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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
WINDSTREAM HOLDINGS, INC., *et al.*,[1]	Case No. 19-22312 (RDD)
Debtors.	(Jointly Administered)

THE FIRST LIEN AD HOC GROUP'S OMNIBUS REPLY IN SUPPORT OF THE DEBTORS' 9019 MOTION, BACKSTOP MOTION AND DISCLOSURE STATEMENT MOTION

The ad hoc group of certain unaffiliated holders of the Debtors' first lien indebtedness (the "First Lien Ad Hoc Group"),[2] by and through its undersigned counsel, hereby replies (the "Reply") (i) in support of the 9019 Motion[3], the Backstop Motion[4] and the

[1] The above captioned debtors in these chapter 11 cases (the "Debtors"), along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [ECF No. 17]. The location of the Debtors' service address is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

[2] The First Lien Ad Hoc Group comprises certain holders of loans or other indebtedness: (i) incurred under that certain Sixth Amended and Restated Credit Agreement, originally dated as of July 17, 2006, amended and restated as of April 24, 2015 and subsequently amended, among Windstream Services, LLC, the other loan parties party thereto, the lenders from time to time party thereto, J.P. Morgan Chase Bank, N.A., as administrative agent and collateral agent and the other parties thereto; and (ii) issued under that certain Indenture for certain 8.625% notes due 2025 dated as of November 6, 2017, by and among Windstream Services, LLC and Windstream Finance Corp., the guarantor party thereto, Delaware Trust Company, as trustee and notes collateral agent and the holders thereunder. *See Fourth Amended Verified Statement of the First Lien Ad Hoc Group Pursuant to Bankruptcy Rule 2019* [ECF No. 1699].

[3] *See Debtors' Motion for Entry of an Order Approving the Settlement Between the Debtors and Uniti Group Inc., Including (I) the Sale of Certain of the Debtors' Assets Pursuant to Section 363(b) and (II) the Assumption of the Leases Pursuant to Section 365(a)* [ECF No. 1558] (the "9019 Motion"). Capitalized terms

Disclosure Statement Motion[5] (collectively, the "Motions"); (ii) in response to the objections and reservation of rights (collectively, the "Objections") to the Motions listed on **Exhibit A** attached hereto; and (iii) in support of the Debtors' Reply to the Objections to the Motions.[6] The First Lien Ad Hoc Group respectfully states as follows:[7]

PRELIMINARY STATEMENT

1. Nearly all of the Debtors' in-the-money stakeholders affirmatively support the settlement resolving the Uniti Adversary Proceeding—which marks the culmination of seven months of extensive, hard-fought negotiations mediated by the Honorable Shelley C. Chapman and paves a clear and viable path toward the Debtors' emergence from chapter 11. The only parties objecting to the settlement are woefully out of the money and cannot (and, indeed, do not) offer any other means for the Debtors to remain viable as a going concern—let alone emerge from chapter 11.

2. Instead, the Committee and the Trustees (together, the "Unsecured Creditors") invite this Court to engage in a monumental suspension of disbelief to indulge their

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used but not defined herein shall have the meanings given such terms in the 9019 Motion, Backstop Motion (as defined below) or Disclosure Statement Motion (as defined below), as applicable.

4 *Debtors' Motion for Entry of an Order Authorizing (I) the Debtors Entry into the Backstop Commitment Agreement and (II) Payment of Related Fees and Expenses* [ECF No. 1579] (the "Backstop Motion").

5 *Debtors' Motion to Approve (I) the Adequacy of Information in the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [ECF No. 1633] (the "Disclosure Statement Motion").

6 The "Debtors' Reply" means, collectively, the (a) *Debtors' Omnibus Reply in Support of Debtors' Motion for Entry of an Order Approving the Settlement Between the Debtors and Uniti Group, Inc., Including (I) the Sale of Certain of the Debtors' Assets Pursuant to Section 363(b) and (II) the Assumption of the Leases Pursuant to Section 365(a)* [ECF No. 1768], (b) *Debtors' Omnibus Reply in Support of Debtors' Motion for Entry of an Order Authorizing (I) the Debtors Entry into the Backstop Commitment Agreement and (III) Payment of Related Fees and Expenses* [ECF No. 1769] and (c) *Debtors' Omnibus Reply to Objections to Approval of the Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc.,* et al.*, Pursuant to Chapter 11 of the Bankruptcy Code* [ECF No. 1767].

7 This Reply relies on the *Declaration of Samuel E. Lovett in Support of the First Lien Ad Hoc Group's Omnibus Reply in Support of the Debtors' 9019 Motion, Backstop Motion and Disclosure Statement Motion* (the "Lovett Declaration"), filed contemporaneously herewith.

attempts to dismantle a painstakingly and vigorously negotiated settlement. This Court should decline the invitation. The narrative woven by the Unsecured Creditors relies on three fictitious threads: *first*, that a global settlement, reached as part of court-ordered mediation under the guidance of a sitting bankruptcy judge in this district, is anything but the product of good faith, arm's-length negotiations; s*econd*, that, absent the settlement, all of the Debtors' creditors would be paid in full and that the Debtors' first lien creditors—who are receiving substantially less than a par recovery under the Plan—colluded to settle with Uniti, and jettison a full recovery, in exchange for the right to purchase Uniti equity; and, *third*, that whether the settlement proceeds are encumbered (they are) has any bearing whatsoever on this Court's decision to approve the settlement (it does not).

3. The Unsecured Creditors' objections to the Backstop Motion and Disclosure Statement Motion are similarly flawed. In their objections to the Backstop Motion, the Unsecured Creditors challenge fees that are consistent with market practice, and impact only first lien, not unsecured, creditors. Given that not a single first lien creditor has objected, the Court should not entertain these objections. And, with respect to the Disclosure Statement Motion, there can be no serious challenge to the Plan as "patently unconfirmable," particularly where the Plan construct was negotiated within the walls of mediation and under the auspices of Judge Chapman.

4. Accordingly, and as explained in more detail below, the Unsecured Creditors' objections to the Motions should be overruled.

ARGUMENT

5. The First Lien Ad Hoc Group hereby joins and incorporates the arguments made in the Debtors' Reply and respectfully submits the following additional arguments in support of approval of the Motions.

I. THE OBJECTIONS TO THE 9019 MOTION SHOULD BE OVERRULED

A. The Settlement Is the Product of Extensive, Arm's Length Mediation Overseen by an Experienced Mediator and Judge in This District

6. Under this Court's mediation order,[8] the Debtors, the First Lien Ad Hoc Group, Elliott and Uniti, among other parties (collectively, the "Mediation Parties"), participated in mediation overseen by Judge Chapman in an effort to reach a consensual resolution of the Uniti Adversary Proceeding and to avoid the cost and uncertainty involved in litigating the claims at issue to a final judgment. After more than seven months of intensive in-person and telephonic mediation discussions, the Debtors and Uniti agreed to, and Judge Chapman approved, the terms of the settlement that encompass the 9019 Motion.

7. The Unsecured Creditors' challenges to that settlement try to portray a back-room, collusive scheme supposedly instigated by Elliott to reap excessive benefits for itself, and subsequently, the First Lien Ad Hoc Group, at the alleged expense of the Debtors and their other stakeholders. Apart from an obvious effort to distract the Court by slinging mud, the Unsecured Creditors' assertions ignore a plethora of facts that undermine their version of events, including that: (i) the Mediation Parties (including each party's counsel, financial advisors and principals and/or board members) exhaustively negotiated the settlement through multiple sessions overseen by Judge Chapman, (ii) any other party was (and still is) welcome to make its own offers and proposals, and had seven long months to do so and (iii) after spending countless hours—and dozens of sleepless nights—over the course of seven months liaising

[8] *See Order Appointing a Mediator* [ECF No. 874].

between and providing guidance to the Mediation Parties, Judge Chapman rendered her support for the settlement and in favor of prompt resolution of the Uniti Adversary Proceeding. If that does not provide the Unsecured Creditors with the required "comfort that the proposed settlement was the result of a vigorously negotiated process," it is hard to imagine what else would. *See In re Adelphia Commc'ns Corp.,* 368 B.R. 140, 246 (Bankr. S.D.N.Y. 2007).

8. Settlements resulting from mediation are entitled to a presumption of good faith. *See In re Telik, Inc. Sec. Litig.,* 576 F. Supp. 2d 570 (S.D.N.Y. 2008) (settlement was entitled to presumption of fairness, given the parties' good-faith negotiations and that a retired judge had served as mediator); *McDonald* v. *CP OpCo, LLC,* 2019 WL 343470, at *6 (N.D. Cal. Jan. 28, 2019) ("counsel appears to have engaged in many months of arms-length bargaining, some with the help of a magistrate judge, and thus the settlement merits an initial presumption of fairness"). The presumption of good faith is particularly applicable where, as here, mediation is overseen by an experienced judge, former judge or mediator, such as Judge Chapman. *See Satchell* v. *Fed. Exp. Corp.,* 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."). Judge Chapman's involvement in the mediation is even more noteworthy given her authorship of the only opinion to which the Committee cites in support of its baseless conclusion that the settlement was not conducted in good faith. (*See* UCC Obj. at ¶ 32 (*citing In re Innkeepers USA Trust*, 442 B.R. 227, 233–34 (Bankr. S.D.N.Y. 2010)).) If anyone over the course of the months' long mediation knows what good faith looks like, it's Judge Chapman and, with her blessing and support, the settlement cannot possibly be anything but the paradigm of good faith, arm's-length negotiation.[9]

[9] The fact that the Unsecured Creditors did not participate in all of the mediation sessions speaks only to their position in the Debtors' capital structure and does not call into question the process through which the

9. The Unsecured Creditors' objections conveniently elide this inconvenient reality. Instead, they attempt to cast a shadow over the entire mediation because, in their view, the entire settlement was "tainted" by a "side-deal" among Uniti, Elliott and the First Lien Ad Hoc Group. Under the terms of that deal, Elliott and the First Lien Ad Hoc Group agreed to purchase Uniti's stock at a price of $6.33 per share (the "Uniti Stock Sale") to yield proceeds at least equal to $244,549,865.10 in cash (the "Purchase Amount") that the settlement requires Uniti to raise. The Unsecured Creditors' portrayal of the Uniti Stock Sale as "tainted" suffers from two fundamental flaws. *First*, it substitutes the Unsecured Creditors' views for that of Judge Chapman. *Second*, it completely mischaracterizes the settlement. The settlement does not dictate *any* terms of the Uniti Stock Sale and contains no mention of which parties will purchase the stock or the price at which such purchases are to be made, much less any requirement that Uniti sell its stock to any specific parties on any specific terms. Those issues instead remain in the sole discretion of Uniti and the counterparties—Elliott, the First Lien Ad Hoc Group or anyone else—it determined to involve to raise the Purchase Amount. The fact that Uniti—a third party not affiliated with the Debtors—chose to raise the Purchase Amount through the Uniti Stock Sale, to which the Debtors are not parties, has nothing to do with the approval of the 9019 since Uniti was free to raise the Purchase Amount however it saw fit.

10. Setting aside for the sake of argument that the Uniti Stock Sale is unrelated to this Court's consideration of the 9019 Motion, the First Lien Ad Hoc Group's and Elliott's agreement to purchase Uniti's stock at a price of $6.33 per share was finalized in a very

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settlement was reached. There were numerous mediation sessions that the First Lien Ad Hoc Group was not invited to attend based on facts as they then stood; the same held true for the Unsecured Creditors later in the mediation. It's now clear that the Debtors' first lien lenders are the fulcrum stakeholders in these cases whose support is required for the success of the settlement and the Debtors' Plan. The Debtors' lack of engagement with unsecured creditors that are woefully out of the money and not entitled to any distribution under the Plan would therefore have served little purpose and offers no support for the arguments that the settlement was not developed in good faith.

different market environment than exists today. The price of Uniti's stock has oscillated significantly since the parties agreed to purchase it, trading as low as $4.96 per share in the last 30 days (much lower than the agreed purchase price of $6.33 per share). Any argument that the Uniti Stock Sale unfairly generates significant value outside of the settlement at the expense of the Debtors' estates fails to recognize that the First Lien Ad Hoc Group and Elliott—not the Debtors—bear all economic risk related to the investment.

B. The Settlement and Its Attendant Benefits Are in the Best Interests of the Estates' and the Debtors' Stakeholders

1. *The Settlement Is Far Superior to Protracted Litigation against Uniti in Which the Best Case Outcome May Be a Pyrrhic Victory*

11. The settlement represents a superior path to litigation against Uniti given the inherent uncertainty and cost of such litigation. While the First Lien Ad Hoc Group believes the Debtors may ultimately prevail on the merits of the claims raised in the Uniti Adversary Proceeding, such victory would prove costly and time-consuming. In addition, even if the Debtors were to prevail, the fashioning of an appropriate remedy would be complicated and could end up bankrupting Uniti. Because the settlement confers significant value to the Debtors, far above "the lowest point in the range of reasonableness" and de-risks an otherwise extremely uncertain situation, the settlement is appropriate and in the best interests of the Debtors and their stakeholders. *See In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 493, 497 Bankr. S.D.N.Y. 1991).

(a) Resolution of the Uniti Adversary Proceeding Clears the Path for the Debtors' Emergence from These Chapter 11 Cases

12. The settlement, if consummated, clears the path to allow the Debtors to emerge from chapter 11 sooner rather than later. By the Unsecured Creditors' own acknowledgements, the "Uniti Litigation has been the most significant hurdle for the Debtors to

craft a confirmable chapter 11 plan"[10] and the recharacterization "trial will . . . be the 'threshold gating item' to a plan of reorganization."[11] It is therefore unsurprising that approval of the 9019 Motion and consummation of the settlement are required before the Debtors can effectuate the Plan.

13. While approval of the 9019 Motion and consummation of the settlement are conditions precedent to the Plan's effectiveness, the opposite is not true. Nothing in the settlement dictates the Plan's distribution scheme or the rights of creditors in violation of section 1129 of the Bankruptcy Code. The relationship between the settlement and Plan is hardly surprising and does not, without more, constitute the type of "extreme circumstances" the law requires to establish that the settlement encroaches on a right afforded to creditors in the chapter 11 process. *See In re Tower Auto. Inc.,* 241 F.R.D. 162, 169 (S.D.N.Y. 2006) (citing *In re Crowthers McCall Pattern, Inc.,* 114 B.R. 877, 885 (Bankr. S.D.N.Y. 1990)). It is not at all uncommon for a significant settlement to serve as a cornerstone for a confirmable Plan.[12]

(b) The Settlement Avoids Substantial Litigation Costs and Uncertainty

14. The settlement avoids the substantial costs and potential appeals of any judgment in the Uniti Adversary Proceeding, a further prolonged and costly stay in chapter 11, a

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[10] *See Limited Objection of the Official Committee of Unsecured Creditors to Debtors' Third Motion to Extend Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121 of the Bankruptcy Code* [ECF No. 1678] at ¶ 19.

[11] *See Limited Objection of UMB Bank, National Association and U.S. Bank National Association, as Indenture Trustees, to Debtors' Third Motion to Extend Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121 of the Bankruptcy Code* [ECF No. 1681] at ¶ 8.

[12] *See, e.g.*, *In re Trident Holding Company, LLC*, No. 19-10384 (Bankr. S.D.N.Y. Sept. 18, 2019) [ECF No. 854] (confirming plan requiring resolution of two adversary proceedings subject to Bankruptcy Rule 9019 settlement prior to plan effectiveness); *In re Fusion Connect, Inc., et al.*, No. 19-11811 (Bankr. S.D.N.Y. 2019) [ECF No. 680] (confirming plan with approval of a settlement as a condition precedent to the effective date of the plan); *In re Nine West Holdings, Inc. et al*, No. 18-10947 (Bankr. S.D.N.Y. 2019) [ECF No. 1308] (same); *In re Westinghouse Electric Company LLC*, No. 17-10751 (Bankr. S.D.N.Y. 2018) [ECF No. 2988] (same); *In re Avaya Inc. et al,* No-17-10089 (Bankr. S.D.N.Y. 2017) [ECF No. 1529] (same); *In re Residential Capital, LLC et al.*, No. 12-12020 (Bankr. S.D.N.Y. 2013) [ECF No. 6065] (same).

possible bankruptcy filing by Uniti and uncertainty as to the outcome and timing of these chapter 11 cases. In addition to the costs and inherent uncertainty associated with the recharacterization trial, fashioning a remedy following a successful recharacterization claim would be exceedingly complex given the unique triangular lease structure under which the subsidiaries of Services originally owned the assets subject to the Uniti Arrangement between Uniti and Holdings. Specifically, the remedy will depend on the determination of critical, mixed questions of law and fact such as (i) whether the leased assets are deemed to be assets of Holdings or Services, (ii) whether Uniti's resulting claim will be allowed against Holdings or Services, (iii) whether Uniti has a secured or unsecured claim, (iv) whether the leased assets constitute real or personal property, (v) the amount of Uniti's claim and (vi) whether the leased assets are collateral securing the first lien creditors' claims. Each of these result in additional issues that will require additional briefing (and possibly more mediation) and that will certainly incur significant costs to the estates. And, even if the Court were to fashion a remedy that benefits the Debtors' estates, enforcement of that remedy will raise additional costs, time and challenges, especially if Uniti's status as a real estate investment trust is jeopardized and Uniti is forced into its own chapter 11 cases.

15. Moreover, regardless of the outcome of the recharacterization claim (and any remedy that is ultimately fashioned), the parties will inevitably face the prospects of lengthy appeal processes and continued litigation over the constructive fraudulent transfer and contract breach claims in the Debtors' Complaint that were previously bifurcated and stayed pending resolution of the recharacterization claim. The prospect of yet more litigation is simply not practicable in light of the Debtors' more than year-long stay in chapter 11 and the Debtors' dwindling liquidity and looming DIP maturity in February 2021. The Committee, as a

fiduciary, should focus its efforts on ensuring the Debtors are able to emerge as a going concern to support the Debtors' vendors and other ongoing stakeholders rather than attempting to stall the settlement in order to litigate for litigation's sake.

(c) The Settlement Delivers Substantial Value to the Debtors' Estates

16. Based on the Debtors' valuation, the settlement results in the conferral of $1.2 billion in present value to the Debtors' estates. Such value includes a substantial cash infusion necessary to satisfy administrative expense claims (the payment of which is required to emerge from chapter 11) and the obligations under the DIP facility. However, while supported by nearly all of the Debtors' first lien creditors (and not objected to by a single first or second lien creditor), the Plan resulting from the settlement does not provide even close to payment in full of the prepetition first lien claims, instead equitizing and paying only $0.67 of each dollar of prepetition first lien claims (and that is before taking into account the first lien lenders' enormous adequate protection claim).[13] As the fulcrum stakeholders, the first lien creditors are the only parties with a financial stake in the outcome of the settlement and would never have supported any settlement providing a dollar less than the upper limit of the Debtors' potential recovery. If it were as obvious and simple to provide a full recovery to all of the Debtors' creditors as the Unsecured Creditors contend, (*see* UCC Obj. at ¶ 45), the first lien creditors would never have agreed to the settlement. The fact that no proposal providing for such robust

[13] The first lien creditors' collateral has suffered from drastic diminution in value notwithstanding the adequate protection the Debtors have provided to the first lien creditors. Such diminution in value is most readily evidenced by the steep decline in the trading prices of the first lien securities, each of which was above 87% on the Petition Date and has recently fluctuated between 50% and 60%. While the First Lien Ad Hoc Group does not fully address the allocation of the settlement proceeds herein, as that issue is reserved for confirmation, the first lien creditors have a junior lien on the DIP collateral and would undoubtedly have the rights to assert claims against the Debtors for the amount of the adequate protection claims, which claims will be substantial and will be accorded priority over all other unsecured claims of such Debtors, including administrative expense claims.

recoveries has materialized speaks volumes as to its improbability and about the reasonableness of the settlement.[14]

17. The Unsecured Creditors also devote much rhetoric to their erroneous view that the proceeds of the settlement are partially unencumbered and available for distribution to Unsecured Creditors. In so arguing, though, they both disregard the fact that whether such proceeds are encumbered—and they are—is irrelevant to this Court's consideration of the 9019 Motion and conspicuously ignore the strong evidence demonstrating that the settlement proceeds are not available for distribution to unsecured creditors.[15]

2. *The Overwhelming Majority of the Debtors' Creditors Support or Do Not Oppose the Settlement*

18. The Unsecured Creditors' contention that there is widespread opposition to the settlement from the Debtors' creditors other than Elliott and the First Lien Ad Hoc Group is patently false. (See UCC Obj. ¶ 41 n.16 ("it is Elliott and the members of the First Lien Ad Hoc Group *alone* that support the Settlement" (emphasis added); Trustees' Obj. ¶ 54.) In addition to Elliott and the First Lien Ad Hoc Group, other first lien lenders holding $667 million of first lien claims, 72% (by amount) of creditors holding Midwest Notes Claims (as defined in

[14] To be clear, at no point in these cases did the First Lien Ad Hoc Group receive any proposals from any unsecured creditors predicated on payment in full of the first lien claims. *See* Lovett Decl., Ex. 1 ("Bruce Mendelsohn Dep. Tr.") 13:13-16 (Q: "Has the committee ever offered a proposal or a settlement plan that would call for full recoveries to the 1Ls and 2Ls? A. No."). Nor do the Unsecured Creditors appear to be making any serious proposal now. Their focus is—and always has been—on complaining about priorities and the value that others are getting. Not once during these cases have the Unsecured Creditors offered to sponsor a rights offering predicated on their pie-in-the-sky valuations or litigation views. Not once, during the many weeks when Uniti's stock traded below $6.33, did the Unsecured Creditors attempt to purchase it (despite Uniti expressly encouraging them to do so). The Unsecured Creditors have had plenty of chances to put their money where their mouths are and not once have they done so. That alone speaks volumes.

[15] Such evidence includes, for example, the Unsecured Creditors' lack of standing to direct or challenge the allocation of the settlement proceeds, the first lien creditors' valid and perfected security interests over the proceeds of general intangibles (such as the settlement proceeds) pursuant to their prepetition credit documents and the fact that the settlement proceeds must be used to pay the first lien creditors' adequate protection claims prior to being made available for distribution to Unsecured Creditors. The First Lien Ad Hoc Group reserves all rights to raise these and other arguments regarding the proceeds, objections and responses thereto at the appropriate time.

the PSA) and 54% (by amount) of second lien holders (much of which is held by second lien creditors other than Elliott) signed the PSA which, among other things, details their affirmative support for the settlement.

19. What's more, *none* of the Debtors' second lien creditors object to the settlement, despite the Unsecured Creditors' assertions to the contrary. (*See* Trustees' Obj. ¶ 54 ("with the exception of Elliott and other partisan creditors, all second lien and Unsecured Creditors and the Unsecured Creditors Committee oppose the Settlement") (emphasis in original); UCC Obj. ¶ 41 ("various unsecured and second lien noteholders all also oppose the Settlement"). Instead, as noted above, by signing the PSA, the majority of second lien creditors by amount affirmatively support the settlement. The Unsecured Creditors are therefore the *only* creditors objecting to the settlement, with the overwhelming majority of the Debtors' creditors affirmatively supporting, or not objecting to, the Motions.

II. THE OBJECTIONS TO THE BACKSTOP MOTION SHOULD BE OVERRULED

20. For the reasons set forth in the Backstop Motion, the Rights Offering and the Backstop Commitment Agreement are necessary to ensure the Debtors have sufficient cash to emerge from chapter 11. Given the Debtors' funding needs, and the lack of interest from other parties (including the Unsecured Creditors), the Equity Backstop Parties negotiated terms that addressed the significant cash needs of the Debtors and the risks to the transactions and the current highly uncertain economic environment. The Unsecured Creditors concede that the Backstop Commitment Agreement may be necessary but take offense to the structure and amount of the fees sought in connection therewith. However, the structure or amount of the fees should not be of any concern to the Unsecured Creditors. To the extent the backstop fees are "too high" (as compared to a hypothetical competing offer that does not exist), such fees

only impact other first lien creditors who are not backstop parties (none of whom object to the Backstop Commitment Agreement) and do not affect the recovery available or result in any harm to the Unsecured Creditors. The Court's approval of the Debtors' entry into the Backstop Commitment Agreement and authorization to pay the associated fees is appropriate.

III. THE OBJECTIONS TO THE DISCLOSURE STATEMENT MOTION SHOULD BE OVERRULED

21. Finally, the First Lien Ad Hoc Group believes that the Disclosure Statement provides adequate information in accordance with section 1125 of the Bankruptcy Code and that the solicitation procedures and confirmation timeline are appropriate and provide all parties in interest ample opportunities to be heard with respect to confirmation of the Plan. Unsurprisingly, the Trustees try to couch objections to the allocation of the settlement proceeds as Disclosure Statement objections by arguing that payment of senior secured claims renders the Plan patently unconfirmable. (*See* Trustees' DS Obj. at ¶ 5.) The First Lien Ad Hoc Group echoes the Debtors' response to the Disclosure Statement objections and for simplicity's sake merely observes that the key terms of the Plan were negotiated during the intensive mediation process described above, and any idea that Judge Chapman would endorse a Plan that had even the slightest chance of being patently unconfirmable is ludicrous.

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CONCLUSION

For the reasons set forth above, the First Lien Ad Hoc Group respectfully requests that the Court grant the Motions.

Dated: May 5, 2020
New York, New York

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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Exhibit A

This Reply responds to the following objections and reservations of rights:

ECF #	Objections to 9019 Motion
1740	*Objection Of The Official Committee Of Unsecured Creditors* (the "Committee") *To Debtors' Motion For Entry Of An Order Approving The Settlement Between The Debtors And Uniti Group Inc., Including (I) The Sale Of Certain Of The Debtors' Assets Pursuant To Section 363(B) And (II) The Assumption Of The Leases Pursuant To Section 365(A)* ("UCC Objection")
1744	*Objection of UMB Bank, National Association and U.S. Bank National Association, As Indentured Trustees* (the "Trustees"), *to the Debtors' Motion For Entry Of An Order Approving The Settlement Between The Debtors And Uniti Group Inc., Including (I) The Sale Of Certain Of The Debtors' Assets Pursuant To Section 363(B) And (II) The Assumption Of The Leases Pursuant To Section 365(A)* ("Trustees' Objection")

ECF #	Objections to BCA Motion
1741	*Objection Of The Official Committee Of Unsecured Creditors To Debtors' Motion For Entry Of An Order Authorizing (I) The Debtors' Entry Into The Backstop Commitment Agreement And (II) Payment Of Related Fees And Expenses* ("UCC BCA Objection")
1738	*Objection of UMB Bank, National Association and U.S. bank National Association, As Indentured Trustees, to the Debtors' Motion for Entry of an Order Authorizing (i) the Debtors' Entry into the Backstop Commitment Agreement and (II) Payment of Related Fees and Expenses* ("Trustees' BCA Objection")

ECF #	Objections to Disclosure Statement
1719	*Response Of Element Fleet Corporation To Disclosure Statement And To Motion For Approval Of Adequacy Of Disclosure Statement And Solicitation Procedures*
1726	*Securities Lead Plaintiff's Objection To Approval Of The Disclosure Statement And Solicitation Procedures Relating To The Joint Chapter 11 Plan Of Reorganization Of Windstream Holdings, Inc. Et Al.*
1724	*Limited Objection Of The U. S. Securities And Exchange Commission To Approval Of The Disclosure Statement And Confirmation Of The Debtors' Joint Plan Of Reorganization*
1734	*Objection of UMB Bank, National Association and U.S. bank National Association, As Indentured Trustees, to the Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al, Pursuant to Chapter 11 of the Bankruptcy Code* ("Trustees' DS Objection")
1735	*Statement And Reservation Of Rights Of The Official Committee Of Unsecured Creditors With Respect To Debtors' Motion To Approve (I) The Adequacy Of Information In The Disclosure Statement, (II) Solicitation And Notice Procedures, (III) Forms Of Ballots And Notices In Connection Therewith, And (IV) Certain Dates With Respect Thereto*