wages Motion on an interim basis, the Debtors have not paid the over-cap obligations pending entry of a final order approving the Wages Motion.

5. The Wages Motion seeks authority to pay *all* prepetition obligations owing to non-insider employees on a final basis, which would include these over-cap obligations. Out of an abundance of caution, this Supplement provides supplemental disclosure regarding all known obligations to date and requests authority to honor those obligations, as well as any subsequently uncovered non-insider prepetition over-cap obligations, under the final order granting the relief requested in the Wages Motion (the form of which the Debtors will submit to this Court in advance of the hearing on the Supplement and the Wages Motion on April 16, 2019) (the “Final Wages Order”).

Basis for Relief

I. Payment of the Over-Cap Obligations Is Warranted Under Section 363(b)(1) of the Bankruptcy Code and the Doctrine of Necessity.

6. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code, provided a sound business purpose for doing so. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (noting that relief is appropriate under section 363(b) where payment is needed to “preserve and protect its business and ultimately reorganize, retain its currently working employees, and maintain positive employee morale.”); *see also Armstrong*, 29 B.R. at 397 (relying

on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors). Specifically, the business judgment standard requires that a debtor “articulate some business justification, other than mere appeasement of major creditors.” *In re Ionosphere Clubs*, 98 B.R. at 175.

7. Courts may also authorize payment of prepetition claims in certain circumstances based on section 105(a) of the Bankruptcy Code. Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the debtor’s businesses. *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 organization”).

8. The Debtors submit that paying the over-cap obligations represents a sound exercise of their business judgment and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying the over-cap obligations will allow the Debtors’ operations to continue without interruption. Given the specialized talent, experience, and significantly high replacement cost of the non-insider employees at issue (who are among the Debtors’ best performing sales employees), the Debtors believe that without the relief requested herein, those individuals may seek and could easily obtain alternative employment, perhaps with the Debtors’ competitors. Moreover, as described above, a significant portion of the over-cap obligations is comprised of sale commissions arising out of customer acquisitions that are ultimately accretive to the Debtors’ businesses. Failure to assure the Debtors’ sales force that they will timely receive commissions for new customer acquisitions could have a significant negative effect on the

Debtors' businesses. Such a development would materially hinder the Debtors' ability to operate their business. Finally, the loss of the Debtors' valuable Employees and the resulting necessity and high cost of recruiting new personnel would distract the Debtors from focusing on stabilizing their business.

9. For the reasons set forth in the Wages Motion and this Supplement, the Debtors respectfully request that this Court enter the Final Wages Order, including authorizing payment of the over-cap obligations.

Notice

10. The Debtors have provided notice of this Supplement to: (a) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at www.kccllc.net/windstream) and (b) any person or entity with a particularized interest in the subject matter of this Supplement. The Debtors respectfully submit that no other or further notice is necessary.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that this Court enter the Final Wages Order granting the relief requested herein and in the Wages Motion, and such other relief as this Court deems appropriate under the circumstances.

Dated: March 26, 2019
New York, New York

/s/ Stephen E. Hessler

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