

Stephen E. Hessler, P.C.
Marc Kieselstein, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

James H.M. Sprayregen, P.C.
Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)
Brad Weiland (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

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

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

NOTICE OF FILING OF CORRECTED TABLE IN DEBTORS’ (I) BRIEF IN SUPPORT OF CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF WINDSTREAM HOLDINGS, INC. *ET AL.*, PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE, AND (II) OMNIBUS REPLY TO CONFIRMATION OBJECTIONS

PLEASE TAKE NOTICE that, on June 22, 2020, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ (I) Brief in Support of Confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, and (II) Omnibus Reply to Confirmation Objections* [Docket No. 2180] (the “Confirmation Brief”).

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’ 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.



PLEASE TAKE FURTHER NOTICE that the filed Confirmation Brief inadvertently included incorrect figures on pages 44-45 and 58 and in an associated table on page 44 titled “Obligor Debtors’ Unencumbered Collateral”.

PLEASE TAKE FURTHER NOTICE that a corrected version of the relevant pages is attached hereto as **Exhibit A** and a redline to the first filed version is attached hereto as **Exhibit B**. The Debtors will deliver a corrected version of the Confirmation Brief to the Court and any requesting parties.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at <http://www.kccllc.net/windstream>. You may also obtain copies of any pleadings by visiting the Bankruptcy Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: June 22, 2020
New York, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

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Exhibit A

Corrected Pages

In total and based on book value, there are, at best, less than \$118 million of unencumbered book value—not fair market value—and the Committee does not even attempt to value other miscellaneous assets (which the Debtors have concluded have *de minimis* or no value):

Obligor Debtors’ Unencumbered Collateral¹¹⁸

Real Property	\$94.018 million ¹¹⁹
Commercial Tort Claims	\$19.9 million
Motor vehicles	\$3.98 million
Copyrights and licenses	<i>De minimis</i>
Foreign subsidiaries	<i>De minimis</i>
Certain non-Obligor subsidiaries	<i>De minimis</i>
Avoidance actions	None
Tax attributes	No value ascribed, but any such value is encumbered ¹²⁰

98. These assets are worth far less than their book value.¹²¹ There is little demand, for example, for late model bucket trucks specialized for telecom use.

99. But even adopting the book value, the highest value that could be ascribed to these assets is just 3.1 percent of the Debtors’ total enterprise value (\$3,750 million midpoint valuation)

¹¹⁸ For the unencumbered assets held at the Non-Obligor Debtors subject to equity pledges (*i.e.*, all Non-Obligor Debtors except for Holdings), the holders of First Lien Claims obtained the economic value of those assets through Services and the other Obligor Debtors’ pledges of their equity interests. These Equity Interests roll up the value of the encumbered and unencumbered assets that the businesses owns. *See Ion Media Networks*, 419 B.R. 585, 588–89, 592, 602–03 (Bankr. S.D.N.Y. 2009) (overruling a second lien lender’s plan objection and finding that the FCC licenses were *de facto* encumbered because, among other reasons, the first lien lenders had “a security interest in the economic value of the FCC Licenses” through the pledges of the equity interests in the special purpose subsidiaries that held those licenses).

¹¹⁹ Though the book value of the Debtors’ unencumbered property is approximately \$598 million, much of that is either at non-Obligors or attributable to the accounting treatment of in progress construction, and the actual value of the unencumbered real property is far less. *See Ex. 7, Grossi Rep.* ¶¶ 47–53, Appendix D; *Ex. 8, Grossi Decl.* ¶ 21.

¹²⁰ Tax attributes are encumbered “General Intangibles.” *In re Protocol Servs., Inc.*, 2005 WL 6485180, at *2 (Bankr. S.D. Cal. 2005) (tax refunds generated from net operating loss were encumbered General Intangibles); *In re TMCI Elecs.*, 279 B.R. 552, 558 (Bankr. N.D. Cal. 1999) (same); *In re Castle Ventures, Ltd.*, 167 B.R. 758, 764 (Bankr. E.D.N.Y. 1994) (tax refunds were General Intangibles).

¹²¹ *See Ex. 8, Grossi Decl.* ¶ 25.

as of the Effective Date (and the percentage would be even lower as of the Petition Date, a \$4,125 million mid-point valuation).¹²²

ii. The Economic Value from the Master Lease Is Encumbered.

100. The Unsecured Creditors also have emphasized the Master Lease at Holdings, where the holders of First Lien Claims have no liens.¹²³ But the Master Lease too has *de minimis* value standing alone.

101. **First**, Holdings’ leasehold interest under the Master Lease in itself has little value. The Unsecured Creditors cannot now assign significant value to the same Master Lease that was described as a “disaster for the Debtors,” and which the Unsecured Notes Indenture Trustees assigned a “current market rate of rent ... [of] approximately \$30 to \$33 million per month”—tens of millions less than Holdings’ actual rent.¹²⁴

102. **Second**, the value of the Master Lease derives from the income generated from Services’ subsidiaries use of the leased assets—not the lease or the leased assets themselves (which Holdings could not operate on its own). These cash flows were encumbered through the holders of First Lien Claims’ liens in “Accounts,” among other collateral.¹²⁵ The holders of First Lien Claims, for this reason, had liens in the economic value of the Master Lease, even if not in the Master Lease itself.¹²⁶

¹²² Ex. 1, Leone Decl. ¶¶ 5, 10, 17.

¹²³ Committee Obj. ¶¶ 53, 67–70 [Docket No. 2159]; Unsecured Notes Indenture Trustees Obj. ¶ 55 [Docket No. 2162].

¹²⁴ 11/18/19 Unsecured Notes Indenture Trustees’ Objection to Debtors’ Motion to Stay Section 365(d)(4) Deadline [Docket No. 1219] ¶ 15; 5/2/20 Unsecured Notes Indenture Trustees’ 9019 Opposition [Docket No. 1744] ¶ 8.

¹²⁵ Under the New York UCC, “Accounts” means: “a right to payment of a monetary obligation, whether or not earned by performance ... for services rendered or to be rendered.” N.Y. UCC § 9-102(2). “Accounts” encompass the “income generated from the debtor’s own use and possession of goods.” *1st Source Bank v. Wilson Bank & Trust*, 735 F.3d 500, 504 (6th Cir. 2013) (defining “Accounts” under the similar Tennessee UCC).

¹²⁶ *See Ion Media Networks*, 419 B.R. at 602–03 (finding that the economic value of FCC licenses was encumbered, even though the licenses themselves were not).

unencumbered assets.”¹⁷⁹ The secured lenders had agreed, as here, to receive less than that amount.¹⁸⁰

133. Likewise, in the *Chateaugay* decision from this district, the court found that it could consider the going concern value of the debtor’s tin and steel mills to fix the unsecured and secured portions of the creditor’s claim, even though the creditor’s liens covered just the hard assets at the mills and not the intangibles there.¹⁸¹

134. The Committee’s response repeats the same unsuccessful arguments from *Hawaiian Telecom*: enterprise value is inappropriate unless there is a “turn-key” collateral package.¹⁸² The court in *Hawaiian Telecom* considered the *same three cases* that the Committee cites now (and cited back then) and found that, “[i]n each of these cases, the courts rejected an asset-by-asset valuation of the collateral.”¹⁸³

135. In fact, the rationale for using total enterprise value is even more compelling here than it was in *Hawaiian Telecom*. In *Hawaiian Telecom*, the value of the unencumbered assets (\$33.1 million) was about 8.5 percent of the debtors’ total enterprise value (\$387.5 million).¹⁸⁴ Here, the highest value that likely could be ascribed to unencumbered assets—about \$118 million—is just 3.1 percent of the Debtors’ total enterprise value (\$3.75 billion midpoint valuation) as of the Effective Date (and the percentage drops even lower as of the Petition Date, which has a

¹⁷⁹ *Id.* at 599, 606.

¹⁸⁰ *Id.* at 606.

¹⁸¹ *In re Chateaugay Corp.*, 154 B.R. 29, 30–34 (Bankr. S.D.N.Y. 1993) (denying a debtor’s motion for partial judgment, which sought to establish the legal standard for valuing the secured lenders’ collateral).

¹⁸² Committee Obj. ¶ 69 [Docket No. 2159].

¹⁸³ *Hawaiian Telecom*, 430 B.R. at 603–04 (citing *In re Kim*, 130 F.3d 863 (9th Cir. 1997); *In re Chateaugay Corp.*, 154 B.R. 29, 30, 34 (Bankr. S.D.N.Y. 1993); and *In re Oklahoma City Broadcasting Co.*, 112 B.R. 425 (Bankr. W.D. Ok. 1990)); *see also* Committee Obj. ¶ 69 (citing the same three cases).

¹⁸⁴ *See Hawaiian Telecom*, 430 B.R. at 569, 577, 580.

Exhibit B

Redline

i. Almost All of the Debtors' Operating Assets Are Encumbered.

97. Because almost all of the Debtors' assets are encumbered, the Committee and the Unsecured Notes Indenture Trustees turn to stray assets in their search for unencumbered value.¹¹⁷ In total and based on book value, there are ~~just \$125~~, at best, less than \$118 million of unencumbered book value—not fair market value—and the Committee does not even attempt to value other miscellaneous assets (which the Debtors have concluded have *de minimis* or no value):

¹¹⁷ See Committee Obj. ¶¶ 15, 90 [Docket No. 2159]; Trustees Obj. ¶ 75 [Docket No. 2162].

Obligor Debtors’ Unencumbered Collateral¹¹⁸

Real Property	\$94.018 million ¹¹⁹
Commercial Tort Claims	\$19.9 million
Unencumbered bank accounts	\$8.424 million
Motor vehicles	\$3.98 million
Copyrights and licenses	<i>De minimis</i>
Foreign subsidiaries	<i>De minimis</i>
Certain non-Obligor subsidiaries	<i>De minimis</i>
Avoidance actions	None
Tax attributes	No value ascribed, but any such value is encumbered ¹²⁰

98. These assets are worth far less than their book value.¹²¹ There is little demand, for example, for late model bucket trucks specialized for telecom use.

99. But even adopting the book value, the highest value that could be ascribed to these assets is just ~~3.43~~1 percent of the Debtors’ total enterprise value (\$3,750 million midpoint valuation) as of the Effective Date (and the percentage would be even lower as of the Petition Date, a \$4,125 million mid-point valuation).¹²²

ii. The Economic Value from the Master Lease Is Encumbered.

¹¹⁸ For the unencumbered assets held at the Non-Obligor Debtors subject to equity pledges (*i.e.*, all Non-Obligor Debtors except for Holdings), the holders of First Lien Claims obtained the economic value of those assets through Services and the other Obligor Debtors’ pledges of their equity interests. These Equity Interests roll up the value of the encumbered and unencumbered assets that the businesses owns. *See Ion Media Networks*, 419 B.R. 585, 588–89, 592, 602–03 (Bankr. S.D.N.Y. 2009) (overruling a second lien lender’s plan objection and finding that the FCC licenses were *de facto* encumbered because, among other reasons, the first lien lenders had “a security interest in the economic value of the FCC Licenses” through the pledges of the equity interests in the special purpose subsidiaries that held those licenses).

¹¹⁹ Though the book value of the Debtors’ unencumbered property is approximately \$598 million, much of that is either at non-Obligors or attributable to the accounting treatment of in progress construction, and the actual value of the unencumbered real property is far less. *See* Ex. 7, Grossi Rep. ¶¶ 47–53, Appendix D; Ex. 8, Grossi Decl. ¶ 21.

¹²⁰ Tax attributes are encumbered “General Intangibles.” *In re Protocol Servs., Inc.*, 2005 WL 6485180, at *2 (Bankr. S.D. Cal. 2005) (tax refunds generated from net operating loss were encumbered General Intangibles); *In re TMC Elec.*, 279 B.R. 552, 558 (Bankr. N.D. Cal. 1999) (same); *In re Castle Ventures, Ltd.*, 167 B.R. 758, 764 (Bankr. E.D.N.Y. 1994) (tax refunds were General Intangibles).

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135. In fact, the rationale for using total enterprise value is even more compelling here than it was in *Hawaiian Telecom*. In *Hawaiian Telecom*, the value of the unencumbered assets (\$33.1 million) was about 8.5 percent of the debtors’ total enterprise value (\$387.5 million).¹⁸⁴ Here, the highest value that likely could be ascribed to unencumbered assets—about ~~\$125~~\$118 million—is just ~~3.4~~3.1 percent of the Debtors’ total enterprise value (\$3.75 billion midpoint valuation) as of the Effective Date (and the percentage drops even lower as of the Petition Date, which has a \$4.125 billion mid-point valuation).¹⁸⁵ To surpass the 8.5 percent threshold from *Hawaiian Telecom*, therefore, the Committee and Unsecured Notes Indenture Trustees would have to present evidence establishing more than \$320 million in unencumbered assets (and they cannot do so).

136. Even if the Committee and Unsecured Notes Indenture Trustees could establish material gaps in the holders of First Lien Claims’ collateral package (which they cannot do), a total enterprise valuation still remains appropriate. *Hawaiian Telecom*—where almost all of the easements and most of the central offices, without which a telecom company cannot transmit

¹⁸² Committee Obj. ¶ 69 [Docket No. 2159].

¹⁸³ *Hawaiian Telecom*, 430 B.R. at 603–04 (citing *In re Kim*, 130 F.3d 863 (9th Cir. 1997); *In re Chateaugay Corp.*, 154 B.R. 29, 30, 34 (Bankr. S.D.N.Y. 1993); and *In re Oklahoma City Broadcasting Co.*, 112 B.R. 425 (Bankr. W.D. Ok. 1990)); see also Committee Obj. ¶ 69 (citing the same three cases).

¹⁸⁴ See *Hawaiian Telecom*, 430 B.R. at 569, 577, 580.

¹⁸⁵ Ex. 1, Leone Decl. ¶¶ 5, 10, 17.