

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION**

In re: § **Chapter 11**
§
WINDSTREAM HOLDINGS, INC. § **Case No. 19-22312**
§
§
Debtors. §

**TEXAS TAXING JURISDICTIONS OBJECTION TO JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF WINDSTREAM HOLDINGS, INC, ET AL., PURSUANT TO
CHAPTER 11 OF THE BANKRUPTCY CODE**

[ECF 1631]

NOW COMES The County of Anderson, Texas, Bell County Tax Appraisal District, Texas, The County of Bosque, Texas, Bowie Central Appraisal District, Texas, The County of Brazos, Texas, Brown Central Appraisal District, Texas, The County of Callahan, Texas, The County of Cherokee, Texas, Cherokee Central Appraisal District, Texas, Eastland Central Appraisal District, Texas, The County of Comal, Texas, The County of Coryell, Texas, The County of Comanche, Texas, The County of Denton, Texas, The County of Erath, Texas, Floyd Central Appraisal District, Texas, The County of Freestone, Texas, Grimes Central Appraisal District, Texas, Groesbeck I.S.D., Texas, The County of Guadalupe, Texas, Harrison Central Appraisal District, Texas, The County of Harrison, Texas, The County of Hays, Texas, The County of Henderson, Texas, Hill Central Appraisal District, Texas, The County of Hill, Texas, Jasper County Tax Units, Texas, Lynn Central Appraisal District, Texas, Mexia I.S.D., Texas, Midland Central Appraisal District, Texas, The County of Milam, Texas, The County of Newton, Texas, Newton I.S.D., Texas, Reeves County Tax Districts, Texas, Shackelford County Appraisal District, Texas, Taylor County Central Appraisal District, Texas, City of Waco



et al., Texas, The County of Wharton, Texas, The County of Williamson, Texas, The County of Leon, Texas, The County of Stephens, Texas, Terry County Appraisal District, Texas, (hereinafter “Texas Taxing Authorities”) and file this objection to the Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”) and would respectfully show the Court the following:

1. The Texas Taxing Authorities, duly organized governmental units of the State of Texas, are the holders of claims for pre-petition and post-petition ad valorem real and business personal property taxes for tax year 2019-2020 assessed against the property of the Debtors in the aggregate amount of \$986,429.43.
2. The Texas Taxing Authorities’ pre and post-petition claims are secured by unavoidable, first priority, perfected liens on all of the Debtors’ real and business personal property pursuant to Texas Tax Code Section 32.01 and 32.05 and 11 U.S.C. Section 362(b)(18).¹ *In re Winn’s Stores, Inc.*, 177 B.R. 253 (Bankr. W. D. Tex. 1995); *Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc.*, 894 S.W.2d 841 (Tex. App. – Eastland 1995). These liens arise on January 1 of each tax year along with the property owner’s personal liability for the ad valorem taxes and attach to the property by operation of law. Tex. Prop. Tax Code 32.01; 11 U.S.C. Sec. 362(b)(18). Texas Tax Code Section 32.01 provides:

- (a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property,

whether or not the taxes are imposed in the year the lien attaches. The lien exists in favor of each taxing unit having power to tax the property.

(b) A tax lien on inventory, furniture, equipment, or other personal property is a lien *in solido* and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires

(c) ..

(d) The lien under this section is perfected on attachment and ... perfection requires no further action by the taxing unit.

11 U.S.C. Section 362(b)(18) allows the attachment of liens that secure taxes that come

due post-petition.

(b) ... a tax lien provided by this chapter takes priority over the claim of any creditor of a person whose property is encumbered by the lien and over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before attachment of the tax lien.

3. The Texas Taxing Authorities object to confirmation of the Plan because it does not provide for the payment of penalties and interest on their Secured claims. Ad valorem taxes incur interest and penalties at the state statutory rate until paid in full. *U.S. v. Noland*, 517 U.S. 535 (1996).
4. The Texas Taxing Authorities object to confirmation of the Plan to the extent that it does not provide that they retain the liens that secure all base tax, penalties and interest that may accrue on their Secured claims.

5. The Texas Taxing Authorities object to the treatment of their claims because the Plan does not specifically provide for retention of their liens against their collateral.
6. The Texas Taxing Authorities object to confirmation of the Plan because it provides for the vesting of all property in each Estate of the applicable Reorganized Debtor free and clear of all Liens, Claims or other encumbrances, unless otherwise provided in the Plan. The Plan does not provide for the Texas Taxing Authorities to retain the liens that secure their claims and administrative expense claims. The Texas Taxing Authorities object to the avoidance of their liens without an adversary proceeding.
7. The Texas Taxing Authorities object to confirmation of the Plan because it does not provide for when The Texas Taxing Authorities shall receive payment of their claims. The Texas Taxing Authorities are still entitled to post-petition pre Effective Date interest and post Effective Date interest at the state statutory rate of 1% per month and 12% per annum, respectively, pursuant to 11 U.S.C. Sections 506(b), 511 and 1129. The Texas Taxing Authorities have the right to know if the Debtors intend to pay their claims in installments or in one lump sum, the number of installments that the Debtors contemplate and when they should expect the first installment payment or the lump sum payment of their claims. The Plan does not provide any of these details.
8. The Texas Taxing Authorities object to confirmation of the Plan to the extent that it does not provide that they retain the liens that secure all base tax, penalties and interest that may accrue on their administrative expense claims and that they be paid in the ordinary course.

WHEREFORE, The Texas Taxing Authorities object to the Debtor's Plan and requests this Court to order appropriate provisions to assure the protection of the position of their secured and administrative tax claims and further request other such relief as is just and proper.

Dated: April 3, 2020

Respectfully Submitted,

**McCREARY, VESELKA, BRAGG &
ALLEN, P.C.**

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CERTIFICATE OF SERVICE

I hereby certify that, on April 3, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of New York, White Plains Division.

/s/ Tara LeDay
Tara LeDay

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