

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

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

**FINAL ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES, (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES, AND (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"): (a) prohibiting Utility Providers from altering, refusing, or discontinuing services; (b) determining adequate assurance of payment for future Utility Services; and (c) establishing procedures for determining adequate assurance of payment for future Utility Services; 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(a)-(b) and 1334(b) 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 this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b) that this Court may decide by

<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.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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Debtors Motion for Entry of an Order (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, and (III) Establishing Procedures for Determining Adequate Assurance of Payment* [Docket No. 7] (the "Motion").



a final order consistent with Article III of the United States Constitution; and this Court having found that venue of the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and that opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and upon the objections to the Motion, the record of the hearing thereon and all of the proceedings herein; and after due deliberation 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, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors shall serve a copy of this Order on any Utility Provider identified prior to the entry of this Order no later than five business days after the date this Order is entered.
3. All Utility Providers, including subsequently identified Utility Providers, are prohibited from (a) altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance; and (b) requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Adequate Assurance Procedures as hereby approved.
4. The following Adequate Assurance Procedures are hereby approved on a final basis:
  - a. The Debtors will serve a copy of this Motion and the order granting the relief requested herein to each Utility Provider within five business days after entry of the order by the Bankruptcy Court.
  - b. Subject to paragraphs (e)–(h) herein, if requested by a Utility Provider, the Debtors will set aside in the Adequate Assurance Account the Adequate Assurance Amount as soon as practicable.

- c. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (i) Windstream Holdings, Inc., 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, Attn.: Kristi M. Moody; and (ii) 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.
- d. Proposed counsel to the Debtors shall promptly cause any notice received pursuant to paragraph 2(c) of this Order to be served on the following: (i) counsel to any statutory committee appointed in these cases (ii) 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; and (iii) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, “Notice Parties”). The Debtors shall honor such request by the applicable Utility Provider within ten business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Bankruptcy Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.
- e. The portion of the Adequate Assurance Account attributable to each Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) will be returned to the Debtors on the earlier of (i) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider and (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases (less any amounts owed on account of unpaid, postpetition Utility Services).
- f. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the Notice Parties.
- g. Any Additional Assurance Request must: (i) be made in writing; (ii) identify the location for which Utility Services are provided; (iii) include information regarding any security deposits paid by the Debtors; (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (v) explain why the Utility Provider believes the

Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- h. An Additional Assurance Request may be made at any time. If a Utility Provider fails to file and serve an Additional Assurance Request, the Utility Provider shall be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- i. Upon the Debtors’ receipt of an Adequate Assurance Request, the Debtors shall have 30 days from the receipt of the Adequate Assurance Request (the “Resolution Period”) to negotiate with the Utility Provider to resolve the Utility Provider’s Adequate Assurance Request.
- j. Without further order of the Bankruptcy Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving as an Additional Assurance Request if the Debtors determine that the Additional Assurance Request is reasonable.
- k. If the Debtors determine, in their sole discretion, that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the Resolution Period, may request a hearing (a “Determination Hearing”) before the Bankruptcy Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- l. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider will be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.

5. The Debtors will cause a copy of this Order, including the Adequate Assurance Procedures, to be served on any subsequently identified Utility Provider and any such Utility Provider shall be bound by the Adequate Assurance Procedure.

6. A Utility Provider shall be deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code unless and until, subject to the limitations of this Order, (a) the Debtors agree to (i) an Additional

Assurance Request or (ii) an alternative adequate assurance payment with the Utility Provider during the Resolution Period; or (b) this Court enters an order at any Determination Hearing requiring that additional adequate assurance of payment be provided.

7. In connection with their provision of Adequate Assurance Amounts to the Utility Providers, the Debtors are hereby authorized to enter into separate adequate assurance agreements (the “Separate Adequate Assurance Agreements”) with Utility Providers, including the Utility Providers that filed and subsequently withdrew objections to the Motion at docket numbers 228, 241, 244, 258, 270 (collectively, the “Excluded Utility Providers”). Notwithstanding anything to the contrary in this Order, the provisions of this Order shall not apply to the Excluded Utility Providers to the extent the applicable Separate Adequate Assurance Agreements provide that this Order shall not apply to the Utility Provider that is party thereto.

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

9. 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.

10. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintains their accounts relating to prepetition or postpetition obligations that the Debtors are authorized to pay pursuant to this Order is directed to honor checks presented for payment and all fund transfer requests made by the Debtors related to such obligations to the extent that sufficient funds are on deposit in such accounts.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

12. The time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

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

Date: White Plains, New York  
April 22, 2019

/s/Robert D. Drain  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE