

Hearing Date: April 16, 2019 at 10:00 a.m. (Eastern Time)

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*Proposed Counsel to the Official Committee of  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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

**STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
REGARDING THE DEBTORS' AMENDED MOTION FOR ENTRY OF INTERIM  
AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, AND  
507 (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED  
SUPERPRIORITY POSTPETITION FINANCING, (II) GRANTING LIENS AND  
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING  
USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION,  
(V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING,  
AND (VII) GRANTING RELATED RELIEF**

<sup>1</sup> 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.



The Official Committee of Unsecured Creditors (the “Committee”) of Windstream Holdings, Inc. and its debtor affiliates, as debtors and debtors-in-possession (collectively, the “Debtors”), by and through its undersigned proposed counsel, hereby submits this statement (the “Statement”) regarding the *Debtors’ Amended Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 42] (the “DIP Financing Motion”).<sup>2</sup> In support of this Statement, the Committee respectfully states as follows:

#### **PRELIMINARY STATEMENT**

1. The Committee was formed approximately four weeks ago. Since that time, the Committee’s professionals have been working closely with the Debtors’ advisors to understand the significant issues in these chapter 11 cases. Although the Committee is still developing an understanding of those issues, it identified several provisions of the proposed DIP Facilities that appeared to unfairly prejudice unsecured creditors. The Committee raised these issues with the advisors to the Debtors, the DIP Lenders, and certain of the Prepetition Secured Parties. In connection with various discussions and negotiations regarding the DIP Facilities, those parties agreed to modify certain provisions of the proposed final order granting the DIP Motion (the “Final Order”).<sup>3</sup> In light of those modifications, which are described below, the Committee does not oppose entry into the DIP Facilities as amended.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Interim Order (as defined below) or the DIP Financing Motion, as applicable.

<sup>3</sup> The Committee also worked with advisors for the Debtors to address various concerns regarding relief requested under the Debtors’ other first and second day motions. The Committee is pleased to report that those concerns also

## **BACKGROUND**

2. On February 25, 2019 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court. The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

3. These chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 56], entered on February 28, 2019.

4. On March 12, 2019, the United States Trustee for Region 2 (appointed the Committee<sup>4</sup> [Docket No. 135].

5. On the Petition Date, the Debtors filed the DIP Financing Motion, and on March 1, 2019, the Court entered the *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Secured Parties, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* [Dkt. No. 75] (the “Interim Order”). A final hearing with respect to the DIP Financing Motion is scheduled for April 16, 2019 at 10:00 a.m. (Eastern Time).

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have been consensually resolved through certain revisions to the relevant proposed final orders.

<sup>4</sup> The members of the Committee are: (a) Pension Benefit Guaranty Corporation; (b) Communication Workers of America, AFL-CIO, CLC; (c) AT&T Services, Inc.; (d) VeloCloud Networks, Inc.; (e) Crown Castle Fiber; (f) LEC Services, Inc.; and (g) UMB Bank.

**DESCRIPTION OF CONSENSUAL MODIFICATIONS  
TO THE FINAL ORDER**

6. Although there were several provisions of the Interim Order and the DIP Facilities that were of concern to the Committee, the Committee recognized the importance of obtaining DIP financing to the Debtors' reorganization efforts. To that end, the Committee negotiated with the Debtors, the DIP Lenders and certain Prepetition Secured Parties to modify certain terms that the Committee believed could be most prejudicial to unsecured creditors.

7. Among the provisions of most significant concern to the Committee was that the proposed Final Order seeks to provide (a) each of the DIP Agents, for the benefit of themselves and the DIP Lenders, with DIP Liens and Superpriority Claims with respect to the DIP Facilities, and (b) the Prepetition Agent and Prepetition Notes Trustees, for the benefit of the Prepetition Secured Parties (together with the DIP Agents and the DIP Lenders, the "Secured Parties"), Adequate Protection Liens and superpriority Prepetition Adequate Protection Claims as adequate protection for the Prepetition Secured Parties under the Prepetition Secured Obligations. Each of those liens and claims attach to the proceeds of any avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents ("Chapter 5 Actions"), as well as proceeds of D&O insurance and unencumbered commercial tort claims (collectively, the "Additional Assets"). The Committee has not yet had the opportunity to investigate potential Chapter 5 Actions or other potential litigation that may be of value to the Debtors' estates, and no schedules of assets and liabilities or statements of financial affairs have yet been filed. However, based on the Debtors' pleadings filed to date, it appears that, aside from the Additional Assets, substantially all of the Loan Parties' assets are encumbered. The proceeds of Chapter 5 Actions or other litigation claims may be a significant asset available to unsecured creditors. Thus, the Committee believed that removal or modification of these provisions was of paramount

importance. In order to ameliorate the Committee's concerns, the Debtors and the Secured Parties have agreed that, with respect to the Additional Assets, the Secured Parties will first use commercially reasonable efforts to satisfy their respective superpriority claims from any available cash proceeds of collateral other than the Additional Assets before seeking recourse to the Additional Assets.

8. The Debtors and the Secured Parties also have agreed to certain additional modifications to the Final Order at the Committee's request, including the following:

- Paragraph 21 of the Final Order has been modified to extend the deadline by which the Committee has to commence a proceeding challenging the Prepetition Lien and Claim Stipulations (a "Challenge") from seventy-five (75) days from the formation of the Committee to ninety (90) days following entry of the Final Order (the "Challenge Period"), subject to extension upon agreement by the parties or as further ordered by the Court. That paragraph has been further modified to provide that the filing by the Committee of a motion for standing to prosecute a Challenge shall serve to automatically toll the Challenge Period until the Court rules on that motion. In addition, the ability of the Committee to bring any claim or cause of action belonging to the Debtors or their estates regarding the Prepetition Second Lien Notes Documents, the Prepetition Second Lien Notes, or the Prepetition Second Lien Notes Liens outside of the Challenge Period has been expressly preserved;
- Paragraph 22 of the Final Order has been modified to increase the amount that may be used for the payment of the fees, costs, and expenses of advisors to the Committee to investigate the validity, enforceability, perfection, priority or extent

of the Prepetition Liens from \$50,000 to \$250,000;

- Paragraphs 15(j) and 32 of the Final Order have been modified to include the Committee in the list of designated parties entitled to receive financial reporting and granted access to the Debtors' advisors;
- Paragraph 15(k) of the Final Order has been modified to clarify that every Debtor except Holdings that is a DIP Loan Party is also an obligor under the Prepetition Debt Documents as of the Petition Date. In addition, the Debtors must provide advance notice of any additional Debtors that may become DIP Loan Parties by filing notice with this Court; and
- Paragraph 18 of the Final Order has been modified to include an express acknowledgment that the payment of the consent fee to prepetition first lien lenders that consented to being primed by the DIP Facilities will not constitute diminution in value for any future adequate protection claim.

9. Taken together, the Committee believes that the compromises outlined above strike an acceptable balance between preserving potential sources of value for the benefit of unsecured creditors. These compromises also avoid disruptive and potentially costly litigation that could place the Debtors' postpetition financing at risk. Accordingly, the Committee does not oppose entry of the proposed Final Order as amended.

#### **RESERVATION OF RIGHTS**

10. The Committee is continuing to review the proposed form of Final Order with the respective advisors for the Debtors and the Secured Parties and reserves the right to raise any issues or objections to the extent not resolved among the parties.

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Dated: April 12, 2019  
New York, New York

Respectfully submitted,

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