

JOHN KINGSTON (PRO HAC VICE)
BRIAN HOCKETT (PRO HAC VICE)
THOMPSON COBURN LLP
ONE U.S. BANK PLAZA, SUITE 2700
ST. LOUIS, MO 63101
314-552-6000
314-552-7000 (FAX)
JKINGSTON@THOMPSONCOBURN.COM
BHOCKETT@THOMPSONCOBURN.COM

Co-counsel for Charter Communications Operating, LLC

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

In re:	)	Chapter 11
WINDSTREAM FINANCE, CORP., <i>et al.</i>,	)	Case No. 19-22397 (RDD)
Reorganized Debtors.	)	(Formerly Jointly Administered under Lead Case Windstream Holdings, Inc., 19-22312)

**DECLARATION OF BRIAN HOCKETT
IN SUPPORT OF CHARTER’S OPPOSITION TO THE REORGANIZED
DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING ASSUMPTION
OF THE CHARTER AGREEMENTS AND GRANTING RELATED RELIEF**

I, Brian Hockett, pursuant to 28 U.S.C. § 1746 and upon penalty of perjury declare as follows:

1. I make this declaration based on my personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.
2. I am an attorney-at-law and a partner at the law firm of Thompson Coburn LLP, and I am admitted *pro hac vice* as counsel for Charter Communications Operating, LLC (Charter) in this action.



3. I submit this declaration in support of *Charter's Opposition to Reorganized Debtors' Motion For Entry of an Order Authorizing Assumption of the Charter Agreements and Granting Related Relief* (the "Opposition") filed simultaneously herewith. Capitalized terms used herein shall, unless otherwise defined, have the same meaning ascribed to them in the Opposition.

4. Attached as **Exhibit A** is a true and correct copy of the "Spectrum Business Value Added Reseller Agreement" between Charter Communications Operating, LLC and Windstream Services, LLC, with an effective date of April 11, 2018.

5. Attached as **Exhibit B** is a true and correct copy of the "Carrier Master Services Agreement" between Charter Communications Operating, LLC and Windstream Services, LLC, with an effective date of December 14, 2018.

6. Attached as **Exhibit C** is a true and correct copy of an email dated June 22, 2021 from me to Shaya Rochester and Terence P. Ross, copying John S. Kingston with a subject "Charter/Windstream – Stipulation and Agreed Order on Cure Dispute" attaching "STIPULATION AND AGREED ORDER.docx."

7. Attached as **Exhibit D** is a true and correct copy of an email dated June 30, 2021 from Shaya Rochester to Judge Drain's Chambers and Dorothy Li, copying Michael Creme, Terence P. Ross, Michael Justus, and John S. Kingston with a subject "In re Windstream Holdings, Inc., et al, Case No. 19-22312 – Proposed Sixth Amended Scheduling and Pre-Trial Order" attaching "WIN - Sixth Amended Scheduling and Pre-Trial Order - WIN - Sixth Amended Scheduling and Pre-Trial Order" and "#149446174v2_US_ - WIN - Sixth Amended Scheduling and Pre-Trial Order."

8. Attached as **Exhibit E** is a true and correct copy of a letter dated June 4, 2021 from me to Shaya Rochester with a subject “Windstream Holdings, Inc., et al. vs. Charter Communications, Inc. and Charter Communications Operating, LLC, Adv. Proc. No. 19-08246 (RDD).”

9. Attached as **Exhibit F** is a true and correct copy of an email dated June 9, 2020 from me to Shaya Rochester with a subject “In re Windstream Holdings, Inc., et al, Case No. 19-22312, Adv. Proc. No. 19-08246 (RDD)”, copying John S. Kingston, Terence P. Ross, Steven T. Rappoport, and Jocelyn Edith Greer.

10. Attached as **Exhibit G** is a true and correct copy of a letter dated September 10, 2020 from John S. Kingston to Terence P. Ross with a subject “Windstream Holdings, Inc. et al. v. Charter Communications, Inc., et al., Adv. Proc. No. 19-08246.”

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 22nd day of July, 2021.

Executed on July 22, 2021

/s/ Brian Hockett
Brian Hockett

EXHIBIT A

Spectrum Business Value Added Reseller Agreement

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SPECTRUM BUSINESS VALUE ADDED RESELLER AGREEMENT

This Spectrum Business Value Added Reseller Agreement, including the Exhibits hereto (this "Agreement") is entered into as of the date of last signature below ("Effective Date") by and between Charter Communications Operating, LLC on behalf of those operating subsidiaries providing the Service(s) hereunder ("Spectrum") and Windstream Services, LLC, on behalf of itself and its Affiliates ("Windstream"), a Delaware Limited Liability Company having a principal place of business at 4001 Rodney Parham Rd, Little Rock, AR 72212.

RECITALS

WHEREAS, Spectrum is in the business of providing Spectrum Services (defined below); and

WHEREAS, Windstream wishes to have non-exclusive rights to market and distribute the Spectrum Services to Companies (defined below), with added value in the form of Windstream Services (defined below), and Spectrum desires to grant Windstream such rights, all as set forth in this Agreement.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Spectrum and Windstream agree as follows:

1. DEFINITIONS

1.1 "Affinity Company" means a Company that gathers independent end-users sharing the same interests or membership.

1.2 "Company" or "Companies" means a customer(s) of Windstream that purchases Spectrum Services with added value in the form of additional Windstream Services.

1.3 "Documentation" means the Spectrum documentation made available in hard copy or in electronic form with the Spectrum Services or otherwise under this Agreement.

1.4 "End User" means an end user accessing or using the Spectrum Services.

1.5 "Equipment" means the equipment, software and other tangible products made available to Windstream hereunder.

1.6 "Intellectual Property Rights" means Spectrum patent rights, copyright rights, trade secret rights, and any other intellectual property rights recognized by the law of each applicable jurisdiction.

1.7 "Marks" means the Spectrum trademarks, trade names, service marks, and/or service names specified by Spectrum and provided to Windstream in writing.

1.8 "Order" means a written or electronic order submitted by an authorized representative of Windstream (or, in the case of an Order submitted via email, submitted from an authorized e-mail address of Windstream) to Spectrum for Spectrum Services pursuant to this Agreement.

1.9 "Order Term" has the meaning ascribed to it in Section 11.1, below.

1.10 "Price List" means Spectrum's standard wholesale price list for the Spectrum Services on Exhibit B, attached hereto and incorporated herein by reference, which price list Spectrum may revise from time to time.

Chris Czepak
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chris.czepak@charter.com
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1.11 "Spectrum Services" means any one or more of a number of services including but not limited to: business Internet access (via coax), and Voice, as described on Exhibit A, attached hereto and incorporated herein by reference, which Spectrum may revise from time to time.

1.12 "Term" has the meaning ascribed to it in Section 11.1, below.

1.13 "Terms of Use" means all rules, terms and conditions set forth in this Agreement or now or hereafter otherwise established by Spectrum for the Spectrum Services, as may be modified from time to time at Spectrum's sole discretion.

1.14 "Territory" means, with respect to each Spectrum Service, all geographic areas where such Spectrum Service is made available by Spectrum.

1.15 "Windstream Services" means the services offered by Windstream, which provide substantial added value when combined with the Spectrum Services including the use of the Spectrum Services to obtain connectivity between Windstream's customer Companies and Windstream's network to access Windstream's finished products and services.

2. LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Spectrum grants to Windstream, a non-exclusive, non-transferable license to (a) market and distribute in the Territory the Spectrum Services to Companies solely in conjunction with the provision of the Windstream Services; (b) use the Spectrum Services as reasonably required in connection with such marketing and distribution; and (c) sublicense Companies and End Users to use the Spectrum Services in conjunction with the Windstream Services in accordance with the provisions of Section 3.1.

2.2 Added Value. In the exercise of Windstream's rights under this Agreement, Windstream will market and distribute the Spectrum Services solely in combination with the Windstream Services.

2.3 Restrictions. Windstream will not (a) disassemble, decompile or reverse engineer any Spectrum Services, or portions thereof; or (b) modify the Spectrum Services in any manner, except as expressly directed by Spectrum in writing; or (c) sell Windstream Services to an Affinity Company. Spectrum expressly reserves the right to market and solicit Spectrum Services sales through any channels of distribution at any time, as Spectrum deems desirable, and to promote, market and sell the Spectrum Services in any manner that Spectrum deems advisable. In addition, Spectrum reserves the right to modify or discontinue the Spectrum Services at any time in Spectrum's sole discretion, provided however, to the extent that Spectrum has provisioned such Spectrum Services that it chooses to discontinue to Windstream and/or Windstream's customer Companies, Spectrum shall give Windstream thirty (30) days' notice prior to such discontinuance and shall continue to provide the Spectrum Services to Windstream's customer Companies for the Term of the Spectrum Services ordered.

3. OTHER AGREEMENTS AND MARKETING

Distribution of Spectrum Services. Windstream may only distribute Spectrum Services to any Company or to such Company's End Users under the following conditions : (a) Windstream shall defend, indemnify and hold Spectrum and its officers, directors, employees, contractors and affiliates harmless from and against any third party claims by any of Windstream's end user customers or against Spectrum for losses, liabilities, damages and expenses, including the fees of attorneys and other professionals, arising out of Windstream's ordering and Spectrum's provisioning and Windstream's end user and Company's use of Spectrum's Services.; (b) Windstream shall insure that its end user customers are contractually obligated to Windstream to use the Spectrum services only for lawful purposes and to comply with the AUP and all applicable laws and regulations governing use of the Spectrum Services; (c) Windstream represents and warrants that its retail customer end users will not resell the Spectrum Services and that Windstream will not resell the Spectrum Services in the wholesale market.; (d); (e) Windstream agrees that it will protect Spectrum's proprietary rights in the Spectrum Services to at least the same degree as the terms and conditions of this Agreement; (f) Windstream represents and warrants that it will make no representations

Chris Czekaj
E-signed 2018-04-11 12:04PM EDT
chris.czekaj@charter.com
Spectrum



or warranties on behalf of Spectrum or; (g) grant any rights to Company beyond the scope of this Agreement.

3.1 Sublicensing to Distributors. Windstream may sublicense or distribute Spectrum Services to other distributors or resellers for sublicensing or distribution to Companies and End Users; provided that (a) such distributor and/or reseller agrees in writing to comply with the terms and conditions of this Agreement; and (b) Windstream shall remain liable for any act or omission of any such other distributor or reseller. Upon request from Spectrum, Windstream shall identify in writing to Spectrum such Windstream distributors and resellers.

3.2 Marketing Efforts. Subject to the terms and conditions of this Agreement, Windstream may market and distribute the Spectrum Services in conjunction with the Windstream Services. Windstream will ensure that the Spectrum Services it proposes to a prospective Company meet the prospective Company's requirements. Windstream covenants that it will: (a) conduct business in a manner that reflects favorably at all times on the Spectrum Services and the good name, goodwill and reputation of Spectrum; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to Spectrum, the Spectrum Services or the public; (c) make no false or misleading representations with regard to Spectrum or the Spectrum Services; (d) not publish or employ, or cooperate in the publication or employment of, any misleading or deceptive advertising material with regard to Spectrum or the Spectrum Services; and (e) make no representations, warranties or guarantees with respect to the specifications, features or capabilities of the Spectrum Services that are inconsistent with the literature distributed by Spectrum.

3.3 Advertising Materials. Spectrum may, in its sole discretion, furnish to Windstream, at no charge, reasonable quantities of Spectrum Services sales aids, brochures and similar literature and material normally made available to potential Spectrum Service end users, as needed for Windstream's marketing activities pursuant to this Agreement.

4. PAYMENTS

4.1 Payments. Except as stated in Section 4.3 following, prices for the Spectrum Services shall be those specified in Spectrum's then-current Price List. All stated prices are exclusive of any taxes, fees and surcharges or other amounts, however designated, and including without limitation value added and withholding taxes which are levied or based upon such charges, or upon this Agreement. Any taxes (excluding any taxes on Spectrum's net income) related to Spectrum Services purchased pursuant to this Agreement shall be paid by Windstream or Windstream shall present an exemption certificate acceptable to the taxing authorities. Notwithstanding anything herein to the contrary, Windstream understands and agrees that additional charges for non-standard services, including without limitation non-standard installation services, may apply. In no event shall Windstream publish or otherwise disclose (whether orally or in writing the fees charged by Spectrum to Windstream for Spectrum Services provided pursuant to this Agreement.

4.2 Payment Terms. During the Order Term for the applicable Order, Spectrum shall bill Windstream monthly in advance in accordance with Spectrum's regular billing cycle for all monthly recurring charges specific to the Spectrum Services ("MRCs") due under this Agreement; except that upon activation of a Company or an End User account for Spectrum Services, Spectrum shall bill Windstream monthly in arrears for the first month's prorated service fees applicable to such Company or End User. Spectrum invoices for non-recurring, one-time charges ("OTCs") for construction or installation charges after the billing start date or as specified in the Order. Windstream will make all payments to Spectrum for undisputed charges due under this Agreement within thirty (30) days after the date appearing on the applicable invoices. Payments made under this Agreement after their due date will incur interest at a rate equal to one and one half percent (1½%) per month or the highest rate permitted by applicable law, whichever is lower. Windstream must provide Spectrum with notice of any disputed charges within ninety (90) days of the invoice date on which the disputed charges appear for Windstream to receive any credit that may be due. Spectrum shall not invoice Windstream for MRCs more than twelve months after the charge for Spectrum Services would normally have been invoiced.

4.3 Revisions.

Chris Czepak

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chris.czepak@charter.com

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4.3.1 Spectrum may revise the Spectrum Services available pursuant to this Agreement and the pricing set forth in the Price List from time to time; provided, however, upon written notice from Windstream, Spectrum will, in relation to any firm quote provided by Spectrum for Spectrum Services submitted by Windstream to a Company prior to a revision to the Price List, honor the prices in place for the Spectrum Services for up to sixty (60) days from the date Windstream receives written notice of a price change; and further provided that any such revision to the pricing set forth in the Price List will not apply to the pricing under any outstanding Order or the pricing under the then current term under then existing Company agreements.

4.3.2 At the end of the Term, for any Spectrum Service that continues to be offered by Spectrum, such Spectrum Service will renew on a month-to-month basis at the then-current applicable rates, unless otherwise specified by the parties in writing.

4.3.3 Notwithstanding anything to the contrary in this Agreement, if any Order for Spectrum Services is terminated prior to the expiration of the Order Term (as defined in Section 11.1.2) (other than as a result of a material breach by Spectrum) then Windstream shall, at Spectrum's discretion: (a) promptly pay Spectrum for the full amount of the service fees that Windstream would have been charged for the remainder of the applicable Order Term or the then-current renewal term thereof; and (b) reimburse Spectrum for all volume, term or other discounts and credits applicable to the specific Order and provided in anticipation of full performance of Windstream's and/or the applicable Company's obligations and any unpaid portion of the installation fee set forth in the applicable Orders.

4.4 Pricing Freedom. Windstream is, and will remain, entirely free to determine its Company prices and fees unilaterally in its own discretion. Notwithstanding the foregoing, in no event shall Windstream line item or otherwise distinguish the fees charged by Windstream for Spectrum Services separately from the fees charged for Windstream Services.

5. ORDERS

5.1.1 Unless otherwise stated in Exhibit A, Windstream shall purchase Spectrum Services by issuing an Order indicating the specific Spectrum Services ordered, quantity, price, total purchase price, requested delivery dates, tax exemption certifications, if applicable, the intended Company, applicable End User information, and any other special instructions. The parties hereby agree that any contingencies contained on such Order are not binding upon Spectrum, unless expressly agreed to by Spectrum in writing on such Order. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any Order or other correspondence submitted by Windstream, and any different or additional terms in any Order or correspondence shall have no force or effect.

5.1.2 All Orders are subject to approval and acceptance by Spectrum and will not be binding upon Spectrum until such acceptance has been granted. Acceptance shall be deemed to have occurred when Spectrum accepts an Order in writing or when Spectrum commences delivery of the Spectrum Services, whichever is earlier. Spectrum shall use commercially reasonable efforts to provide information regarding acceptance or rejection of such Orders.

5.1.3 By submitting an Order, Windstream represents that (a) Windstream has sufficient right and authority to submit an Order on behalf of Company; and (b) the applicable End User(s) shall have the equipment and software necessary for activation of Spectrum Services (other than the Equipment provided by Spectrum as part of the Spectrum Services).

5.2 Installation. The parties agree that if the End User is not present or does not have the minimum hardware and/or software requirements necessary for a Service installation at the time of a scheduled installation, Windstream shall pay Spectrum the installation fee set forth on the Price List for such unsuccessful installation in addition to standard installation fee upon successful installation. Otherwise, Spectrum shall perform its standard installation procedures, including verification of Internet connectivity. Spectrum shall not be responsible for configuring the End User's equipment including but not limited to

Chris Czekaj

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chris.czekaj@charter.com

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computers or telephones or providing any other non-standard installation services, unless otherwise agreed in writing between the parties.

6. WINDSTREAM OBLIGATIONS

In a manner satisfactory to Spectrum and at Windstream's sole expense, Windstream shall:

6.1 Keep Spectrum promptly informed of any problems which involve the Spectrum Services and require Spectrum's support or impact Windstream's or Spectrum's ability to deliver service or solutions to Companies and their End Users; and

6.2 Appoint an account/relationship manager whose responsibility will be to work with the designated Spectrum account/relationship manager to manage the implementation of this Agreement, and act as the focal point for day-to-day account issues and problem escalation.

7. PROPRIETARY RIGHTS

7.1 Spectrum's Ownership.

7.1.1 The Spectrum Services are and will remain the sole and exclusive property of Spectrum and its suppliers, if any, whether the Spectrum Services are separate or integrated with any other services or products. Spectrum's rights under this Section 7.1.1 include, but are not limited to, all Intellectual Property Rights in the Spectrum Services.

7.1.2 Windstream will not delete or in any manner alter the Intellectual Property Rights notices of Spectrum and its suppliers, if any, appearing on the Spectrum Services or any Documentation or other materials provided in connection therewith. As a condition of the license rights granted to Windstream in this Agreement, Windstream will reproduce and display such notices on each copy it makes of any Spectrum Services or any such Documentation or other materials.

7.2 Windstream's Duties. Windstream shall use its reasonable efforts to protect Spectrum's Intellectual Property Rights in the Spectrum Services and promptly shall report to Spectrum any infringement of such rights of which Windstream becomes aware.

7.3 Third Party Infringement. Spectrum reserves the sole and exclusive right, exercisable at its discretion, to assert claims against third parties for infringement or misappropriation of its Intellectual Property Rights in the Spectrum Services.

7.4 Trademarks.

7.4.1 Subject to the terms and conditions of this Agreement, Spectrum grants Windstream a non-exclusive, non-transferable, limited license for the Term to use the Marks in Windstream's marketing of the Spectrum Services; provided that such use is in accordance with Spectrum's trademark usage guidelines then in effect, which guidelines Spectrum may amend at any time and in any manner. Spectrum will provide Windstream with such guidelines and as such guidelines are amended. Windstream agrees that the quality of all services rendered by Windstream in connection with the Marks shall be high and consistent with the quality control standards established by Spectrum. Windstream agrees to cooperate with Spectrum in facilitating Spectrum's review of its industry standard quality controls, and to supply Spectrum with specimens of all uses of the Marks upon request. Any use of the Marks by Windstream must reference the Marks as being owned by Spectrum. Nothing in this Agreement grants Windstream ownership or any rights in or to use the Marks, except as expressly set forth in this Section 7.4.1.

7.4.2 The rights granted to Windstream in this Section 7.4 will terminate upon any termination or expiration of this Agreement. Upon such termination or expiration, Windstream will no longer make any use of any Marks. Spectrum will have the exclusive right to own, use, hold, apply for

Chris Czekaj
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chris.czekaj@charter.com
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registration for, and register the Marks during the Term of, and after the expiration or termination of, this Agreement; Windstream will neither take nor authorize any activity inconsistent with such exclusive right. The Marks, and the goodwill associated therewith, are the exclusive property of Spectrum, and the use of such Marks, and the goodwill arising therefrom, shall inure to the benefit of Spectrum.

8. LIMITED WARRANTY

8.1 Limited Warranty. Spectrum warrants to Windstream that Spectrum has the corporate power and authority to enter into and perform its obligations under this Agreement. Windstream warrants to Spectrum that Windstream has the corporate power and authority to enter into and perform its obligations under this Agreement. Spectrum will use commercially reasonable efforts to provide the Spectrum Services to Company 24 hours per day, seven (7) days per week. It is possible, however, that there will be interruptions of the Spectrum Services.

8.2 DISCLAIMER OF WARRANTY. Windstream ACKNOWLEDGES AND AGREES THAT THE SPECTRUM SERVICES PROVIDED BY SPECTRUM HEREUNDER ARE PROVIDED "AS IS, AS AVAILABLE". EXCEPT AS SPECIFIED IN THIS SECTION 8, ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUIET ENJOYMENT, DATA ACCURACY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

9. CONFIDENTIAL INFORMATION

9.1 Confidential Information. Each party acknowledges that, in connection with this Agreement, a party may obtain information from the other party that is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information which are marked as confidential and/or a party knows or has reason to know are confidential, proprietary or trade secret information of Spectrum. Each party shall at all times, both during and after the Term, keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by this Agreement, and a party shall not disclose any such Confidential Information to third parties without the disclosing party's written consent unless such disclosure is necessary to fulfill a party's obligations under this Agreement and any such third party is bound in writing by obligations of confidentiality reasonably consistent with those set forth herein. Each party further agrees to, upon request, immediately return to the other party all Confidential Information (including copies thereof) in that party's possession, custody, or control upon termination of this Agreement at any time and for any reason. The obligations of confidentiality herein shall not apply to information which (a) has entered the public domain except where such entry is the result of a party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in a party's possession; (c) subsequent to disclosure hereunder is obtained by a party on a non-confidential basis from a third party who has the right to disclose such information to the party; or (d) is required to be disclosed pursuant to law or government regulation; provided that a party gives the other party reasonable notice of such required disclosure and an opportunity to obtain an appropriate protective order, to the extent permitted by law.

9.2 Publicity. Neither party shall use the other party's or its affiliates' names or logos, or otherwise issue any publicity releases or make any public statement(s) (including without limitation in the form of news releases, advertising or solicitation materials, or blog or social media postings) relating to this Agreement or the services to be performed hereunder, without the prior written approval of the other party.

9.3 Terms of this Agreement. Neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party.

Chris Czeka

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chris.czeka@charter.com

Spectrum



10. INDEMNIFICATION

10.1 Windstream agrees to defend, indemnify and hold Spectrum and its officers, directors, employees, contractors and affiliates harmless from and against any third party claims against Spectrum for losses, liabilities, damages and expenses, including the fees of attorneys and other professionals, arising out of (a) any acts or omissions of (i) Windstream, or its employees, agents, distributors or resellers, in connection with its activities under this Agreement or (ii) any Company or End User; (b) any representation or warranty made by Windstream, or its employees or agents, distributors or resellers, relating to the Windstream Services or Spectrum Services that is inconsistent with statements provided in writing by Spectrum; (c) breach of any representation, warranty, covenant or agreement of Windstream under this Agreement; or (d) physical damage to person or real property or bodily injury, including death, resulting (in whole or in part) from the acts or omissions, including but not limited to negligence, recklessness willful misconduct of Windstream, or its employees, agents, distributors or resellers.

10.2 Spectrum agrees to defend, indemnify and hold Windstream and its officers, directors, employees, contractors and affiliates harmless from and against any third party claims against Windstream for losses, liabilities, damages and expenses, including the fees of attorneys and other professionals, arising out of (a) any acts or omissions of (i) Spectrum, or its employees, agents, , in connection with its activities under this Agreement; (b) breach of any representation, warranty, covenant or agreement of Spectrum under this Agreement; or (c) physical damage to person or real property or bodily injury, including death, resulting (in whole or in part) from the acts or omissions, including but not limited to negligence, recklessness willful misconduct of Spectrum, or its employees, agents.

10.3 Spectrum shall indemnify, defend, protect and hold Windstream Indemnified Parties, harmless from any and all liabilities, judgments, claims, losses, obligations, damages, penalties, actions, or other proceedings, suits, costs, fees, expenses and disbursements, whether by judgment or settlement, (including without limitation reasonable attorneys' fees) to the extent that such arise directly from third party claims that any of the Equipment and/or Spectrum's network (collectively, the "Spectrum System") used to deliver the Spectrum Services infringes upon the intellectual property rights of such third party ("IP Claims"). Notwithstanding anything to the contrary herein, Spectrum shall have no indemnification obligation with respect to any IP Claim arising out of: (i) content, materials or data transmitted by via the Spectrum Services; (ii) use of the Spectrum System or Spectrum Services in combination with products, materials, applications, methods, or other items not furnished by Spectrum; (iii) a modification of the Spectrum System or Spectrum Services not required or directed by Spectrum; or (iv) use of the Spectrum System or Spectrum Services in an unauthorized manner or in breach of this Agreement. If an IP Claim for which Spectrum has an indemnification obligation under this Section is, or in Spectrum's reasonable opinion is likely to be made, then Spectrum will promptly notify Customer of such claim or proceeding and, at Spectrum's expense and sole discretion, take one or more of the following actions: (I) secure the right for Company to continue to use the Spectrum System consistent with this Agreement; (II) replace or modify the Spectrum System to make it non-infringing; or (III) if none of the foregoing alternatives are possible after Spectrum has used its commercially reasonable efforts, terminate the affected Spectrum Service. The foregoing Section states the sole and exclusive remedy of Windstream Indemnified Parties in connection with any IP Claim.

11. TERM AND TERMINATION

11.1 Agreement and Order Terms.

11.1.1 The initial term of this Agreement commences as of the Effective Date and remains in full force and effect for three (3) years thereafter, unless terminated earlier in accordance with its terms (the "Initial Term"); provided, that the terms of this Agreement remain in effect with respect to each Order until the expiration thereof. Thereafter, this Agreement shall renew automatically for subsequent annual renewal terms unless either party provides the other party with notice of termination at least thirty (30) days prior to the end of the initial term or then-current renewal term, as applicable. The Initial Term and any extension(s) thereof are referred to in this Agreement as the "Term".

11.1.2 The initial term of each Order under this Agreement shall begin on the date installation is completed and be for a period of one (1) month or such other period as specified in the applicable Order (the "Initial Order Term"), and, unless terminated earlier in accordance with this

Chris Czepak
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chris.czepak@charter.com
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Agreement or the applicable Order, each Order Term shall automatically renew thereafter on a month-to-month basis at Spectrum's then-current applicable rates unless either party provides the other party with at least thirty (30) days' written notice of termination of such Order. The Initial Order Term and any extension(s) thereof are referred to in this Agreement as the "Order Term".

11.2 **Termination.** This Agreement (including all Orders) may be terminated immediately by either party through written notice under any of the following conditions:

11.2.1 The other party ceases to carry on business as a going concern, becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets; or

11.2.2 The other party materially breaches any provision of this Agreement and fails to remedy such breach within thirty (30) days after written notification by the non-breaching party of such breach, or, except in the case of breach of payment obligations, such longer period as may be reasonably required to cure the breach, up to a maximum of forty-five (45) days; provided that the breaching party within thirty (30) days after receiving written notice of such breach commenced diligent efforts to cure the breach.

11.3 **Additional Termination Rights.** Spectrum may terminate this Agreement (including all Orders) immediately in the event of Windstream's breach of Section 7 or Section 9 above. In addition, Spectrum may terminate this Agreement for convenience upon ninety (90) days' written notice to Windstream; provided however, in the event of such a termination for convenience, Spectrum will continue to honor the terms of any Orders which were accepted by Spectrum prior to such termination.

11.4 **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, (a) Spectrum reserves the right to cease all further delivery of the Spectrum Services hereunder; (b) all outstanding invoices immediately become due and payable by certified or cashier's check; and (c) all rights and licenses of Windstream hereunder shall terminate. Additionally, upon termination or expiration of this Agreement, Windstream shall immediately return to Spectrum all Confidential Information and data (including all copies thereof) then in Windstream's possession or control including, without limitation: (x) all technical materials and business plans supplied by Spectrum; (y) all manuals covering Spectrum Services; and (z) any Spectrum Service customer or prospect lists provided by Spectrum.

11.5 **No Damages for Termination.** Each party agrees that in the event of termination of this Agreement for any reason, neither party shall have any rights to damages of any nature related to such termination, specifically including without limitation any rights to damages or indemnification for commercial severance pay, whether by way of loss of future profits, expenditures for promotion of the Spectrum Services, or other commitments in connection with the business and good will of Windstream. Notwithstanding anything to the contrary, the foregoing shall not be read to limit any claim for damages Windstream might have on account of Spectrum's breach of this Agreement, even if the breach gave rise to termination, such liability being governed by and subject to the limitations set forth elsewhere in this Agreement. Windstream expressly waives and renounces any claim to compensation or indemnities for any termination of a business relationship.

11.6 **Suspension or Termination of Spectrum Service Accounts.** Notwithstanding anything to the contrary herein, Spectrum may suspend or terminate the Spectrum Service account of any End User in the event that such End User is in material breach of any applicable Spectrum Terms of Use and/or Acceptable Use Policy, which shall have been passed through by Windstream to Company pursuant to Section 3.1. Whenever practicable and permitted by law, as determined in Spectrum's reasonable discretion, Spectrum shall provide Company and Windstream with advance written notice of such suspension or disconnection and shall provide the End User with a reasonable opportunity to cure such breach. Where such advance notice is not practicable or permitted by law, as determined in Spectrum's sole discretion, Spectrum shall provide the Company and Windstream with notice of such suspension or termination after such suspension or disconnection has occurred, to the extent such notice is permitted by law.

Chris Czekaj

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chris.czekaj@charter.com

Spectrum



12. SUPPORT

12.1 By Windstream. Windstream will be responsible for providing support to Companies and End Users, including without limitation, by training End Users and providing all direct first level technical support to Companies and End Users, including but not limited to diagnosing problems and using its reasonable efforts to provide solutions.

12.2 By Spectrum. Spectrum shall not be responsible for providing any technical support directly to Companies or End Users. Subject to receipt by Spectrum of payments as specified in Section 4, Spectrum will provide a telephone number and email address solely for Windstream inquiries and remote problem support for Spectrum Service disruption. All support provided by Spectrum to Windstream shall be tier two support, provided only to Windstream's help desk personnel and not to Companies or End Users. Hours of availability and the scope of inquiry and remote support services shall be as determined by Spectrum in its sole discretion from time to time.

13. RECORDS

During the Term and for two (2) years thereafter, Windstream shall make records available to Spectrum or its independent representative upon thirty (30) days' prior written notice, during regular business hours at Windstream's principal place of business to demonstrate its compliance with terms hereunder.

14. FORCE MAJEURE

Except for payment obligations hereunder, neither party shall be liable for any delay or failure in performance due to events outside such party's reasonable control, including, but not limited to acts of God, terrorism, earthquake, governmental acts, labor disputes, utility failures, fiber cuts, shortages of supplies, riots, war, fire, epidemics, or delays of common carriers. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

15. COMPLIANCE WITH LAWS

Each party agrees to comply with all applicable laws, rules, and regulations in connection with its activities under this Agreement. Without limiting the foregoing, Windstream acknowledges that all Spectrum Services, including Documentation and other technical data, may be subject to export controls imposed by the U.S. Export Administration Act of 1979, as amended (the "Act"), and the regulations promulgated thereunder. Windstream will not export or re-export (directly or indirectly) any Spectrum Services or Documentation or other technical data therefor without complying with the Act and the regulations thereunder.

Windstream shall obtain and maintain throughout the Term all applicable licenses, permits and approvals necessary to perform its obligations and exercise its rights hereunder. Without limiting the foregoing, Windstream's business and activities under this Agreement may require Windstream to maintain or submit licenses, registrations or filings in accordance with the requirements of the Federal Communications Commission ("FCC") and/or other federal, state or local agencies. Windstream agrees that it is solely responsible to comply with all such requirements, and will indemnify, defend and hold harmless Spectrum for any failure to comply.

Windstream shall not discriminate against individuals based on their status as protected veterans or individuals with disabilities, or based on their age, race, color, religion, sex, or national origin. Moreover, to the extent applicable for this Agreement, Windstream shall comply with regulations requiring that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to age, race, color, religion, sex, national origin, protected veteran status or disability.

Chris Czekaj
E-signed 2018-04-11 12:04PM EDT
chris.czekaj@charter.com
Spectrum



16. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY OR SPECTRUM'S SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR ANTICIPATED PROFITS, OR LOST DATA, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY OR SPECTRUM'S SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF. THE AGGREGATE LIABILITY OF SPECTRUM AND ITS SUPPLIERS UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID TO SPECTRUM UNDER THIS AGREEMENT DURING THE TWELVE(12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

17. NOTICES

All notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile (followed by the actual document in air mail/air courier); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six (6) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All notices to Spectrum shall be sent to the following address:

Charter Communications
ATTN: Commercial Contracts Management
Dept: Corporate – Legal Operations
12405 Powerscourt Drive
St. Louis, MO 63131

Windstream Services, LLC
Attn: Carrier Relations
4001 N Rodney Parham Road
Little Rock, AR 72223

With a copy to:

Windstream Services, LLC
Attn: Legal
4001 N Rodney Parham Road
Little Rock, AR 72223

Each party may change its address for receipt of notices by giving written notice to the other party pursuant to this paragraph.

18. GENERAL

18.1 Choice of Law. The interpretation, validity and enforcement of this Agreement, and all legal actions brought under or in connection with the subject matter of this Agreement, shall be governed by the law of the State of New York (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded). The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.

18.2 Submission to Jurisdiction; Venue. Any legal action brought under or in connection with the subject matter of this Agreement shall be brought only in the United States District Court for the Southern District of New York or, if such court would not have jurisdiction over the matter, then only in a New York State court sitting in the Borough of Manhattan, City of New York. Each party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the

Chris Czekaj
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chris.czekaj@charter.com
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subject matter of this Agreement in any other court or forum. Each party waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of this Agreement in the Federal or state courts sitting in the Borough of Manhattan, City of New York, and agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum.

18.3 No Waiver. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of such right or any other right under this Agreement.

18.4 Assignment and Subcontracting. Neither Party will assign or transfer this Agreement without the other Party's prior written consent, such consent not to be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement upon notice and without the other Party's consent to a person or entity (i) that controls, is controlled by or is under common control with the assigning Party, (ii) which purchases all or substantially all of its assets or equity, or (iii) resulting from any merger, consolidation or other reorganization involving such Party. Windstream understands and agrees that regardless of any such assignment, Spectrum, at its option, may exercise any of its rights or remedies under this Agreement, and/or perform any of its duties or obligations hereunder, by itself and/or its subcontractors or through any Spectrum affiliated party in conformity with the terms and conditions of this Agreement. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

18.5 Severability. In the event that any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this Agreement by written notice to the other.

18.6 Attorneys' Fees. In any suit or proceeding relating to this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.

18.7 No Agency. This Agreement does not create any agency, partnership, joint venture, or franchise relationship. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

18.8 No Third Party Beneficiary. Subject to Section 18.4, it is the intention of the parties that no person or entity other than Spectrum and Windstream or their permissible assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties, and the covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

18.9 Press Releases. Neither party shall issue a press release regarding the relationship established by this Agreement without the prior written approval of the other party.

18.10 Survival. Sections 4, 7.1, 8.2, 9, 10, 11.3, 11.4, 11.5, 13, 16 and 18, and shall survive the termination of this Agreement.

18.11 Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties relating to Spectrum Services, supersedes all prior agreements, understandings and representations between the parties, oral or written, with respect to its Spectrum Services. No different or additional terms set forth in a purchase order or other communication will be binding on Spectrum. Notwithstanding the foregoing, pricing in any existing Orders will remain as set forth therein unless otherwise agreed in writing by the parties.

Chris Czekaj
E-signed 2018-04-11 12:04PM EDT
chris.czekaj@charter.com
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18.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile or other electronic copy will have the same force and effect as execution of an original, and a facsimile or electronic signature will be deemed an original and valid signature.

18.13 Joint Preparation. Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Order(s) and, accordingly, no court construing this Agreement and any Order(s) shall construe it more stringently against one party than against the other.

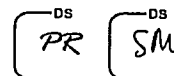
IN WITNESS WHEREOF, this Agreement has been executed by each party's duly authorized representative as of the dates set forth below.

Charter Communications Operating, LLC
By: Charter Communications, Inc., its Manager:

Windstream Services, LLC

By: Chris Czekaj
Name: Chris Czekaj
Title: VP, Strategic Channels
Date: Apr 11, 2018

DocuSigned by:
By: Jeanne Dale
Name: Jeanne Dale
Title: VP Vendor Relations & Voice Management
Date: 4/9/2018



Chris Czekaj
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chris.czekaj@charter.com
Spectrum



Exhibit A

Spectrum Service Description

I. Spectrum Services include:

A. Business Internet Service

Business Internet Service is Internet access service implemented using a hybrid fiber/coax access network. The Company interface to the Spectrum data network is via Ethernet connection. Business Internet Service enables a variety of upstream and downstream rates. If a Company selects to receive Business Internet Service, Spectrum shall provide connectivity from the Company sites set forth in an Order to the Company's data network.

C. Business WiFi ("WiFi")

Spectrum Business WiFi is available to Companies via a Spectrum-provided wireless router and provides wireless access to the Spectrum-provided Internet service. Company must purchase a Spectrum Business Internet service.

E. Business Voice Services ("Voice Service")

Spectrum Business Voice Service consists of one or more lines or connections and a variety of features, as set forth in an Order and the applicable price guide available at <https://business.spectrum.com/newterms>.

Voice Service is not available for resale by Windstream in all Spectrum service areas. Windstream must contact its Spectrum representative to determine if Voice Service is available for resale in the Territory.

II. Spectrum Services are subject to additional terms and conditions:

Spectrum's provision of any Spectrum Service is subject to availability. Certain features of Spectrum Services, may not be available in all service areas and may change from time to time, in Spectrum's sole discretion.

Company must agree to comply and ensure that their End Users comply with the terms and conditions in the Service Attachments, Spectrum's Acceptable Use Policy, Network Management Practices, applicable tariffs and price guides, and other policies or practices that are applicable to Company's use of the Spectrum Services.

Chris Czekaj

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chris.czekaj@charter.com

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Exhibit B

Price List

I. Pricing

Standard installation fee - \$99.00 one-time, non-recurring installation fee per site for all coax services.

Services and pricing are subject to change from time to time as provided in Section 4.3 (Revisions) of this Agreement.

II. Business Internet Service

As of the Effective Date, the Business Internet Service is priced as follows:

A. Monthly recurring charges ("MRC") per site for Business Internet Service is as follows:

Service	Speed*		Volume Offer (50+ Sites per Company)		Standard Offer (fewer than 50 Sites per Company)	
	Standard Markets	Select Markets	New Sites	Existing Spectrum Sites	New Sites	Existing Spectrum Sites
Internet Plus	60 x 5M	100 x 10M	\$49.99	\$69.99	\$79.99	\$99.99
Internet Pro	100 x 10M	200 x 15M	\$69.99	\$89.99	\$119.99	\$199.99
Internet Max	300 x 20M		\$129.99	\$129.99	\$179.99	\$299.99

*Note: Upload and download speeds may be different by Territory

"New Sites" are sites submitted by Windstream which do not, as of the Effective Date, have services within the Territory.

Volume Offer Pricing

New Sites:

The Volume Offer New Site MRCs set forth above will apply to Services delivered to a Company at a New Site. In order to retain the Volume Offer for New Sites, Windstream must achieve fifty (50) or more New Sites for a single Company ("Site Minimum") no later than one (1) year after the date of installation of the first New Site for the applicable Company. After the end of such one (1) year period, Spectrum may review and confirm Windstream's achievement of the Site Minimums for each Company. If a Site Minimum is not met for each such Company, then Spectrum may, in its sole discretion, adjust the respective MRC to the respective Standard Offer MRC for the respective Company.

"Existing Spectrum Sites" are sites that Windstream requests, and Spectrum agrees in writing, to migrate to Windstream. Windstream must request each site be migrated to Volume Offer pricing through Spectrum's then-approved migration process. Volume Offer pricing is available for such sites only where Windstream has achieved and continued attainment of the Site Minimum. Spectrum reserves the right, in its sole discretion, to apply this pricing to Existing Spectrum Sites.

Existing Spectrum Sites do not count toward achievement of the Site Minimum.

B. Static IP Address

Chris Czekaj

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chris.czekaj@charter.com

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Static IP addresses are available with Business Internet Service in accordance with the following fees:

IP Address	
IP Addresses	Monthly Recurring Charge
1 Useable Static IP Address	\$14.99
5 Useable Static IP Addresses	\$24.99
13 Useable Static IP Addresses	\$39.99
29 Useable Static IP Addresses	\$59.99

- III. Intentionally omitted
- IV. Intentionally omitted
- V. Intentionally omitted
- VI. Business WiFi
\$4.99 monthly recurring charge
- VII. Voice Services (where available)

Standard MRC for Voice Service and Available Features, which vary by market and are subject to change from time to time, are below:

Unlimited local and long distance (voicemail not included)

Business Voice

Standard Offer		
New Sites		Existing Spectrum Sites
Month 1 - 12	Month 13+	
\$29.99	\$39.99	\$49.99

Business Voice Features	Monthly Recurring Charge
Directory Listing	\$5.00/month (after 1 st free)
Remote Number Forwarding Directory Listing	\$5.00/month (after 1 st free)
Remote Number Forwarding	\$15.00 each/month

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chris.czekaj@charter.com

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EXHIBIT B

Carrier Master Services Agreement

CARRIER MASTER SERVICES AGREEMENT

This CARRIER MASTER SERVICES AGREEMENT, effective when signed by both Parties ("**Effective Date**"), is by and between Charter Communications Operating, LLC, a Delaware limited liability company ("**Spectrum**") on behalf of its subsidiaries providing services, with offices located at 12405 Powerscourt Drive, St. Louis, MO 63131, and Windstream Services, LLC, on behalf of itself and its Affiliates, a Delaware limited liability company ("**Customer**") whose principal place of business is located at 4001 Rodney Parham Rd, Little Rock, AR 72212. Customer and Spectrum are referred to herein individually as "**Party**" and collectively as the "**Parties**."

WITNESSETH:

WHEREAS, Spectrum owns or operates communications and related facilities and is in the business of providing communications services; and

WHEREAS, Customer wishes to purchase services from Spectrum, and Spectrum wishes to provide services to Customer, pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

1. **DEFINITIONS.** The following capitalized terms shall have the following meanings for the purpose of this Agreement. Additional definitions may be found herein and within the attached Exhibit(s):
 - a. "**Acceptance**" or "**Accepted**." Customer will be deemed to have given its "Acceptance" or to have "Accepted" a Service on the earliest date of: (i) when testing pursuant to Exhibit D has been successfully completed and Customer has affirmatively accepted the Service, in the manner set forth in Exhibit D; (ii) when Customer puts the Service into commercial use; or (iii) five (5) days after the date of the applicable Connection Notice, unless Customer notifies Spectrum within such period that the applicable Services do not conform to the Technical Specifications in all material respects.
 - b. "**Affiliate(s)**" shall mean (i) with respect to Spectrum, Spectrum Parent, any entity that is Controlled by Spectrum Parent, or any entity in which Spectrum Parent holds the power to vote, directly or indirectly, 25% or more of the voting securities; or (ii) with respect to Customer, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with, Customer. "**Control**" means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. "**Spectrum Parent**" means the ultimate parent entity of Spectrum, which is the parent entity that holds the power to vote, directly or indirectly, 50% or more of the voting securities of Spectrum, but in which no person or entity holds the power to vote 50% or more of such parent entity's voting securities.
 - c. "**Agreement**" shall mean this Carrier Master Services Agreement, including any schedules, appendices, Exhibits and documents such as accepted Orders and Access Service Requests ("**ASRs**", defined under the definition of Order below) attached hereto and made a part hereof, or incorporated herein by reference, as well as any written amendments to this Agreement which have been signed by the duly authorized representatives of the Parties.
 - d. "**Confidential Information**" shall have the definition set forth in Section 20.
 - e. "**Connection Notice**" shall have the definition set forth in Exhibit D.
 - f. "**Desired Due Date**" shall mean the date that Customer specifies for desired delivery of a particular Service in an Order.
 - g. "**Emergency Maintenance**" shall mean maintenance which, if not accomplished promptly by Spectrum, could result in a serious degradation or loss of Service to Customer.
 - h. "**End User**" shall mean, individually and collectively, any and all third parties who gain access to or utilize Service(s) provided to Customer hereunder.
 - i. "**FOC**" shall mean a Firm Order Confirmation which is a document provided by Spectrum to Customer establishing the planned installation date, and which may include other terms of the Order.
 - j. "**FOC Date**" shall mean the Firm Order Confirmation Date, which shall be the date that has been identified as the installation date in the FOC.
 - k. "**Initial Agreement Term**" shall mean this Agreement's initial three (3) year time period, commencing upon the Effective Date.

- i. **"MRC"** shall mean a Monthly Recurring Charge for Services to be invoiced and paid on a monthly basis.
 - m. **"Network"** shall mean the communications network of one of the Parties, as the context of the provision requires or as contemplated under this Agreement.
 - n. **"NRC"** shall mean a Non-Recurring Charge for Services to be invoiced and paid on a one-time basis.
 - o. **"Order"** or **"ASR"** shall mean an ordering document for the Services such as Spectrum's standard Access Service Request ("ASR") form or other Spectrum standard ordering document which shall identify, at a minimum, (i) the Service(s) which are the subject of such Order, (ii) Service location and (iii) the Service Term. The term "Order" expressly includes any Upgrade Orders (defined below in Section 7). Orders may also include applicable MRCs and NRCs.
 - p. **"Oversubscribed"** or **"Oversubscription"** shall mean the point at which the sum of the provisioned Ethernet Virtual Circuit bandwidth on a User to Network Interface port utilization exceeds the ordered External Network-to-Network Interface port bandwidth.
 - q. **"Planned Service Outage"** shall mean any Service Outage caused by scheduled maintenance or planned enhancements or upgrades to Spectrum's Network and either (i) agreed to in writing by Customer's operations group via e-mail or other means, such agreement not to be unreasonably withheld, provided the scheduled maintenance or planned enhancements or upgrades are performed within the hours of 12:00 midnight and 6:00 AM local time, unless otherwise agreed by the Parties, or (ii) in the case of Emergency Maintenance, Spectrum's operations group provides as much prior notice as practicable, via e-mail or other means.
 - r. **"Point of Termination"** shall mean the particular location within the applicable Customer Point of Presence or other Site, as specified in the applicable Order, where Spectrum's responsibility to provide Spectrum Equipment and Service ends and where Customer's Network and Customer's responsibilities begin.
 - s. **"Service(s)"** shall mean the service(s) to be provided by Spectrum under this Agreement, as identified pursuant to Section 3 herein.
 - t. **"Service Commencement Date"** shall mean the date upon which a Service is Accepted.
 - u. **"Service Outage"** shall mean an unavailability of the Service to carry traffic between two (2) Points of Termination; provided that a Service Outage will not be deemed to have occurred in the event that it arises from or relates to any of the following: (i) a Service has not been "Accepted" by Customer, (ii) the negligence, error, acts or omissions of Customer or others authorized by Customer to use the Service; (iii) failure of Customer provided equipment; (iv) any period in which Spectrum or its agents are not afforded access to any premises where the access lines associated with the Service are terminated; (v) any period when Customer has released Service to Spectrum for maintenance or rearrangement purpose (including, without limitation, during any Planned Service Outage); (vi) any period when Customer elects not to release the Service(s) for testing and/or repair and continues to use it on an impaired basis; (vii) a Force Majeure Event; (viii) interruptions relating to, resulting from, or occurring during any Oversubscription; or (ix) a breach by Customer of its obligations under this Agreement (each of (i) – (ix) is referred to as an **"Excluded Disruption"**).
 - v. **"Service Term"** shall mean the minimum period of time specified in an Order for which Customer commits to purchase and Spectrum commits to supply the Service specified in the Order and with respect to each Order, the period of time during which such Order shall be in effect, which shall commence upon the Service Commencement Date unless expressly stated otherwise.
 - w. **"Site"** shall mean the premises of Customer or an End User at which a Point of Termination is located.
 - x. **"Spectrum Equipment"** shall mean real or personal property owned or leased by Spectrum and used to deliver Services, including without limitation terminal and other equipment, wires, lines, ports, routers, switches, fiber termination equipment, channel service units, data service units, cabinets, racks, and private rooms.
 - y. **"Technical Specifications"** shall mean the performance specifications for each Service, which are set forth in the attached Exhibit A, as amended by Spectrum from time to time upon thirty (30) days written notice to Customer.
2. **PROVISION OF SERVICES.** Subject to all terms and conditions of this Agreement:
- a. With respect to each Order executed by both Parties, Spectrum shall, directly or through one or more of its Affiliates, make available those Services described in such Order for the duration of the applicable Service Term (except as expressly provided for otherwise herein);

- b. Customer shall pay the applicable MRCs and NRCs provided with respect to each Order as more fully described in Sections 10 and 11 herein; and
- c. Spectrum may elect to provide any additional services related to installation or use of the Services as may be necessary to deliver the Services or as ordered by Customer at rates and charges agreed upon by the Parties.
3. **SERVICE TYPES, SERVICE PERFORMANCE AND REMEDIES.** See Exhibits A, B-1 through B-3, and C.
4. **AGREEMENT TERM AND RENEWALS.** The term of this Agreement shall commence as of the Effective Date, and shall expire, unless terminated earlier in accordance herewith, upon the later of the expiration of the Initial Agreement Term and any renewals thereof (as described below the "Term" shall mean the initial Agreement Term and any renewals thereof). Upon the expiration of the Initial Agreement Term, this Agreement shall automatically renew for additional successive one (1) year periods, unless a Party has delivered to the other Party written notice to the contrary at least ninety (90) days prior to the end of the Initial Agreement Term or then-current renewal Term, as the case may be.
5. **SERVICE TERM.** The Service Term shall commence on the Service Commencement Date. Each Order shall set forth the initial Service Term. In the event an Order does not explicitly state the Service Term, then the Service Term corresponding to the MRC in the respective pricing attachment or then-current Spectrum pricing applicable for such Service shall apply. Upon expiration of the Service Term with respect to a particular Order, the Service Term shall continue on a month to month basis, and Spectrum may, upon 30 days' notice adjust such rates to the then applicable month to month MRC, until terminated by (a) Customer upon thirty (30) days written notice to Spectrum or (b) Spectrum upon ninety (90) days written notice to Customer. Any and all Service Term renewals shall be at then-current Service pricing unless otherwise agreed by the Parties in writing. If any Service Term or renewal Service Term extends beyond the expiration of the Term, then the applicable Service shall continue to be governed by the terms and conditions of this Agreement through the expiration of the applicable Service Term or renewal Service Term, as the case may be, for such Order, subject to specific Service termination provisions set forth herein.
6. **SERVICE ORDERING.**
- a. Customer may from time to time throughout the Term, place orders for specific Services in accordance with the ordering procedures in Spectrum's Carrier Guide, which shall be provided to Customer upon request.
- b. In the event a Customer Affiliate places an Order pursuant to this Agreement, then (i) such Customer Affiliate shall be bound by the terms and obligations of this Agreement, (ii) Spectrum may enforce the terms and conditions of this Agreement against such Customer Affiliate, and (iii) Customer shall be jointly and severally liable for the obligations of such Customer Affiliate. With respect to each Customer Affiliate seeking or obtaining Services from Spectrum hereunder, upon Spectrum's acceptance of an Order from any such Customer Affiliate, each such Customer Affiliate shall be construed to be "Customer" as such term is used in this Agreement (with the exception of this Section 6.b). Notwithstanding the foregoing: (a) Customer shall be responsible for general administration of this Agreement; (b) any notices required hereunder shall be directed to Customer; and (c) no Customer Affiliate shall be construed as an intended third-party beneficiary with the right to enforce the terms hereof, such that any legal action brought under or in connection with the subject matter of this Agreement shall be brought solely by Customer.
- c.
7. **UPGRADES TO ORDERS.**
- a. From time to time during the Term, Customer may elect to purchase additional quantities of or functionally enhanced versions of Services. In such event, at Customer's request and subject to Spectrum's approval and acceptance of such request, Customer may amend an Order to include such additional quantities of or functionally enhanced versions of Services upon execution of an "Upgrade Order." The Upgrade Order shall reference, in addition to any other information required to be set forth in an Order, the functionally enhanced versions of Services to be provided thereunder (or, where Customer seeks additional quantities of Services currently provided to Customer pursuant to an Order, the total amount of such Services to be provided to Customer).
- b. Upon Spectrum's execution or acceptance of an Upgrade Order, such Upgrade Order shall be deemed to terminate the respective Service under the prior Order(s) associated with such Upgrade Order without liability to Customer for any early termination charges otherwise applicable for such terminated Service(s). Customer acknowledges that Customer shall remain liable for all charges associated with Services actually provided during the applicable Service Term of such terminated Service through the date of termination in accordance with this Section 7 (including any charges for additional services required for installation or use of such Services).
8. **PORTABILITY.** Customer may, upon written notice to Spectrum, discontinue or terminate Service at a Site, after the first twelve (12) months of, but prior to the end of, the applicable Service Term, without payment of the applicable early termination charge set forth in Section 16, if:

- a. Customer replaces the affected Service with a different single Service (e.g., two Services may not replace one terminated Service, such that Services may only be ported on a 1:1 ratio);
- b. Customer places an Order for such replacement Service having a Desired Due Date of no later than sixty (60) days after discontinuance or termination of the original Service;
- c. the replacement Service has an MRC equal to or greater than the MRC for the original Service and a Service Term equal to or greater than the months remaining in the original Order's Service Term;
- d. the replacement Service is the same type of Service as the terminated Service (e.g., a terminated E-Access Service must be replaced by an Order for an E-Access Service);
- e. the Order for the replacement Service identifies that it is a replacement Service made in accordance with this Section 8 and identifies the applicable terminated Service, including the date of termination and Spectrum Service ID of the terminated Service; and
- f. Customer pays to Spectrum on demand all construction expenses and other NRCs, if any, associated with the replacement Service, and the costs and expenses incurred by Spectrum to terminate the terminated Service, including without limitation any applicable third party termination liability.

For clarity, the Order for the replacement Service must be a newly placed Order and shall not be an Order already submitted to Spectrum; this Section 8 does not apply to termination charges incurred pursuant to Section 16.b below.

9. ACCESS, SPACE AND POWER; SPECTRUM EQUIPMENT; CUSTOMER PROVIDED EQUIPMENT.

- a. Access.
 - i. If requested by Spectrum, Customer, at no cost to Spectrum, shall secure on an initial and ongoing basis during the Service Term, all necessary rights of access between the public rights of way and the Service location(s) to enable Spectrum to install and provide the Services.
 - ii. Customer shall allow Spectrum reasonable, escorted access to the Site to install, operate, maintain, repair and replace any Spectrum Equipment in and on the Site for purposes of providing Services under this Agreement. Spectrum shall use commercially reasonable efforts to give prior written notice to Customer of its intent to enter the Site.
 - iii. Customer shall ensure that the Site is secure and safe from hazards to the Spectrum Equipment or to Spectrum's employees, agents and contractors.
- b. Space and Power. Customer shall, upon Spectrum's request and at no cost to Spectrum,
 - i. provide adequate clean electrical power to meet Spectrum's reasonable requirements during the Service Term at the Site, as well as all necessary connections to electrical and mechanical facilities at the Site as necessary for the operation of Spectrum Equipment at the Site; and
 - ii. provide floor space, an equipment bay or equipment rack space and access at the Site, which will include, without limitation, environmental controls (humidity control, fire suppression, temperature/climate control, security control and alarm monitoring), redundant/DC power and protected/UPS AC power, technical and maintenance support, site access, building licenses, approvals, and permissions from building managers, landlords, and data center operators, cable entrance, conduit, COC access, tower/antenna space, ground isolation device and central office repeater.
- c. Spectrum Equipment. Absent Spectrum's prior written consent, Customer shall not, and shall not permit others to:
 - i. rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Spectrum Equipment;
 - ii. use any Spectrum Equipment for any purpose other than that for which Spectrum provides them; or
 - iii. take any action that causes the imposition of any lien or encumbrance on the Spectrum Equipment.

Anything in this Agreement to the contrary notwithstanding, in no event shall Spectrum be liable to Customer or any other person for interruption of Services or for any other loss, cost or damage caused by or related to a failure of Customer to meet its obligations in Section 9(a), 9(b) or 9(c), including without limitation the improper use or maintenance of the Spectrum Equipment by Customer or third parties provided access to the Spectrum Equipment by Customer in violation of this Section 9.

Customer shall be responsible for any damage to the Spectrum Equipment to the extent arising from the improper use or maintenance of the Spectrum Equipment by Customer or third parties provided access to Spectrum Equipment by Customer.

Customer agrees (which agreement shall survive the expiration, termination or cancellation of any Order, the Term or this Agreement) to allow Spectrum to remove the Spectrum Equipment from the Site after termination, expiration or cancellation of the Services in connection with which the Spectrum Equipment was used, and for maintenance, repair, replacement or otherwise as Spectrum may determine is necessary or desirable from time to time. Upon termination, expiration or cancellation of the Services, the applicable Spectrum Equipment shall be returned to Spectrum in the same condition as when received,

ordinary wear and tear excepted. Customer shall reimburse Spectrum for the reasonable and documented costs of the repair or replacement, at Spectrum's discretion, of any Spectrum Equipment not returned in accordance with this Section.

Spectrum shall be responsible for any damage to the Site to the extent arising from the improper use of the Site by Spectrum or third party agents or contractors acting on Spectrum's behalf during installation, inspection or maintenance activities pursuant to this Agreement.

Title to all Spectrum Equipment shall remain with Spectrum. Spectrum will provide and maintain the Spectrum Equipment in good working order. Such maintenance shall be at Customer's expense to the extent that it is related to and/or resulting from the misuse of the Spectrum Equipment, the negligence or misconduct of Customer or breach of this Agreement by Customer. Spectrum shall have the right, but not the obligation, to upgrade, modify and enhance Spectrum Equipment (including related firmware) and the Service and take any action that Spectrum deems appropriate to protect the Service and its facilities.

- d. **Customer-Provided Equipment.** Spectrum may, but shall have no obligation to, install certain Customer-provided communications equipment at the request of Customer. Spectrum shall not be responsible for the operation or maintenance of any Customer-provided communications equipment, nor shall Spectrum have any liability whatsoever for the configuration, management or performance of Customer-provided communications equipment. Customer shall be responsible for ensuring that all Customer-provided equipment and wiring that are used in connection with the Services are fully compatible with the Services. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by Spectrum's employees or authorized contractors when the Service problem or trouble report results from Customer's negligence or misconduct or Customer-provided equipment. Spectrum may use third-party wiring from a building or premises Point of Termination (e.g. telephone closet, risers) to reach a Site and Spectrum shall have no responsibility for such third-party owned wiring.

10. BILLING AND PAYMENT

- a. **MRCs and NRCs.** The MRCs and any applicable NRCs payable by Customer for each Service shall be set forth in another document agreed upon by the Parties (e.g., an Order, ASR and/or rate cards) and shall be paid after being invoiced as provided below. Customer agrees to pay any charges for the Services within forty five (45) days after the date of the invoice (the "**Due Date**") in immediately available funds to the address set forth on the respective invoice. Customer acknowledges and agrees that rate cards may be updated by Spectrum from time to time, with thirty (30) days' prior written notice to Customer, and are incorporated herein by reference.
- b. **Commencement of Billing.** As compensation for the Services provided by Spectrum, Customer shall pay the MRCs and all applicable NRCs beginning on the Service Commencement Date. Notwithstanding the foregoing, in the event of a delay in activation of Service under an Order due to delays or failures by Customer or an End User, Spectrum shall be permitted to commence billing on the FOC Date for the applicable Service. When Service is initiated on a day other than the first of the month or terminates on a day other than the last of the month, the MRCs shall be determined by prorating the monthly payment for the number of days during such month that Service was provided. Customer shall not be liable for any MRCs that were not previously billed to Customer by Spectrum and as to which over one hundred eighty (180) days have passed since the applicable Service(s) was provided.
- c. **Interest.** Past due amounts are subject to interest at a rate of 1.5% monthly (or the highest rate allowed by law, whichever is less), charged by Spectrum on the balance not paid by the Due Date, calculated on a daily basis from the first day when said amount became due and owing until paid. Customer shall also be responsible for all costs of collection (including attorneys' fees) to collect undisputed overdue amounts.
- d. **Billing Disputes.** In the event Customer disputes any portion of a Spectrum invoice, Customer shall pay the undisputed portion of the invoice by the Due Date, and shall submit to Spectrum a written claim for the disputed amount, which claim shall set forth with specificity Customer's grounds for such dispute. All disputes must be raised and claims submitted to Spectrum no later than 90 days after the applicable Due Date or such claims shall be deemed waived and invoices shall be deemed correct. The Parties will cooperate in good faith to resolve any such disputes within a sixty (60) day period after the dispute is submitted to Spectrum. In the event that the dispute is resolved against Customer, Customer shall pay such amounts plus interest at the rate referenced in, and calculated in accordance with, Section 10.c above within thirty (30) days after the date of resolution of such disputed amount. If the Parties are unable to resolve any dispute timely brought by Customer hereunder, either Party may pursue any legal or equitable remedy available to it.
- e. **Payment of Credits.** In the event a Service Outage results in the right to Outage Credits hereunder (as defined in the Exhibits hereto), then at Customer's request and subject to the provisions of the respective Exhibit hereto, Spectrum will credit Customer for the Outage to the affected Service as set forth in the respective Exhibit. Except as expressly set forth in the applicable Exhibit, such Outage Credits shall constitute Customer's sole and exclusive remedy, and Spectrum's sole and exclusive liability, with respect to any failure or deficiency with respect to any Service.

11. TAXES.

- a. **Generally.** Customer shall pay any applicable federal, state or local sales, use, or excise taxes, fees or surcharges in connection with the Service furnished to Customer pursuant hereto, including state or federal Universal Service Fund contributions, but excluding any taxes based upon Spectrum's property, net income, franchise, license, or capital stock. Customer shall pay all gross receipts taxes which may be passed through by Spectrum under the rules of any Federal, state or local governmental authority. Notwithstanding the foregoing, Customer shall not be liable for any gross receipts taxes enacted or imposed in lieu of state or local income or franchise taxes. Spectrum shall have the right to recover from Customer the amount of any fees or taxes imposed directly on Spectrum or the Services provided hereunder, in accordance with all applicable laws, in the form of a surcharge included on Spectrum's invoice.
- b. **Exemption Documentation.** Customer shall provide Spectrum with all information requested by Spectrum, including but not limited to duly executed exemption certificates with respect to any exemption from sales, use or other tax or fee exemption claimed by Customer and shall immediately notify Spectrum of any change in Customer's tax status. To the extent any such exemption documentation is held invalid by the tax or governmental authority for any reason, Customer agrees to reimburse Spectrum for any tax liability, including without limitation related interest and penalties, arising from such invalid documentation.
- c. **Protest.** Customer and Spectrum shall each have the right to protest or appeal any tax or charge assessed against it by any taxing authority. However, the appealing Party shall bear all costs and expenses associated with such appeal. Any liability related to taxes, fees, penalties, and interest arising in connection with a charge or assessment by any taxing authority shall be allocated to the Parties in accordance with this Section 11.
- 12. SUSPENSION OF SERVICE(S).** Spectrum may, at its option, and in addition to any other remedies it may have, immediately suspend Service(s) without liability to Customer, in the event that:
- a. Customer fails to pay charges in an invoice by the Due Date (other than amounts which are the subject of a then-current dispute initiated in accordance with Section 10.d) and such failure is not remedied within ten (10) days after Customer's receipt of written notice from Spectrum that Spectrum will suspend Services for non-payment. Such suspension may continue until all past due amounts are paid in full or Spectrum terminates the applicable Service(s), Order(s) or this Agreement.
- b. Customer commits a material breach of this Agreement, including, without limitation, a failure to comply with its obligations under Section 22.c and fails to cure such breach within thirty (30) days after receipt of written notice from Spectrum. Such suspension may continue until such time as the underlying noncompliance has been corrected or Spectrum terminates the applicable Service(s), Order(s), or this Agreement.
- Any such suspension by Spectrum pursuant to this Section 12 will not affect Customer's ongoing obligation to pay Spectrum any amounts due under this Agreement, as if such suspension of Services had not taken place.
- 13. TERMINATION BY EITHER PARTY.** In the event that a Party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice from the non-breaching Party in accordance with this Section 13, the non-breaching Party may terminate this Agreement or any affected Order(s) without penalty. Prior to such termination, the non-breaching Party shall first give the other Party written notice of its intent to terminate, which such notice shall clearly set forth the provision(s) of this Agreement alleged to have been breached along with a description of the specific circumstances alleged to constitute such breach. Nothing in this Section 13 shall be deemed to limit any other remedies available to Spectrum hereunder.
- 14. TERMINATION BY SPECTRUM.** Spectrum may, at its option, and in addition to any other remedies it may have, terminate an Order (in whole or in part) and/or discontinue Service(s) (in whole or in part) or terminate the Term and this Agreement, all without liability, by sending written notice of termination to Customer with termination effective as of the date such notice is received, in the event that:
- a. any amounts due and owing by Customer (other than amounts which are the subject of a then-current dispute initiated in accordance with Section 10.d) remain unpaid ten (10) days after Customer's receipt of written notice from Spectrum of such non-payment;
- b. Customer (i) suspends its business operations, (ii) is adjudicated to be insolvent, (iii) makes a general assignment for the benefit of creditors, or (iv) files (or has filed against it) a petition in bankruptcy which petition is not dismissed within sixty (60) days thereafter;
- c. Spectrum is ordered, by a federal, state or local governmental entity, regulatory body or court of competent jurisdiction, to cease providing Service(s);
- d. there is a change in applicable law or regulation, including without limitation any change pursuant to applicable decisions, rules and orders, that materially increases Spectrum's costs or materially affects other terms of Spectrum's delivery of Service(s), and Spectrum and Customer are unable to reach agreement with respect to new rates, terms and/or conditions regarding such Service(s) within ninety (90) days after Spectrum's delivery of written notice requesting renegotiation thereof; or

- e. Spectrum determines in good faith that Customer's End User's and/or Customer's use of the Services is interfering unreasonably with the operation of the Spectrum Equipment or the Spectrum Network.

15. EFFECT OF TERMINATION. Upon termination or expiration of this Agreement, any Service(s) or any Order for any reason whatsoever: all obligations of the Parties hereto under (i) this Agreement shall terminate upon termination or expiration of this Agreement, and (ii) such terminated Order(s) and under this Agreement with respect to such terminated Service(s), shall immediately terminate upon termination or expiration of the applicable Service(s) or Order; provided, however, that the provisions of this Agreement and/or Order which state that they survive or which, by their nature, reasonably would be expected to survive termination or expiration (including without limitation any provisions related to payment obligations, disclaimers, limitations or exclusions of warranties and liability, confidentiality or indemnification) shall survive the termination or expiration of such Service(s) or Order; and (ii) all payment obligations of Customer under this Agreement with respect to such terminated Service(s) (including any obligations to pay termination charges in connection therewith) shall accrue through the date of such termination and shall become immediately due and payable.

16. TERMINATION CHARGES.

- a. Except as may be set forth in a mutually agreed upon document (e.g., Order or ASR), in the event that Customer terminates a Service on or after the Service Commencement Date but before the end of the applicable Service Term, Customer shall pay to Spectrum on demand, as liquidated damages and not as a penalty: (i) an early termination charge equal to the sum of: (1) the full amount of all undisputed past due charges and interest thereon, if any, and (2) one hundred percent (100%) of all remaining MRCs for the first year of the applicable Service Term, fifty percent (50%) of all remaining MRCs for the second year of the applicable Service Term, and twenty-five percent (25%) of all remaining MRCs for the third and subsequent years of the applicable Service Term; and (ii) any construction expenses or installation charges incurred by Spectrum with respect to such Service to the extent that the early termination charge in (i) above does not fully reimburse Spectrum for such costs, but in no event will such charges exceed remaining MRCs for the Service Term.
- b. Except as may be agreed upon in an Order or other mutually agreed upon document, in the event that Customer terminates a Service at any time after issuance of the FOC by Spectrum and prior to the applicable FOC Date, Spectrum may invoice Customer for, and Customer shall pay Spectrum by the applicable Due Date, as liquidated damages and not as a penalty: (i) the amount of any third party-imposed termination liability incurred as a result of such termination, as well as any construction expenses or installation charges incurred by Spectrum prior to such termination that are attributed to the affected Service; and (ii) a termination charge of one (1) month's MRCs if cancelled more than thirty (30) days prior to the FOC Date, two (2) months' MRCs if cancelled between eleven and thirty (11-30) days prior to the FOC Date, and three (3) months' MRCs if cancelled ten (10) days or fewer prior to the FOC Date. There will be no such early termination charge if a Service is cancelled prior to the issuance of a FOC by Spectrum. For clarity, in the event of postponement of the FOC Date requested by Customer, the original FOC Date shall be used to determine amounts due under this Section 16.

17. INSURANCE. Each Party shall carry such types and amounts of insurance as are reasonably necessary to meet its respective obligations under this Agreement, including without limitation its indemnification obligations set forth hereunder, but in no event less than: (a) employer's liability insurance with limits for employer's liability of \$500,000 per accident/occurrence; and (b) commercial general liability insurance covering (i) bodily injury and property damage of \$1,000,000 per person/per accident and \$2,000,000 in the aggregate; and (ii) umbrella, or excess liability of \$5,000,000. Upon request of the other Party, a Party will furnish to the requesting Party certificates of such insurance.

18. DISCLAIMER OF WARRANTIES. THE SERVICES AND RELATED SPECTRUM EQUIPMENT AND/OR OTHER MATERIALS USED IN CONNECTION WITH THE SERVICES, IF ANY, ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY SPECTRUM, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY.

SPECTRUM DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE, ERROR-FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME.

CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OR ITS END USER'S OWN DISCRETION AND RISK.

IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT SPECTRUM'S THIRD-PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT.

AS BETWEEN CUSTOMER AND SPECTRUM, CUSTOMER WILL BE RESPONSIBLE TO ENSURE THAT THE SERVICES IT OR A CUSTOMER RESELLER PROPOSES TO USE TO CARRY THE TRAFFIC OF END USERS WILL MEET ITS END USERS' REQUIREMENTS.

ANY SERVICES PROVIDED BY CUSTOMER TO ANY THIRD PARTIES (INCLUDING ANY CUSTOMER OF CUSTOMER, CUSTOMER RESELLER OR END USER) ARE THE SOLE RESPONSIBILITY OF CUSTOMER, AND IN NO CIRCUMSTANCES SHALL SUCH SERVICES BE DEEMED TO BE SERVICES PROVIDED BY SPECTRUM TO SUCH PARTIES. THE DISCLAIMER OF WARRANTY SET FORTH IN THIS SECTION 18 SHALL NOT AFFECT CUSTOMER'S RIGHTS (INCLUDING INDEMNIFICATION RIGHTS) OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT.

19. REPRESENTATIONS AND COMPLIANCE WITH LAWS.

- a. Each Party hereby represents and warrants to the other Party that such Party has been duly formed and is in good standing in the state of its organization, that such Party is qualified to do business in the states where the Services will be delivered, and that the execution of this Agreement by such Party has been duly authorized in compliance with such Party's organizational documents and procedures.
- b. Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Spectrum to violate applicable law.
- c. In connection with the matters provided for in this Agreement, each Party hereto shall comply with all laws and regulations applicable to such Party's obligations and, in the case of Customer, Customer's use of the Service (including all content transmitted via the Service) hereunder, including, but not limited to, the Telecommunications Act of 1996, as amended from time to time, and the policies, rules and regulations of the Federal Communications Commission, and all applicable local and state, laws, rules and regulations. Customer shall ensure that its Customer Resellers' and End Users' use of the Service shall comply with all applicable laws and regulations and the terms of this Agreement. This Agreement, its Exhibits, and the Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which Spectrum provides the Services. If any provision of this Agreement, its Exhibits, or the Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of this Agreement, its Exhibits, and/or the Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided hereunder, then such law or regulation will take priority over the relevant provision of this Agreement, its Exhibits, and the Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this Agreement, nothing contained in this Agreement shall constitute a waiver by Spectrum of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or Spectrum Equipment.

20. NONDISCLOSURE.

- a. Each Party acknowledges that, in the course of performance under this Agreement, it may receive Confidential Information (as hereinafter defined) of the other Party. Neither Party shall disclose to any third party or use for any purpose whatsoever, except to the extent required for such Party's performance under this Agreement or to the extent expressly permitted hereunder, any Confidential Information of the other Party. Notwithstanding anything in this Section to the contrary, the obligation of the Receiving Party to protect the confidentiality of any information or materials shall terminate as to any information or materials which: (i) are, or become, public knowledge through no act or failure to act by the Receiving Party; (ii) are publicly disclosed by the proprietor thereof or are otherwise generally made available to the public; (iii) are lawfully obtained without obligation of confidentiality by the Receiving Party from a third party not bound by confidentiality restrictions; (iv) are independently developed by the Receiving Party; or (v) are lawfully known by the Receiving Party at the time of disclosure other than by reason of discussions with or disclosures by the Disclosing Party. For purposes of this Agreement, "*Disclosing Party*" means the Party who has disclosed Confidential Information of such Party to the other Party, and "*Receiving Party*" means the Party to whom Confidential Information of the other Party is disclosed.
- b. If a Receiving Party is required or becomes legally compelled (by deposition, interrogatories, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information of the other Party, such Receiving Party shall provide the Disclosing Party with prompt notice of such request(s), requirement(s) or compulsion(s) so that such Disclosing Party may seek an appropriate protective order or other limitation on such disclosure from an appropriate court or regulatory authority of competent jurisdiction. The Parties hereto further agree that, anything in this Agreement to the contrary notwithstanding, in the event such a protective order or limitation on such disclosure issued by an appropriate court or regulatory authority of competent jurisdiction is not obtained by the latest date such disclosure is legally required, or in the event that the Disclosing Party elects to not seek such protective order or limitation on disclosure, the Receiving Party's compliance with such requirement or legal compulsion shall not be deemed a breach of this Agreement. The Receiving Party agrees, when complying with such requirement or legal compulsion, to disclose only that limited portion of the Disclosing Party's Confidential Information that it is advised by counsel is legally required for compliance therewith and further agrees to exercise commercially reasonable efforts to obtain assurance that the recipient will accord confidential treatment to such Confidential Information.

- c. For the purposes of this Agreement, "**Confidential Information**" shall mean all technical, economic, business, engineering or other information (including "trade secrets", as defined under applicable law) which is proprietary to the Disclosing Party (or with respect to which the Disclosing Party owes a third party a duty of confidence) and which the Disclosing Party discloses to the Receiving Party either (i) in tangible form marked as confidential, or (ii) orally, provided that the Disclosing Party identifies such information disclosed orally as being confidential at the time of disclosure and then promptly confirms the confidential nature of such information in writing to the Receiving Party. The terms and conditions of this Agreement, as well as pricing information exchanged in connection with this Agreement or included in any Service hereunder are hereby designated as Confidential Information without further obligation on the part of either Party to mark or designate it as such.
- d. The Receiving Party acknowledges that, upon the breach or threatened breach by the Receiving Party of any provision contained in this Section, the Disclosing Party will be without an adequate remedy at law and may suffer or be threatened with irreparable injury, and that the Disclosing Party shall have the right to seek immediate injunctive relief against the Receiving Party, in addition to all other rights and remedies available to the Disclosing Party in equity and at law. This Section shall survive expiration or termination of this Agreement for any reason whatsoever, and the Receiving Party's obligations under this Section shall continue (i) with respect to Confidential Information of the Disclosing Party that also constitutes "trade secrets", as defined under applicable law, until such time as such information no longer constitutes a trade secret due to no fault of the Receiving Party, and (ii) with respect to all other Confidential Information, for a period of three (3) years after the expiration or termination of this Agreement or such longer period as may be required by applicable law.

21. INDEMNIFICATION.

- a. Customer agrees, at its own expense, to indemnify, defend and hold harmless Spectrum and its directors, employees, representatives, officers and agents, (the "**Spectrum Indemnified Parties**") against any and all claims, liabilities, lawsuits, damages, losses and judgments asserted against the Spectrum Indemnified Parties by a third party, as well as fees and expenses incurred in connection therewith, including but not limited to reasonable attorneys' fees and court costs (collectively, "**Claims**"), to the full extent that such Claims arise directly from: (i) Customer's noncompliance with the terms of this Agreement and any or all Orders; (ii) Customer's or its Customer Resellers' or End-Users' failure to comply with applicable laws; (iii) Customer's or its Customer Resellers' or End Users' use or misuse of the Services or Spectrum Equipment and/or the content of any communications transmitted via the Service(s); (iv) Customer's misconduct or negligence; and/or (v) physical damage to personal or real property or bodily injury, including death, caused by the gross negligence or willful misconduct of Customer or Customer's End Users, its employees or contractors. In the event any such action will be brought against the Spectrum Indemnified Parties, Spectrum will immediately notify Customer in writing. Customer shall have full authority to settle any such Claims; provided, however, that it may not enter into any settlement without Spectrum's advance written consent in which (A) a full and final release of such Claim in favor of Spectrum Indemnified Parties is not obtained as a result of the settlement, or (B) any admission or affirmative obligation is required or placed upon Spectrum Indemnified Parties.
- b. Spectrum agrees, at its own expense, to indemnify, defend and hold harmless Customer, its directors, employees, representatives, officers and agents ("**Customer Indemnified Parties**") against any and all Claims incurred by or asserted against Customer Indemnified Parties by a third party to the full extent that such Claims arise directly from: (i) physical damage to personal or real property or bodily injury, including death, caused by the gross negligence or willful misconduct of Spectrum, its employees or contractors while at the Site(s) as a direct result of Spectrum's installation, removal or maintenance at Customer's Premises of the Spectrum Equipment; and/or (ii) Spectrum's failure to comply with applicable laws. In the event any such action will be brought against the Customer Indemnified Parties, Customer will immediately notify Spectrum in writing. Spectrum shall have full authority to settle any such Claims; provided, however, that it may not enter into any settlement without Customer's advance written consent in which (A) a full and final release of such Claim in favor of Customer Indemnified Parties is not obtained as a result of the settlement, or (B) any admission or affirmative obligation is required or placed upon Customer Indemnified Parties.
- c. Spectrum agrees, at its own expense, to indemnify, defend and hold harmless Customer and its affiliates, directors, employees, representatives, officers and agents, (the "**Customer Indemnified Parties**") against any and all claims, liabilities, lawsuits, direct damages, losses, judgments, costs, fees and expenses incurred by Customer Indemnified Parties (including but not limited to, reasonable attorneys' fees and court costs), to the extent that such arise directly from third party claims that any of the Spectrum Equipment and/or Network (collectively, the "**Spectrum System**") used to deliver the Services infringes upon the intellectual property rights of such third party ("**IP Claims**"). Notwithstanding anything to the contrary herein, Spectrum shall have no indemnification obligation with respect to any IP Claim arising out of: (i) content, materials or data transmitted by Customer via the Services; (ii) use of the Spectrum System or Services in combination with products, materials, applications, methods, or other items not furnished by Spectrum; (iii) a modification of the Spectrum System or Services not required or directed by Spectrum; or (iv) use of the Spectrum System or Services in an unauthorized manner or in breach of this Agreement. If an IP Claim for which Spectrum has an indemnification obligation under this Section is, or in Spectrum's reasonable opinion is likely to be made, then Spectrum will promptly notify Customer of such claim or proceeding and, at Spectrum's expense and sole discretion, take one or more of the following actions: (i) secure the right for Customer to continue to use, the Spectrum System consistent with this Agreement; (ii) replace or modify the Spectrum System to make it non-infringing; or (iii) if none of the foregoing alternatives are possible after Spectrum has used its commercially reasonable efforts, terminate the affected Service. The foregoing Section states the sole and exclusive remedy of Customer in connection with any IP Claim.

22. LIMITATION OF LIABILITY.

- a. EXCEPT TO THE EXTENT THE SAME ARISE OUT OF A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR THE OTHER PARTY'S END-USERS FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, RELIANCE OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, SAVINGS OR HARM TO BUSINESS) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROVISION OF SERVICES OR EITHER PARTY'S PERFORMANCE OR NONPERFORMANCE HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SPECTRUM'S AFFILIATES, THIRD-PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER, CUSTOMER RESELLERS OR END USERS HEREUNDER.
- b. EXCEPT TO THE EXTENT THE SAME ARISE OUT OF (i) A PARTY'S INDEMNIFICATION OBLIGATION WITH RESPECT TO A THIRD-PARTY CLAIM, (ii) AN INTENTIONAL BREACH OF A CONFIDENTIALITY OBLIGATION UNDER THIS AGREEMENT, (iii) A PARTY'S WILLFUL MISCONDUCT, OR (iv) WITH RESPECT TO CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, THE AGGREGATE LIABILITY OF EITHER PARTY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ASR FOR THE APPLICABLE SERVICE DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.
- c. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, SPECTRUM'S SOLE LIABILITY, AND CUSTOMER'S SOLE REMEDY, WITH RESPECT TO ANY FAILURE OR DEFICIENCY OF THE SERVICE SHALL BE AS SET FORTH IN THE RESPECTIVE SERVICE EXHIBIT ATTACHED HERETO.

23. LIMITED RESALE / REGULATORY OBLIGATIONS.

This Agreement is an individually negotiated agreement between two communications network providers. The Parties agree that Spectrum is offering and providing all Service(s) and system functions on an individually negotiated basis. Customer may resell the Service(s) or system functions covered by this Agreement to its End Users; as "telecommunications" as that term is defined under the Communications Act of 1934; and subject to Customer's use restrictions and/or obligations in this Agreement (a "Customer End User"). Notwithstanding the foregoing, in no event shall Customer offer to any third party any Service covered by this Agreement as a standalone service. Further, Customer may resell the Service(s) or system functions to a reseller. (a "Customer Reseller") so long as Customer certifies that Customer Resellers: (a) comply with applicable legal and regulatory requirements, including all necessary federal, state and local agency licenses, authorizations, certifications, periodic reports and other submissions and monetary contributions, including applicable universal service fund requirements, FCC Form 499 and 499-A filing obligations, and all other regulatory obligations and requirements; and (b) are Form 499-A worksheet filers, direct contributors to the federal universal service fund and have made the necessary certifications. Customer shall notify Spectrum promptly in writing in the event that it does not certify, or does not intend to certify, as to such Customer's and Customer Reseller's Universal Service Fund ("USF") filing, certification, payment and other obligations. In the event that Customer does not make such certification with respect to the traffic carried by the Services, then: (1) Spectrum shall assume that the traffic to be carried by the Services will be jurisdictionally interstate, pursuant to the FCC's mixed use "10% Rule" (see, 47 CFR 36.154, 4 FCC Red. 1352), in the absence of a prompt written notice from Customer to the contrary and (2) Spectrum shall have the right to invoice Customer for USF contributions in accordance with Section 11. Customer shall not permit the Service(s) or system functions (which shall include all Spectrum Equipment and software used to provide such Service(s) or system functions) to be used for any unlawful purpose, including but not limited to seeking or securing unauthorized access to computer systems, software, data, copyrighted or patent-protected material. Customer shall not interfere with or disrupt the Service(s), system, system functions, system components or software, including, but not limited to those features used by other customers. Customer at all times shall ensure compliance with applicable laws and regulations as they pertain to Customer's use of the Service(s) and system functions. In addition to any additional rights or remedies that Spectrum may have under applicable law, the violation of any aspect of this provision is grounds for immediate termination of this Agreement and/or of all completed or pending Orders under this Agreement.

24. EFFECT OF DECISIONS.

In the event that a decision by a communications regulatory authority or court with competent jurisdiction ("*Decision*") has the effect of canceling, changing, superseding, making legally or financially or economically infeasible or otherwise frustrating the material provisions of this Agreement, then Customer acknowledges that Spectrum may terminate this Agreement or modify this Agreement to the extent necessary to address the impact of the Decision, in Spectrum's discretion. Additionally, if a Decision materially increases Spectrum's costs or changes the economic structure of the transactions contemplated hereunder, then

Customer acknowledges and agrees that Spectrum may terminate this Agreement or pass through to Customer any increased costs arising out of such Decision, in Spectrum's discretion.

25. FORCE MAJEURE EVENT.

- a. A "**Force Majeure Event**" means any event that is directly or indirectly caused by circumstances beyond the reasonable control of a Party, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, fiber cuts (not caused by the performing Party or its contractors or agents), or any order, law or ordinance in any way restricting the operation of the Services. Customer agrees that Spectrum shall not be liable for any inconvenience, loss, liability or damage resulting from a Force Majeure Event.
- b. If either Party's performance hereunder (other than performance of payment obligations hereunder) is delayed or prevented by reason of a Force Majeure Event (the "**Affected Party**"), then the Affected Party shall promptly notify the other Party of the Force Majeure Event and shall be excused from performance to the extent delayed or prevented as a result of such Force Majeure Event (and the other Party shall be excused from any corresponding performance, including payment obligations for the affected Service if applicable, for the same period); provided, however, that the Affected Party shall endeavor in good faith to avoid or remove such cause of nonperformance and shall continue to perform whenever and to the extent reasonably possible, and provided further that any time for performance set forth in this Agreement shall be extended for a period equal to the period of any such delay. Notwithstanding the foregoing, in the event a Force Majeure event adversely affects a Party's ability to perform its material obligations under this Agreement for more than thirty (30) days, either Party shall have the right to terminate the affected Order(s).

26. **ASSIGNMENT.** The Parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other Party, which consent shall not be unreasonably withheld; provided, however, that Spectrum may assign this Agreement and the associated executed Order(s) without Customer's consent to its Affiliates or to its successor-in-interest in the event Spectrum sells all or any portion of the underlying Network. All the terms and provisions of this Agreement will be binding upon, will inure to the benefit of and will be enforceable by the Parties and their respective successors and permitted assigns. Any attempted assignment or transfer in violation of this Section 26 shall be null and void. Notwithstanding the foregoing, either Party may assign this Agreement upon notice and without the other Party's consent to a person or entity (i) that controls, is controlled by or is under common control with the assigning Party, (ii) which purchases all or substantially all of its assets or equity, or (iii) resulting from any merger, consolidation or other reorganization involving such Party. In such case Customer seeks to assign due to 26(i) or (ii), Customer shall notify Spectrum in advance of such assignment.

27. NOTICES

- a. All notices, demands, requests or other communications under this Agreement shall be in writing and delivered by hand delivery (including overnight mail delivery service or courier), postage prepaid, or mailed by first-class registered or certified mail, return receipt requested, postage prepaid, to the persons whose names and business addresses appear below and such notice shall be effective on the date of receipt by the receiving Party:

If to Spectrum: Charter Communications, Inc.
Attn: Spectrum Enterprise-Carrier Sales
6399 South Fiddler's Green Circle
Greenwood Village, CO 80111

with a copy to: Charter Communications, Inc.
Attn: Legal Ops – Commercial Contract Mgmt
12405 Powerscourt Drive
St. Louis, MO 63131-3674

If to Customer: Windstream Services, LLC
Attn: Carrier Relations
4001 N Rodney Parham Road
Little Rock, AR 72223

with a copy to: Windstream Services, LLC
Attn: Legal
4001 N Rodney Parham Road
Little Rock, AR 72223

- b. Each Party may designate by written notice a new person and/or address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger or facsimile transmission confirmation being deemed conclusive, but not exclusive evidence of such delivery) or at such time as delivery is refused by the address upon presentation.

28. MISCELLANEOUS


- a. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties and supersedes all prior agreements, interim agreements, letters of agreement, memorandums of understanding, and any other oral or written documentation of agreements between the Parties hereto with respect to the subject matter hereof. In the event of any inconsistency between the main body of this Agreement and any appendices, Exhibits, or Orders made a part or in accordance with this Agreement, precedence shall be given in the following order to:
- i. The main body of this Agreement;
 - ii. Appendices and Exhibits hereto; and
 - iii. Any Order executed pursuant to this Agreement.
- b. **Legal Relationship.** Nothing in this Agreement shall be deemed to create any relationship between Spectrum and Customer other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. This Agreement does not render either Party the employee, agent or legal representative of the other Party and does not create a partnership or joint venture between Customer and Spectrum. Neither Party shall have any authority to enter into any agreement on behalf of or bind the other Party in any manner whatsoever without the prior written consent of the other Party. This Agreement confers no rights of any kind upon any third party, except as specifically set forth herein.
- c. **No Third Party Beneficiaries.** The Parties agree that the terms of this Agreement and the Parties' respective performance of obligations as described are not intended to benefit any person or entity, including but not limited to Customer's End Users, not a Party to this Agreement, that the consideration provided by each Party under this Agreement runs solely to the respective Parties hereto, and that no person or entity, including but not limited to Customer's End Users, not a Party to this Agreement shall have any rights under this Agreement nor the right to require the performance of obligations by either of the Parties under this Agreement.
- d. **Waiver.** No waiver of any of the provisions of this Agreement shall be binding unless it is in writing and signed by both Parties. The waiver by any Party hereto of a breach or a default under any of the provisions of this Agreement, or the failure of either Party on one or more occasions to insist on the strict enforcement of any provision of this Agreement or to exercise any right or privilege hereunder, shall not constitute or be construed as a waiver of any subsequent breach or default of a similar nature, or any provision, rights or privileges, and all such provisions shall remain in full force and effect.
- e. **Amendments.** No subsequent agreement among the Parties concerning the Service(s) (including, without limitation, any amendment to this Agreement or any Order) shall be effective or binding unless it is agreed to in writing by authorized representatives of the Parties.
- f. **Severability.** If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.
- g. **Interpretation.** Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or entity may require. Unless specified to the contrary, all references to "day" or "days" shall mean calendar day or days.
- h. **Governing Law.**
- i. The Interpretation, validity and enforcement of this Agreement and all legal actions brought under or in connection with the subject matter of this Agreement shall be governed by the law of the State of New York (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded).
 - ii. Any legal action brought under or in connection with the subject matter of this Agreement shall be brought only in the United States District Court for the Southern District of New York or, if such court would not have jurisdiction over the matter, then only in a New York State court sitting in the Borough of Manhattan, City of New York. Each Party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum.

- iii. Each Party waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of this Agreement in the Federal or state courts sitting in the Borough of Manhattan, City of New York, and agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum.
- iv. The Parties hereby waive any right to trial by jury in any court with respect to any contractual, tortious, or statutory claim, counterclaim, or cross-claim against the other arising out of or connected in any way to this Agreement because the Parties hereto, both of whom are represented by counsel, believe that the complex commercial and professional aspects of their dealings with one another make a jury determination neither desirable nor appropriate.
- i. Publicity. Neither Party shall use the other Party's or its Affiliates' names, logos, insignia, brands, trademarks, trade names, service marks, or otherwise issue any publicity releases or make any public statement(s) (including without limitation in the form of news releases, advertising or solicitation materials, or blog or social media postings) relating to this Agreement or the Services to be performed hereunder, without the prior written approval of the other Party.
- j. Survival. The terms and provisions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties shall survive the completion of performance and termination of this Agreement, including, without limitation, the making of any and all payments hereunder.
- k. Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and both of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

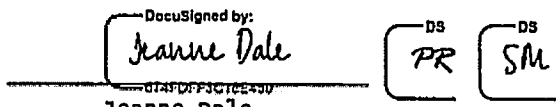
Charter Communications Operating, LLC
on behalf of itself and its Affiliates
By: Charter Communications, Inc., Its Manager
("Spectrum")

Windstream Services, LLC
("Customer")

By: 

Name: Stephen Webster
Title: Vice President, Carrier Sales

Date: 12/14/18

By: 
Name: Jeanne Dale
Title: VP Vendor Relations & Voice Management

Date: 12/14/2018

EXHIBIT A SERVICE DESCRIPTIONS¹

(1) **Carrier Ethernet Access Service (E-Access)** – Spectrum E-Access Service enables Customer to extend Ethernet last mile coverage within Spectrum Metro, Regional or National markets by establishing an External Network-to-Network Interface (“*ENNI*”) with Spectrum. The E-Access Service is delivered using an Operator Virtual Connection (“*OVC*”) from a retail customer premise User Network Interface (“*UNI*”) to an ENNI. The E-Access Service provisioned on the Spectrum Network is based on the Metro Ethernet Forum (“*MEF*”) 33 service definitions utilizing a MEF 6.1 (*UNI* Specifications) and MEF 26.1 (*ENNI* Specifications). The carrier fiber E-Access Service is made available on a Gold, Silver and Bronze CoS basis,* as elected by Customer and set forth in the applicable Order.

(2) **Carrier Ethernet Transport Service (E-Transport)** – Spectrum E-Transport Service provides a point-to-point Ethernet *OVC* circuit from one Network to Network Interconnection (“*NNI*”) port to another *NNI* port or location A to location Z within Spectrum Metro or Regional and National markets. The E-Transport Service may be provisioned only on the Spectrum fiber network. The carrier fiber E-Transport Service is made available on a Gold CoS basis only.

*As used herein, “*CoS*” means “*Class of Service*” and indicates the performance expectations associated with a given set of traffic frames, how that set (class) is identified, and including performance objectives by MEF defined performance tiers, and associated parameters. The available CoS of Gold, Silver and Bronze for the carrier fiber E-Access Service and Gold for the carrier fiber E-Transport Service are described in the table included in Exhibit B-1 to this Agreement, as the same may be updated by Spectrum from time to time.

(3) **Carrier Wavelength Service** – Spectrum Wavelength Service is a wave-based service providing 10 Gbps or nx10 Gbps optical wavelength capacity using Dense Wave Division Multiplexing (*DWDM*) transport capacity between two (2) locations within Spectrum Metro and Regional markets. The subscriber path is wholly dedicated optical channel to Customer. Additional specifications for the Wavelength Service include:

Customer Optical Channel	10G Fiber Channel, OC-192, 10G Ethernet.
1. Data rate	10 Gbps with 1310nm SMF Interface.
2. Framing	SONET, Fiber Channel, 10G Ethernet.
3. Protection	Unprotected, single path. Customer may request diversity and Customer's optical equipment would provide circuit switching protection.
4. Service Level Agreement (SLA)	Standard availability Metro and Regional SLA applies.

¹ Customer understands that all Services are subject to availability.

EXHIBIT B-1

SERVICE LEVEL AGREEMENT

CARRIER FIBER E-ACCESS AND CARRIER FIBER E-TRANSPORT SERVICES

This document contains Spectrum’s Service Level Agreement (“SLA”) and associated Service Level Objectives (“SLO”) for network Service performance and operational measurements that will be provided with Spectrum’s carrier fiber E-Access and carrier fiber E-Transport Services (referred to in this Exhibit B-1 as the “Service”). For clarity, no SLAs or SLOs are provided with respect to any failure or deficiency of the Service or for any unavailability of operational measurements resulting from an Excluded Disruption. Capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Master Services Agreement to which this SLA is attached.

1. SLO Performance Calculation

- a. **Service Availability:** “Service Availability” is calculated based on Service frame loss during a sequence of consecutive small time intervals and the availability state during the previous small time interval. Service Availability is the percentage of time within a specified time interval during which the frame loss is small.
- b. **Mean Frame Delay:** “Mean Frame Delay” is the arithmetic mean of delays experienced by a set of frames that egress an external interface (UNI or ENNI) as a result of an ingress frame at another external interface (UNI or ENNI). Mean Frame Delay is the sum of: the time to transit the Ingress UNI or ENNI; the time to transit the Ethernet network; and the time to transit the egress UNI or ENNI. The roundtrip delay is expressed in milliseconds (ms) and applies to UNI to UNI, UNI to ENNI and ENNI to ENNI. Spectrum measures frame delay using the ITU-T Y.1731 DMM/DMR messages for round trip (2-way) delay measurement as follows:

$$\text{Frame Delay (round trip in ms)} = \frac{\text{Sum of the round trip delay measurements}}{\text{Total number of measurements}}$$

- c. **Frame Loss Ratio:** “Frame Loss Ratio” is defined as the percentage of frames that are not successfully received compared to the total frames that are sent. The percentage calculation is based on frames that are transmitted from a network origination point and received at a network destination point. Spectrum uses synthetic loss measurement (“SLM”) frames to measure frame loss. Frame Loss Ratio is calculated as follows:

$$\text{Frame Loss Ratio (\%)} = 1 - \left(\frac{\text{Number of SLM Frames delivered to destination UNI}}{\text{Total SLM Frames sent to destination UNI}} \right) \times 100$$

- d. **Frame Delay Variation:** “Frame Delay Variation” is defined as the average variation in delay for two (2) consecutive frames that are transmitted (one-way) from one external interface (UNI or ENNI) to another external interface (UNI or ENNI). Spectrum measures a sample set of frames, and determines the average delay between consecutive frames within each sample set. Frame Delay Variation is calculated as the average of all of the frame delay variation measurements and is expressed in milliseconds (ms) as follows:

$$\text{Frame Delay Variation (ms)} = \frac{\text{Sum of the Frame Delay Variation measurements}}{\text{Total number of measurements}}$$

2. Service Level Objectives

The following section is a description of Spectrum's network performance SLOs for the Service.
 Note: SLOs do not apply if an ENNI is Oversubscribed.

SLO Metric	Gold CoS Monthly Average Target	Silver CoS Monthly Average Target	Bronze CoS Monthly Average Target
Service Availability Metro (<250km), Regional (<1200km)	99.995%	99.99%	99.9%
Service Availability National (<7000km)	99.995%	99.975%	99.9%
Mean Frame Delay Roundtrip - Metro (<250km)	≤ 10 ms	≤ 26 ms	≤ 56 ms
Mean Frame Delay Roundtrip - Regional (<1200km)	≤ 25 ms	≤ 60 ms	≤ 100 ms
Mean Frame Delay Roundtrip National (<7000km)	≤ 125 ms	≤ 160 ms	≤ 250 ms
Frame Delay Variation Metro (<250km)	≤ 2 ms	≤ 8 ms	≤ 12 ms
Frame Delay Variation Regional (<1200km)	≤ 4 ms	≤ 40 ms	≤ 50 ms
Frame Delay Variation National (<7000km)	≤ 8 ms	≤ 40 ms	≤ 50 ms
Frame Loss Ratio Metro (<250km), Regional (<1200km)	≤ 0.005%	≤ 0.01%	≤ 0.1%
Frame Loss Ratio National (<7000km)	≤ 0.005%	≤ 0.025%	≤ 0.1%
MTTR (Depending on Severity)	4 – 8 Hours	4 – 8 Hours	4 – 8 Hours

3. **Outage Credits**

In the event of a Service Outage that lasts for a continuous period of thirty (30) minutes (hereafter an "Outage"), and provided that Customer submits a request in accordance with the "Remedies" section below, Spectrum shall provide a credit (the "Outage Credit") as follows:

Length of Outage (cumulative) = X	Credit
30 Minutes < X < 2 Hours	5% of MRC
2 ≤ X < 4 Hours	10% of MRC
4 ≤ X < 6 Hours	45% of MRC
6 ≤ X < 8 Hours	70% of MRC
X ≥ 8 Hours	100% of MRC

All Outage Credits shall be credited to Customer no later than the second subsequent monthly invoice issued to Customer for the affected Service. THE PROVISIONS OF THIS SECTION 3 STATE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR SERVICE OUTAGES OR SERVICE DEFICIENCIES OF ANY KIND WHATSOEVER.

- a. **Outages Over Eight (8) Hours:** If an Outage for a single event exists for a period of at least eight (8) consecutive hours, then Customer will have the option, as Customer's sole and exclusive remedy, to either (i) terminate the affected Service without charge or liability; or (ii) receive an Outage Credit. If Customer elects to terminate the Service, Customer must provide Spectrum with written notice of such

termination within thirty (30) days after the applicable Outage. Such termination will be effective forty-five (45) days after Spectrum's receipt of such written notice of termination.

- b. **Remedies:** Upon Customer's request to the Spectrum Help Desk made within thirty (30) days of the closing of a Trouble Ticket in which the relevant Service Availability objective was not met, Customer shall be entitled to Outage Credits as set forth herein. The maximum Outage Credit issued in any one calendar month shall not exceed the applicable month's MRC for the affected Service.
- c. **Outage Start/End Time For Outage Credit Calculation Purposes:** An Outage will begin when Customer opens a trouble ticket ("*Trouble Ticket*") for the affected Service and Spectrum acknowledges receipt of such Trouble Ticket, or when Spectrum becomes aware of network Outages. Spectrum will not unreasonably withhold or delay such acknowledgement and validation. An Outage is concluded when Spectrum contacts Customer and closes out the Trouble Ticket relating to such Outage, and Customer acknowledges receipt and validation that the Outage has been cured. Customer will not unreasonably withhold or delay such acknowledgement and validation.
- d. **Excessive Outage:** In the event that Customer experiences either three (3) or more Outages, or twelve (12) aggregate hours of Outages in each instance in any thirty (30) day period (the "*Excessive Outage*"), Customer shall be entitled, in addition to the applicable Outage Credit due up to termination of the Service, if any, to terminate the affected Service(s) without charge or liability. If Customer elects to terminate the Service, Customer must provide Spectrum with written notice of such termination within thirty (30) days after the applicable Excessive Outage. Such termination will be effective forty-five (45) days after Spectrum's receipt of such written notice of termination.
- e. **Recurring Service Errors:** If the Services contain recurring errors or deficiencies, then upon Customer's request, Spectrum and Customer shall coordinate and cooperate to jointly provide the necessary personnel and equipment, at each Party's own cost, to promptly perform a root cause analysis to determine the cause of such recurring errors. Upon such joint determination Spectrum shall provide Customer with a written copy of its analysis, which shall include an action plan containing a reasonably detailed description of corrective action to be taken by Spectrum and the date by which such corrective action shall be completed. Spectrum shall correct such recurring errors, at no additional charge to Customer.

EXHIBIT B-2

SERVICE LEVEL AGREEMENT

CARRIER WAVELENGTH SERVICE

This document contains Spectrum's SLA and associated SLO for network performance and operational measurements that will be provided with Spectrum's carrier Wavelength Service (referred to in this Exhibit B-2 as the "Service"). For clarity, no SLAs or SLOs are provided with respect to any failure or deficiency of the Service or for any unavailability of operational measurements resulting from an Excluded Disruption. Capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Master Services Agreement to which this SLA is attached (the "MSA").

1. SLO Performance Calculations

- a. **Service Availability:** "Service Availability" is defined as the total number of minutes in a billing month during which a Service is available to exchange data between the Customer/Spectrum interconnection point and the Customer's End User location, divided by the total number of minutes in a billing month.

The calculation of Service Availability commences after the Customer opens a trouble ticket ("**Trouble Ticket**") based on unavailability of the Service with Spectrum, and is based on the availability of the Service during the monthly Service billing period in which the Customer opens the Trouble Ticket, or when Spectrum becomes aware of a Service impacting network issue. Service Availability is calculated on reported or discovered Outages.

Service Availability is calculated as follows:

$$\text{Service Availability (\%)} = 100 \% - \left(\left(\frac{\text{Total Number of Minutes Unavailable per Month by ticket}}{\text{Total Number Days in Month} \times 24 \text{ hours} \times 60 \text{ minutes}} \right) \times 100 \right)$$

2. Service Level Objectives

The following section is a description of Spectrum's network performance SLOs for the Service.

SLO	Target
Service Availability	99.95%
MTTR (Depending on Severity)	4 – 8 Hours

3. Outage Credits

UNPROTECTED SERVICES

In the event of a Service Outage with respect to an unprotected Service that lasts for a continuous period of thirty (30) minutes (hereafter an "**Unprotected Service Outage**"), and provided that Customer submits a request in accordance with the "Remedies" section below, Spectrum shall provide an Outage Credit as follows:

Length of Outage (cumulative) = X	Credit
30 Minutes < X < 2 Hours	5% of MRC
2 ≤ X < 4 Hours	10% of MRC
4 ≤ X < 6 Hours	45% of MRC
6 ≤ X < 8 Hours	70% of MRC
X ≥ 8 Hours	100% of MRC

PROTECTED SERVICES

In the event of a Service Outage with respect to a protected Service (as set forth in the applicable ASR) that lasts for a continuous period of one (1) minute (hereafter a *“Protected Service Outage”*); and provided that Customer submits a request in accordance with the “Remedies” section below, Spectrum shall provide an Outage Credit equal to 100% of the applicable month’s MRC for the affected Service.

All Outage Credits shall be credited to Customer no later than the second subsequent monthly invoice issued to Customer for the affected Service. THE PROVISIONS OF THIS SECTION 3 STATE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR SERVICE OUTAGES OR SERVICE DEFICIENCIES OF ANY KIND WHATSOEVER.

- a. **Outages Over Eight (8) Hours:** If an Outage for a single event exists for a period of at least eight (8) consecutive hours, then Customer will have the option, as Customer’s sole and exclusive remedy, to either (i) terminate the affected Service without charge or liability; or (ii) receive an Outage Credit. If Customer elects to terminate the Service, Customer must provide Spectrum with written notice of such termination within thirty (30) days after the applicable Outage. Such termination will be effective forty-five (45) days after Spectrum’s receipt of such written notice of termination.
- b. **Remedies:** Upon Customer’s request to the Spectrum Help Desk made within thirty (30) business days of the closing of a Trouble Ticket in which the relevant Service Availability objective was not met, Customer shall be entitled to Outage Credits as set forth herein. The maximum Outage Credit issued in any one calendar month shall not exceed the applicable month’s MRC for the affected Service.
- c. **Outage Start/End Time For Outage Credit Calculation Purposes:** An Outage will begin when Customer opens a trouble ticket (*“Trouble Ticket”*) for the affected Service and Spectrum acknowledges receipt of such Trouble Ticket, or when Spectrum becomes aware of network Outages. Spectrum will not unreasonably withhold or delay such acknowledgement and validation. An Outage is concluded when Spectrum contacts Customer and closes out the Trouble Ticket relating to such Outage, and Customer acknowledges receipt and validation that the Outage has been cured. Customer will not unreasonably withhold or delay such acknowledgement and validation.
- d. **Excessive Outage:** In the event that Customer experiences either three (3) or more Outages, or twelve (12) aggregate hours of Outages in each instance in any thirty (30) day period (the *“Excessive Outage”*), Customer shall be entitled, in addition to the applicable Outage Credit due up to termination of the Service, if any, to terminate the affected Service(s) without charge or liability. If Customer elects to terminate the Service, Customer must provide Spectrum with written notice of such termination within thirty (30) days after the applicable Excessive Outage. Such termination will be effective forty-five (45) days after Spectrum’s receipt of such written notice of termination.
- e. **Recurring Service Errors:** If the Services contain recurring errors or deficiencies, then upon Customer’s request, Spectrum and Customer shall coordinate and cooperate to jointly provide the necessary personnel and equipment, at each Party’s own cost, to promptly perform a root cause analysis to determine the cause of such recurring errors. Upon such joint determination Spectrum shall provide Customer with a written copy of its analysis, which shall include an action plan containing a reasonably detailed description of corrective action to be taken by Spectrum and the date by which such corrective action shall be completed. Spectrum shall correct such recurring errors, at no additional charge to Customer.

**EXHIBIT C
RESTORATION, MAINTENANCE AND DELIVERY**

1. Network Management

1. **Mean Time To Restore.** The mean time to restore (MTTR) measurement for a Service is the average time between the time a trouble ticket ("*Trouble Ticket*") is opened by Customer, or Spectrum becomes aware of Service impacting network issues, and the time the Service is restored. If Customer disputes Spectrum's determination of when the Service is restored, the Parties shall work together in good faith to resolve any such dispute within thirty (30) days. The "average time" is determined based on all Trouble Tickets with the same severity level associated with the same Service Outage.

There are two (2) priority levels of Trouble Ticket severity (Critical and Major).

MTTR objectives for each severity level are:

Severity 1 – Critical	Average within 4 hours
Severity 2 – Major	Average within 8 hours

"Severity 1 - Critical" is defined as a complete outage affecting Customer's Service.

"Severity 2 - Major" is defined as a partial outage or service degradation affecting Customer's Service.

2. Network Maintenance

Spectrum will perform routine network maintenance for network improvements and preventive maintenance. Spectrum will use commercially reasonable efforts to provide seven (7) days' notice to Customer of all such maintenance that is expected to result in a Planned Service Outage. For Emergency Maintenance, Spectrum shall notify Customer as soon as is commercially practical under the circumstances. Planned Service Outages will not be calculated against SLA measurements. If routine network maintenance exceeds the time scheduled and results in a Service Outage, Customer will be entitled to Outage Credits as specified below.

Unless otherwise agreed to between the Parties, routine network maintenance is performed during Spectrum's standard maintenance windows. Maintenance windows are as follows:

12 a.m. - 6 a.m. Local Time, Monday through Friday

If Planned Service Outages are expected during these specified times, Customer will be notified via email to the contact designated by the Parties. This notification will inform the Customer of the anticipated time, duration and reason for the network maintenance.

2. Failure To Meet Agreed Start Date

Failure of Spectrum to deliver Service by the FOC Date (or other mutually agreed upon start date) contained in an ASR other than due to a Force Majeure event or action or inaction by Customer (including any Customer Reseller or End User) will be cause for Spectrum to compensate Customer for damages ("*Delivery Credit*") as follows:

Delivery Credit for Spectrum's failure to meet the FOC Date (or other mutually agreed upon start date) for Services	Two (2) days' worth of the monthly recurring charge credit for each day the Services are late.
---	--

Total Delivery Credits shall not exceed one hundred percent (100%) of one (1) month's MRC for each affected Service Order. Delivery Credits will not be provided for Spectrum's failure to meet the FOC Date (or other mutually agreed upon start date) if the delay was a result of a Force Majeure event or actions or

inactions of Customer (including any Customer Reseller or End User). Unless otherwise agreed in writing, where Spectrum has exceeded the FOC Date (or other mutually agreed upon start date) by thirty (30) days or more, Customer may terminate the Service Order; provided, that Spectrum may invoice Customer for, and Customer shall pay Spectrum, as liquidated damages and not as a penalty, the amount of any third party-imposed termination liability incurred as a result of such termination, as well as any construction expenses or installation charges incurred by Spectrum prior to such termination. In no event shall liquidated damages exceed the NRC and MRCs that Customer would have paid over the course of the initial term of the service. THE PROVISIONS OF THIS SECTION 2 STATE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR SPECTRUM'S FAILURE TO DELIVER THE SERVICE IN ACCORDANCE WITH THE FOC DATE (OR OTHER MUTUALLY AGREED UPON START DATE).

3. Customer Care Center

Spectrum shall maintain a customer care center ("*Help Desk*") staffed (24) hours per day, seven (7) days per week for Customer to open Trouble Tickets, receive status on existing tickets, and escalate when appropriate. All customer support shall be provided to Customer's designated personnel only. Customer is solely responsible for interfacing with its employees, and End Users. Spectrum will not contact any End User when a Service Outage is detected, or for any other Service-related issues. If an End User contacts Spectrum regarding Customer's service, Spectrum will promptly refer the caller to Customer.

In the event Spectrum dispatches a field technician to a Site to perform diagnostic troubleshooting and the problem resides with Customer's equipment or facilities or results in a "No Trouble Found," or the failure is due to Customer acts or omissions, then Customer will pay Spectrum for time and materials at Spectrum's commercially reasonable standard technician rates.

EXHIBIT D
ACCEPTANCE TESTING

When Spectrum believes that a Service is ready for use by Customer, Spectrum shall notify Customer that the Service is ready for testing and acceptance.

For carrier fiber E-Access, carrier fiber E-Transport, and carrier Wavelength Services only, testing shall be coordinated and performed by Spectrum and shall run for a continuous twenty (20) minute period, mutually agreed upon by the Parties but not unreasonably delayed by Customer. This test will be performed by Spectrum at the Customer Site Point of Termination or the patch panel at the drop-off termination point. If the test results demonstrate that the Service meets the Technical Specifications, Spectrum shall give electronic notice to Customer ("Connection Notice") along with a copy of the test result.

Customer shall have five (5) business days in which to notify Spectrum of its acceptance or rejection of the Service. Customer shall accept the Service if it meets the Technical Specifications. If Customer delivers to Spectrum, within five (5) business days after Customer's receipt of the Connection Notice, notice specifying non-conformance of the Service with the Technical Specifications as demonstrated by the test results ("**Non-Conformance Notice**"), Spectrum shall use commercially reasonable efforts to remedy the installation and the testing and acceptance process shall be repeated.

In the event such test and accept process is repeated two additional times (i.e., after the original test) and the Service still does not meet the Technical Specifications, Customer may terminate the applicable ASR with respect to such Service only without liability.

Customer shall be deemed to have accepted the applicable Service if a Non-Conformance Notice is not delivered to Spectrum within any five-day period provided for above, or if Customer uses the Service to carry customer traffic.

EXHIBIT C

**Email dated June 22, 2021 from
Brian Hockett to Shaya Rochester and Terence P. Ross**

From: Hockett, Brian W. <bhockett@thompsoncoburn.com>
Sent: Tuesday, June 22, 2021 3:35 PM
To: shaya.rochester_katten.com; Ross, Terence P.
Cc: Kingston, John S.
Subject: Charter/Windstream -- Stipulation and Agreed Order on Cure Dispute
Attachments: STIPULATION AND AGREED ORDER.docx

Shaya and Terry –

It appears that our respective clients have resolved the cure dispute and the cure amount of \$12,000,000 will be paid to Charter for assumption of the contracts. I have prepared a stipulation and agreed order resolving those issues on those terms. A draft is attached. Please advise if you have any questions or comments on the draft.

Thanks.

Brian

Brian W. Hockett

(he/him/his)

bhockett@thompsoncoburn.com

P: 314 552 6461

F: 314 552 7000

M: 314.602.6461

Thompson Coburn LLP

One US Bank Plaza St. Louis, MO 63101

www.thompsoncoburn.com

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

)	
In re:	)	Chapter 11
)	
WINDSTREAM FINANCE, CORP., <i>et al.</i>,	)	Case No. 19-22397 (RDD)
)	
Debtors.	)	(Formerly Jointly Administered under Lead Case Windstream Holdings, Inc., 19-22312)
)	

**STIPULATION AND AGREED ORDER RESOLVING
CURE DISPUTE AND ASSUMPTION OF CHARTER CONTRACTS**

This STIPULATION AND AGREED ORDER (the **Stipulation**) is entered into as of June _____, 2021, by and among Windstream Holdings, Inc. and its affiliates, as reorganized under the *First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code* (Dkt. No. 1812) (the **Plan**) in the above-referenced Chapter 11 bankruptcy cases (collectively, the **Debtors**), and Charter Communications Operating, LLC (**Charter**). The Debtors and Charter are collectively referred to in this Stipulation as the “Parties” and each as a “Party.”

By this Stipulation, the Parties desire to resolve specific disputed matters, including: (i) the proper cure amounts associated with the assumption of the Charter Contracts (as defined below); (ii) the Cure Objection (defined below); and (iii) the Proofs of Claim filed by Charter.

Recitals

A. On February 25, 2019, (the **Petition Date**), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the U.S. Code, 11 U.S.C. §§ 101-1532 in the United States Bankruptcy Court for the Southern District of New York, which cases are currently being administered under Case No. 19-22397 (the **Bankruptcy Cases**).

B. Prior to the Petition Date, Charter and Windstream Services, LLC (**Windstream Services**), on behalf of itself and all of its affiliated companies entered into the Spectrum Business Value Added Reseller Agreement dated April 11, 2018 (**VAR Agreement**) and the Carrier Master Service Agreement dated December 14, 2018 (**Enterprise Agreement**) (collectively, the **Charter Contracts**). The Charter Contracts are identified on Windstream Services’ Amended Schedule G, Lines 2.601 and 2.602 (Case No. 19-22400, Dkt. No. 7).

C. On July 12, 2019, Charter filed thirty-eight proofs of claim in thirty-six of the Debtors’ Bankruptcy Cases describing the pre-petition obligations of each of those Debtors under the Charter Contracts (Claim Nos. 5731-5740, 5747-5755, 5758-5769, 5780, 5786, 5790-5793, and 5830) (the Proofs of Claim). Charter asserted in the Proofs of Claim that Debtors’ pre-petition obligations under the 38 claims owed pursuant to the Charter Contracts totaled \$13,672,143.83.

D. On June 26, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc., et al., Pursuant to Chapter 11 of the Bankruptcy Code* (Dkt. No. 2243) confirming the Plan, and on September 21, 2020, the Effective Date (as defined in the Plan) of the Plan occurred.

E. On November 4, 2020, the Debtors filed the *Notice of Filing of Ninth Amended Plan Supplement* (Dkt. No. 2654) and served on counsel for Charter a *Notice of (A) Executory Contracts to be Assumed by the Reorganized Debtors pursuant to the Plan, (B) Cure Amounts and (C) Related Procedures in Connection Therewith (Notice of Assumption)* indicating the Debtors' intent to assume the Charter Contracts. The Notice of Assumption asserted the cure amount of \$1,643,717.97 for the VAR Agreement and the cure amount of \$4,098,377.88 for the Enterprise Agreement (**Debtors' Cure Amount**). Charter disputes the Debtors' Cure Amount.

F. On November 18, 2020, Charter filed *Charter Communications Operating, LLC's Objection to Notice of Filing of Ninth Amended Plan Supplement and Notice of (A) Executory Contracts to be Assumed by the Reorganized Debtors Pursuant to the Plan, (B) Cure Amounts and (C) Related Procedures in Connection Therewith* (Dkt. No. 2692) (**Cure Objection**). The Cure Objection asserted the cure amount of \$3,566,856 for the VAR Agreement and the cure amount of \$15,295,846 for the Enterprise Agreement (**Charter's Cure Amount**). Debtors dispute the Charter' Cure Amount. The dispute regarding the cure obligations for assumption of the Charter Contracts is hereinafter called the "**Cure Dispute.**"

G. After good faith, arm's length negotiations and reconciliations of the accounts balances and disputed charges in connection with the Cure Dispute, the Parties have agreed to resolve the Cure Dispute on the terms and conditions set forth in this Stipulation.

NOW, THEREFORE, UPON THE FOREGOING RECITALS WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, AND IN CONSIDERATION OF THE PREMISES AND THE OTHER MUTUAL COVENANTS CONTAINED HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED AND CONFIRMED, THE PARTIES AGREE WITHOUT MAKING ANY ADMISSIONS OR CONCESSIONS CONCERNING THEIR RESPECTIVE FACTUAL OR LEGAL POSITIONS, AS FOLLOWS:

1. **Agreed Cure Amount.** No later than thirty (30) days after the Stipulation Effective Date, the Debtors shall pay \$12,000,000 (**Agreed Cure Amount**) in cash to Charter in full and final satisfaction of all pre-petition and post-petition claims of Charter, whether known or unknown, for services provided and charges accrued under the Charter Contracts on or before December 31, 2020, including any claims that accrued and that were not invoiced by Charter prior to December 31, 2020, any interest and/or late fees asserted in the Charter Cure Amount, and any early termination liability claims incurred under the Charter Contracts prior to the Effective Date of the Plan (collectively, the **Pre-Assumption Claims**). The Agreed Cure Amount shall be paid to Charter by wire transfer.

2. **Resolution of Pre-Assumption Claims.** Upon receipt of payment of the Agreed Cure Amount by Charter, (a) the Charter Contracts shall be deemed cured under 11 U.S.C. §§ 365

and 1123, (b) the Pre-Assumption Claims shall be fully and finally satisfied; and (c) the Parties shall not be entitled to dispute any amount that was billed or could have been billed as a Pre-Assumption Claim relating to the Charter Contracts. Without limiting the generality of the foregoing, no later than 45 days after receipt of the Agreed Cure Amount, Charter shall issue credits to the Debtors in an amount that, after application of the Agreed Cure Amount, the remaining balance for amounts owed by the Debtors to Charter with respect to the Pre-Assumption Claims shall be \$0.00.

3. Assumption of Charter Contracts. Upon receipt of payment of the Agreed Cure Amount by Charter, the Charter Contracts shall be assumed by the Debtors pursuant to the Plan and 11 U.S.C. §§ 365 and 1123 effective as of the Effective Date of the Plan.

4. Resolution of Cure Objection. Effective immediately upon Charter's receipt of payment of the Agreed Cure Amount, the Cure Objection shall be deemed resolved in its entirety, including without limitation, any objection to the assumption of the Charter Contracts.

5. Satisfaction of Proofs of Claim. Upon receipt of the payment of the Agreed Cure Amount by Charter, the Proofs of Claim shall be deemed satisfied in full without further order of the Bankruptcy Court, and Kurtzman Carson Consulting is hereby directed to mark the Proofs of Claim as Expunged on the claims register maintained for the Bankruptcy Cases due to the Proofs of Claim being satisfied.

6. Post-Assumption Services and Obligations. Following assumption of the Charter Contracts, each Party agrees to continue providing services in the ordinary course of business and to perform their respective obligations, including the payment obligations, in accordance with the terms of the underlying Charter Contracts. All services provided by Charter to Debtors under the Charter Contracts from and after January 1, 2021, shall be invoiced by Charter and paid by Debtors (or otherwise resolved between the Parties) in the ordinary course of business under the terms of the Charter Contracts.

7. Mutual Release. Effective upon the payment of the Agreed Cure Amount, the Debtors, on the one hand, and Charter, on the other hand, and each of their respective predecessors in interest, parents, subsidiaries, affiliates, partners, members, officers, directors, managers, shareholders, employees, agents, representatives, attorneys, trustees, heirs, successors and assigns, forever release and discharge the other from any and all manner of action or actions in relation, cause or causes of action, claim or claims, in law or in equity, known or unknown, which arise out of or are related to the Cure Dispute; *provided, however*, that this release and discharge shall not apply to the obligations, rights and privileges created by this Stipulation.

8. Governing Law. This Stipulation shall be governed by and construed under the laws of the State of New York, without regard to conflicts of laws principles that would require the application of the law of another jurisdiction.

9. Retention of Jurisdiction. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation.

10. Notices. Any and all notices, consents, or demands permitted or required to be

made or given under this Stipulation shall be in writing, signed by the individual giving such notice, consent, or demand and shall be delivered personally, sent by e-mail, or sent by registered or certified mail, return receipt requested, to the other party at its address set forth below:

To Charter: Charter Communications
Attn: Larry Christopher
12405 Powerscourt Drive
St. Louis, MO 63131
Larry.Christopher@charter.com

With a copy to:
Brian Hockett
Thompson Coburn LLP
One U.S. Bank Plaza, Suite 2700
St. Louis, MO 63101
bhockett@thompsoncoburn.com

To Debtors: Windstream Services, LLC
Attn: Legal Department
4001 Rodney Parham Rd
Little Rock, AR 72212

With a copy to:
Terence P. Ross and Shaya Rochester
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022-2585
srochester@katten.com
terence.ross@kattenlaw.com

11. Fees and Costs Associated with Cure Dispute. The Parties agree to bear their own fees and costs in connection with the Cure Dispute and the preparation of this Stipulation. Neither Debtors nor Charter shall be considered a “prevailing party” in connection with the Cure Dispute pursuant to section 18.6 of the VAR Agreement.

12. Counterparts/Electronic Signatures. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Stipulation. The delivery by electronic transmission of any signature on this Stipulation shall be a valid signature as of the transmission thereof.

13. Miscellaneous Provisions.

- a. Each Party represents and warrants that in entering into this Stipulation, it is relying on its own judgment, belief, and knowledge and on that of the attorney

it has retained to represent it in this matter, and no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

- b. The Parties drafted this Stipulation through a cooperative effort, and neither Party shall be considered the drafter of this Settlement Agreement so as to give rise to any presumption regarding construction of this document.
- c. Neither this Stipulation nor any of its terms may be modified, altered, amended or waived, except in writing signed by the Parties hereto.
- d. The provisions of this Stipulation shall be binding on, and inure to the benefit of, the respective successors and assigns or partial assigns of the Parties, and, in any event, shall continue to be binding on the Parties.
- e. This Stipulation shall have no force or effect until the date on which the Court has approved this Stipulation on a final and non-appealable basis (such date, the **Stipulation Effective Date**).

IN WITNESS WHEREOF, this Stipulation to be executed on its behalf by its duly authorized officer as of the day and year first written above.

WINDSTREAM SERVICES, INC.
(on behalf of itself and each of its affiliated Debtors)

CHARTER COMMUNICATIONS OPERATING, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Jointly submitted for entry by:

KATTEN MUCHIN ROSENMAN LLP

THOMPSON COBURN LLP

Terence P. Ross
Shaya Rochester
575 Madison Avenue
New York, NY 10022
Telephone: (212) 940-8800
Facsimile: (212) 940-8876
Email: terence.ross@kattenlaw.com
srochester@katten.com

John S. Kingston (*pro hac vice*)
Brian W. Hockett (*pro hac vice*)
One US Bank Plaza
St. Louis, MO 63101
Telephone: (314) 552-6000
Facsimile: (314) 552-7000
Email: jkingston@thompsoncoburn.com
bhockett@thompsoncoburn.com

Counsel for Debtors

Counsel for Charter

It is **SO ORDERED**, there being no objections, after due notice, to the Debtors' motion for approval hereof, by notice of presentment dated _____, 2021, and no additional notice or a hearing on such motion being required.

Dated: _____, 2021
White Plains, NY

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT D

**Email dated June 30, 2021 from
Shaya Rochester to Judge Drain's Chambers and Dorothy Li**

From: Rochester, Shaya <shaya.rochester@katten.com>
Sent: Wednesday, June 30, 2021 10:19 AM
To: 'NYSBml_Drain's_Chambers'; 'Dorothy Li'
Cc: 'Michael Creme'; Ross, Terence P.; Justus, Michael R.; Hockett, Brian W.; Kingston, John S.
Subject: In re Windstream Holdings, Inc., et al, Case No. 19-22312 – Proposed Sixth Amended Scheduling and Pre-Trial Order
Attachments: #149446174v2_US_ - WIN - Sixth Amended Scheduling and Pre-Trial Order.DOCX;
WIN - Sixth Amended Scheduling and Pre-Trial Order - WIN - Sixth Amended Scheduling and Pre-Trial Order.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Ms. Li,

Good morning and hope you are well. As you know, we are Conflicts Counsel for the Reorganized Debtors in the above-referenced Chapter 11 Cases.

On December 1, 2020, the Court entered a Scheduling and Pre-Trial Order [Case No. 19-22312, Docket No. 2728] (the "Original Order"), which set forth a litigation schedule agreed to by Charter and the Reorganized Debtors (collectively, the "Parties") and approved by the Court to resolve a cure dispute between the Parties (the "Cure Dispute").

On December 21, 2020, the Court entered an Amended Scheduling and Pre-Trial Order [Case No. 19-22312, Docket No. 2756] (the "First Amended Order"), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the Cure Dispute.

On January 27, 2021, the Court entered a Second Amended Scheduling and Pre-Trial Order [Case No. 19-22312, Docket No. 2781] (the "Second Amended Scheduling Order"), which set forth a further amended litigation schedule agreed to by the Parties and approved by the Court to resolve the Cure Dispute.

On March 5, 2021, the Court entered a Third Amended Scheduling and Pre-Trial Order [Case No: 19-22397; Docket No. 58] (the "Third Amended Scheduling Order"), which set forth a further amended litigation schedule agreed to by the Parties and approved by the Court to resolve the Cure Dispute.

On April 8, 2021, this Court entered a Fourth Amended Scheduling and Pre-Trial Order [Docket No. 83] (the "Fourth Amended Scheduling Order"), which set forth a further amended litigation schedule agreed to by the Parties and approved by the Court to resolve the Cure Dispute.

On June 15, 2021, this Court entered a Fifth Amended Scheduling and Pre-Trial Order [Docket No. 124] (the "Fifth Amended Scheduling Order"), which set forth a further amended litigation schedule agreed to by the Parties and approved by the Court to resolve the Cure Dispute.

As a result of additional time afforded by the foregoing Scheduling Orders, the Parties have reached an agreement regarding the Cure Dispute. The Parties are now in the process of preparing a stipulation to memorialize that agreement. Accordingly, the Parties have negotiated and agreed to the attached proposed Sixth Amended Scheduling and Pre-Trial Order (the "Proposed Order") to preserve a litigation schedule in the event they are unable to resolve the Cure Dispute on a consensual basis.

The Parties believe that entry of the Proposed Order will be in the interest of judicial economy in that the Parties will either resolve their differences in their entirety, thereby removing this Cure Dispute from the Court's docket, or reduce the areas of disagreement, which will reduce the issues related to the Cure Dispute to be decided by the Court. Therefore, the Parties believe that entry of the Proposed Order is in the interests of judicial economy and request that the Court to do so. Attached for your reference is a redline of the Proposed Order against the Fifth Amended Scheduling Order.

If you have questions, please let us know.

Respectfully submitted,
Shaya Rochester
Conflicts Counsel for the Reorganized Debtors

Shaya Rochester
Partner

Katten
Katten Muchin Rosenman LLP
575 Madison Avenue | New York, NY 10022-2585
direct +1.212.940.8529 / cell +1.718.344.4719
shaya.rochester@katten.com | katten.com

=====
CONFIDENTIALITY NOTICE:
This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction. Please notify the sender, by electronic mail or telephone, of any unintended recipients and delete the original message without making any copies.
=====

NOTIFICATION: Katten Muchin Rosenman LLP is an Illinois limited liability partnership that has elected to be governed by the Illinois Uniform Partnership Act (1997).
=====

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

In re:)	
	)	Chapter 11
)	
WINDSTREAM FINANCE, CORP., <i>et al.</i> , ¹	)	Case No. 19-22397 (RDD)
)	
Reorganized Debtors.	)	(Formerly Jointly Administered
	)	under Lead Case: Windstream
	)	Holdings, Inc., 19-22312)
)	

SIXTH AMENDED SCHEDULING AND PRE-TRIAL ORDER

On November 4, 2020, the above-captioned debtors and debtors-in-possession (before the effective date of their Chapter 11 plan, the “Debtors”, and after the effective date of their Chapter 11 plan, the “Reorganized Debtors”) filed their *Notice of Filing of Ninth Amended Plan Supplement* [Case No. 19-22312, Docket No. 2654] (the “Plan Supplement Amendment”). Also on November 4, 2020, the Reorganized Debtors served on Charter Communications Operating, LLC (“Charter”) the *Notice of (A) Executory Contracts to Be Assumed by the Reorganized Debtors Pursuant to the Plan, (B) Cure Amounts, and (C) Related Procedures in Connection Therewith* (the “Cure Notice”). On November 18, 2020, Charter filed *Charter Communications Operating, LLC’s Objection to Notice of Filing of Ninth Amended Plan Supplement and Notice of (A) Executory Contracts to be Assumed by the Reorganized Debtors Pursuant to the Plan, (B) Cure Amounts and (C) Related Procedures in Connection Therewith* [Case No. 19-22312, Docket No. 2692] (the “Cure Objection”). On December 1, 2020, the Court entered a *Scheduling and Pre-Trial Order* [Case No. 19-22312, Docket No. 2728] (the “Original Scheduling Order”), which set forth a litigation

¹ The last four digits of Reorganized Debtor Windstream Finance, Corp.’s tax identification number are 5713. Due to the large number of Reorganized Debtors in these Chapter 11 cases, for which joint administration has been granted, a complete list of the Debtors 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 Reorganized Debtors’ claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Reorganized Debtors’ service address for purposes of these Chapter

schedule agreed to by Charter and the Reorganized Debtors (collectively, the “Parties”) and approved by the Court to resolve the foregoing matters. On December 21, 2020, the Court entered an *Amended Scheduling and Pre-Trial Order* [Case No. 19-22312, Docket No. 2756] (the “First Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters. On January 27, 2021, the Court entered a *Second Amended Scheduling and Pre-Trial Order* [Case No. 19-22312, Docket No. 2781] (the “Second Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters. On March 5, 2021, this Court entered a *Third Amended Scheduling and Pre-Trial Order* [Docket No. 58] (the “Third Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters. On April 8, 2021, this Court entered a *Fourth Amended Scheduling and Pre-Trial Order* [Docket No. 83] (the “Fourth Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters. On June 15, 2021, this Court entered a *Fifth Amended Scheduling and Pre-Trial Order* [Docket No. 124] (the “Fifth Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters.

Pursuant to the foregoing Scheduling Orders, the Parties met and conferred in good faith to attempt to reconcile their accounting records in order to determine the Cure Amounts (as defined in the Cure Notice). Although such reconciliation period formally concluded on April 30, 2021, the Parties continued to meet and confer in good faith to attempt to determine the Cure Amounts. As a result of

those negotiations, the Parties have reached an agreement on the Cure Amounts. The Parties are now in the process of preparing a stipulation to memorialize that agreement.

By this further amended Scheduling and Pre-Trial Order (this “Sixth Amended Order”), the Parties have agreed to the litigation schedule set forth herein to preserve a litigation schedule in the event they are unable to resolve this dispute on a consensual basis.

It is hereby ORDERED as follows:

1. Intentionally omitted.
2. Intentionally omitted.
3. All discovery shall be completed on or before **August 11, 2021**. In the event of a dispute over discovery, the Parties’ counsel shall promptly confer to attempt in good faith to resolve the dispute. If, notwithstanding their good faith efforts to do so, they are unable to resolve a discovery issue, they shall promptly inform the Court by letter of the nature of the dispute and request a telephonic discovery conference. At the conference, the Court will ask the Parties about their prior efforts to resolve the dispute.
4. The Parties may seek leave under the Local Bankruptcy Rules to move for summary judgment under Fed. R. Bankr. P. 7056 after completion of discovery and before taking the steps set forth in paragraphs 5-9 below. If such leave is granted, the schedule set forth in paragraphs 5-9 below is adjourned and the Parties shall meet and confer on a trial schedule for the steps set forth in paragraphs 5-9 below within two weeks after the Court’s ruling on summary judgment.
5. The Parties shall file and serve pre-trial briefs not to exceed twenty (20) pages in length (excluding the Table of Contents and Table of Authorities) on or before **September 14, 2021** (unless a Party has previously obtained permission under the Local Bankruptcy Rules to move for summary judgment).
6. The Court will hold a final pretrial conference on **October 21, 2021 at 10:00 A.M.** (unless a Party has previously obtained permission under the Local Bankruptcy Rules to move for summary judgment, which motion shall be heard at that date and time), at which time the Parties must be prepared to proceed to trial within two weeks.
7. In advance of the final pretrial conference, the Parties shall have conferred and used their best efforts to agree on a joint exhibit book and shall have identified any exhibits whose admissibility is not agreed.
8. In addition, on or before two weeks before the final pretrial conference, the Parties shall have exchanged proposed witness lists.

9. On or before one week before the scheduled trial date, the Parties shall (a) submit to chambers declarations under penalty of perjury or affidavits of their direct witnesses, who shall be present at trial for cross-examination and redirect, or have sought the Court's permission to examine direct witnesses at trial and (b) submit to chambers the joint exhibit book referred to in paragraph 9 hereof.
10. The Parties agree that, during the period of December 18, 2020 through and including April 14, 2021, no interest accrued on the amounts allegedly owed by the Reorganized Debtors. Nothing contained in this Sixth Amended Order shall constitute, or be deemed to constitute, an acknowledgement that the Reorganized Debtors owe any interest to Charter for the period prior to December 18, 2020 or after April 14, 2021. Nothing contained in this Sixth Amended Order shall prejudice the Reorganized Debtors' ability to argue that they do not owe any interest to Charter for the period prior to December 18, 2020 or after April 14, 2021.
11. **Except as specified above, the Parties cannot amend this Sixth Amended Order by stipulation or otherwise, and the Court will not amend it unless presented with (i) proof of cause beyond the control of the party seeking amendment and (ii) timely application as soon as possible after the party seeking amendment learns of the cause. FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTION. If delay or other act or omission of your adversary may result in a sanction against you, it is incumbent on you to promptly bring this matter to the Court for relief.**

Dated: White Plains, New York

_____ , _____

Hon. Robert D. Drain
United States Bankruptcy Judge

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

In re:)	
	)	Chapter 11
)	
WINDSTREAM FINANCE, CORP., <i>et al.</i> , ¹	)	Case No. 19-22397 (RDD)
)	
Reorganized Debtors.	)	(Formerly Jointly Administered
	)	under Lead Case: Windstream
	)	Holdings, Inc., 19-22312)
)	

~~FIFTH~~SIXTH AMENDED SCHEDULING AND PRE-TRIAL ORDER

On November 4, 2020, the above-captioned debtors and debtors-in-possession (before the effective date of their Chapter 11 plan, the “Debtors”, and after the effective date of their Chapter 11 plan, the “Reorganized Debtors”) filed their *Notice of Filing of Ninth Amended Plan Supplement* [Case No. 19-22312, Docket No. 2654] (the “Plan Supplement Amendment”). Also on November 4, 2020, the Reorganized Debtors served on Charter Communications Operating, LLC (“Charter”) the *Notice of (A) Executory Contracts to Be Assumed by the Reorganized Debtors Pursuant to the Plan, (B) Cure Amounts, and (C) Related Procedures in Connection Therewith* (the “Cure Notice”). On November 18, 2020, Charter filed *Charter Communications Operating, LLC’s Objection to Notice of Filing of Ninth Amended Plan Supplement and Notice of (A) Executory Contracts to be Assumed by the Reorganized Debtors Pursuant to the Plan, (B) Cure Amounts and (C) Related Procedures in Connection Therewith* [Case No. 19-22312, Docket No. 2692] (the “Cure Objection”). On December 1, 2020, the Court entered a *Scheduling and Pre-Trial Order* [Case No. 19-22312, Docket No. 2728] (the “Original Scheduling Order”), which set forth a litigation schedule agreed to by Charter and the Reorganized Debtors

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(collectively, the “Parties”) and approved by the Court to resolve the foregoing matters. On December 21, 2020, the Court entered an *Amended Scheduling and Pre-Trial Order* [Case No. 19-22312, Docket No. 2756] (the “First Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters. On January 27, 2021, the Court entered a *Second Amended Scheduling and Pre-Trial Order* [Case No. 19-22312, Docket No. 2781] (the “Second Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters. On March 5, 2021, this Court entered a *Third Amended Scheduling and Pre-Trial Order* [Docket No. 58] (the “Third Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters. On April 8, 2021, this Court entered a *Fourth Amended Scheduling and Pre-Trial Order* [Docket No. 83] (the “Fourth Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters. On June 15, 2021, this Court entered a *Fifth Amended Scheduling and Pre-Trial Order* [Docket No. 124] (the “Fifth Amended Scheduling Order”), which set forth an amended litigation schedule agreed to by the Parties and approved by the Court to resolve the foregoing matters.

Pursuant to the ~~Fourth Amended~~foregoing Scheduling ~~Order~~Orders, the Parties met and conferred in good faith to attempt to reconcile their accounting records in order to determine the Cure Amounts (as defined in the Cure Notice). Although such reconciliation period formally concluded on April 30, 2021, the Parties ~~have~~ continued to meet and confer in good faith to attempt to determine the Cure Amounts. ~~Also pursuant to the Fourth Amended Scheduling Order, the deadline to commence discovery in this matter was May 14, 2021. As of June 11, 2021, no discovery has been served by either Party.~~As a result of those negotiations, the Parties

have reached an agreement on the Cure Amounts. The Parties are now in the process of preparing a stipulation to memorialize that agreement.

By this further amended Scheduling and Pre-Trial Order (this “~~Fifth~~Sixth Amended Order”), the Parties have agreed to ~~a further amended~~the litigation schedule ~~as~~ set forth herein to ~~resolve the foregoing matters.~~preserve a litigation schedule in the event they are unable to resolve this dispute on a consensual basis.

It is hereby ORDERED as follows:

1. Intentionally omitted.
2. Intentionally omitted.
3. All discovery shall be completed on or before ~~July 28,~~August 11, 2021. In the event of a dispute over discovery, the Parties’ counsel shall promptly confer to attempt in good faith to resolve the dispute. If, notwithstanding their good faith efforts to do so, they are unable to resolve a discovery issue, they shall promptly inform the Court by letter of the nature of the dispute and request a telephonic discovery conference. At the conference, the Court will ask the Parties about their prior efforts to resolve the dispute.
4. The Parties may seek leave under the Local Bankruptcy Rules to move for summary judgment under Fed. R. Bankr. P. 7056 after completion of discovery and before taking the steps set forth in paragraphs 5-9 below. If such leave is granted, the schedule set forth in paragraphs 5-9 below is adjourned and the Parties shall meet and confer on a trial schedule for the steps set forth in paragraphs 5-9 below within two weeks after the Court’s ruling on summary judgment.
5. The Parties shall file and serve pre-trial briefs not to exceed twenty (20) pages in length (excluding the Table of Contents and Table of Authorities) on or before ~~August 27,~~September 14, 2021 (unless a Party has previously obtained permission under the Local Bankruptcy Rules to move for summary judgment).
6. The Court will hold a final pretrial conference on **October 21, 2021 at 10:00 A.M.** (unless a Party has previously obtained permission under the Local Bankruptcy Rules to move for summary judgment, which motion shall be heard at that date and time), at which time the Parties must be prepared to proceed to trial within two weeks.
7. In advance of the final pretrial conference, the Parties shall have conferred and used their best efforts to agree on a joint exhibit book and shall have identified any exhibits whose admissibility is not agreed.
8. In addition, on or before two weeks before the final pretrial conference, the Parties shall have exchanged proposed witness lists.

9. On or before one week before the scheduled trial date, the Parties shall (a) submit to chambers declarations under penalty of perjury or affidavits of their direct witnesses, who shall be present at trial for cross-examination and redirect, or have sought the Court's permission to examine direct witnesses at trial and (b) submit to chambers the joint exhibit book referred to in paragraph 9 hereof.
10. The Parties agree that, during the period of December 18, 2020 through and including April 14, 2021, no interest accrued on the amounts allegedly owed by the Reorganized Debtors. Nothing contained in this ~~Fifth~~Sixth Amended Order shall constitute, or be deemed to constitute, an acknowledgement that the Reorganized Debtors owe any interest to Charter for the period prior to December 18, 2020 or after April 14, 2021. Nothing contained in this ~~Fifth~~Sixth Amended Order shall prejudice the Reorganized Debtors' ability to argue that they do not owe any interest to Charter for the period prior to December 18, 2020 or after April 14, 2021.
11. **Except as specified above, the Parties cannot amend this ~~Fifth~~Sixth Amended Order by stipulation or otherwise, and the Court will not amend it unless presented with (i) proof of cause beyond the control of the party seeking amendment and (ii) timely application as soon as possible after the party seeking amendment learns of the cause. FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTION. If delay or other act or omission of your adversary may result in a sanction against you, it is incumbent on you to promptly bring this matter to the Court for relief.**

Dated: White Plains, New York

_____ , _____

Hon. Robert D. Drain
United States Bankruptcy Judge

Document comparison by Workshare 9.5 on Wednesday, June 30, 2021
10:16:46 AM

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Document 2 ID	interwovenSite://LOCAL/US/149446174/2
Description	#149446174v2<US> - WIN - Sixth Amended Scheduling and Pre-Trial Order
Rendering set	Firm Word - Adds Double Underline, Delete Strikethrough

Legend:	
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Padding cell	

Statistics:	
	Count
Insertions	15
Deletions	14
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	29

EXHIBIT E

Letter dated June 4, 2021 from Brian Hockett to Shaya Rochester



One US Bank Plaza
St. Louis, MO 63101

314 552 6000 main
314 552 7000 fax
thompsoncoburn.com

Brian W. Hockett
314 552 6461 direct
bhockett@thompsoncoburn.com

June 4, 2020

VIA ELECTRONIC MAIL

Shaya Rochester
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022-2585
shaya.rochester@kattenlaw.com

Re: Windstream Holdings, Inc., et al. vs. Charter Communications, Inc. and Charter
Communications Operating, LLC, Adv. Proc. No. 19-08246 (RDD).

Dear Shaya:

I write in response to your letter dated June 3, 2020. I followed up promptly upon receipt of your letter.

We investigated the allegations raised in your June 3 letter involving the alleged statements of [REDACTED]. Like all Charter direct sales representatives, Mr. [REDACTED] received instruction on and a copy of the preliminary injunction, and Mr. [REDACTED] specifically remembers the instructions provided to him regarding not discussing Windstream's bankruptcy with customers. Mr. [REDACTED] stated that he does not discuss the Windstream bankruptcy with customers so he could not have expressly or impliedly made the May 28, 2020, statements attributed to him in your letter. Consequently, I do not agree that Charter violated the automatic stay or the preliminary injunction. Please provide me with any additional information you have that would help us further investigate this issue.

As requested in your letter, I can confirm that Charter has and continues to provide clear and unequivocal instructions to its direct sales representatives, employees and other agents that they are not permitted to engage in conduct prohibited by the preliminary injunction. Moreover, Charter's practice is to remind sales associates about the prohibitions in the injunction any time Charter sells its products in Windstream areas. I confirm that Charter's direct sales representatives, employees and other agents will not engage in conduct prohibited by the preliminary injunction.

Very truly yours,

Thompson Coburn LLP

A handwritten signature in black ink that reads "B. Hockett".

By
Brian W. Hockett

cc: Terrence Ross
John Kingston

EXHIBIT F

**Email dated June 9, 2020 from
Brian Hockett to Shaya Rochester**

Hockett, Brian W.

From: Hockett, Brian W.
Sent: Tuesday, June 9, 2020 10:23 AM
To: Rochester, Shaya
Cc: Kingston, John S.; Ross, Terence P.; Rappoport, Steven T.; Greer, Jocelyn Edith (JGreer@mofo.com)
Subject: RE: In re Windstream Holdings, Inc., et al, Case No. 19-22312, Adv. Pro. No. 19-08246 (RDD)

Shaya –

My letter included a denial that Mr. [REDACTED] discussed Windstream’s bankruptcy in a sales situation. If one never does something, it is not possible for that person to have done that something in one instance. It is just basic logic. So to address your confusion on that point, Mr. [REDACTED] denied making the statements attributed to him in your letter.

Right now, I have is you saying that you are confident that he made the statement because an unknown customer in Nebraska City, NE told someone at Windstream that Mr. [REDACTED] made the statements on May 28, and on the other hand, I have Mr. [REDACTED] saying that he received instruction to follow the preliminary injunction, he follows the instruction, and that he did not make the statement. If you have more information on this incident, I would appreciate you sharing that information so that we can further address it. It does not make sense for you to hold information back and expect me to address the allegation in a vacuum.

You asked in your letter that Charter confirm that all of its direct sales representatives, employees and other agents shall henceforth immediately cease and desist from engaging in conduct prohibited by the Preliminary Injunction. I provided that confirmation in my June 4 letter.

Thank you.

Brian W. Hockett

bhockett@thompsoncoburn.com
P: 314.552.6461
F: 314.552.7000
M: 314.602.6461

Thompson Coburn LLP

One US Bank Plaza
St. Louis, Missouri 63101
www.thompsoncoburn.com

From: Rochester, Shaya <shaya.rochester@katten.com>
Sent: Tuesday, June 9, 2020 9:01 AM
To: Hockett, Brian W. <bhockett@thompsoncoburn.com>
Cc: Kingston, John S. <jkingston@thompsoncoburn.com>; Ross, Terence P. <terence.ross@katten.com>; Rappoport, Steven T. <SRappoport@mofo.com>; Greer, Jocelyn Edith (JGreer@mofo.com) <JGreer@mofo.com>
Subject: In re Windstream Holdings, Inc., et al, Case No. 19-22312, Adv. Pro. No. 19-08246 (RDD)

Brian,

As you know, our firm is counsel to Windstream Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-referenced Chapter 11 cases (collectively, “Windstream”), and as plaintiffs in the above-referenced adversary proceeding against your clients, Charter Communications, Inc. and Charter Communications Operating, LLC (collectively, “Charter”).

We write in response to your letter dated June 4, 2020 that you sent in response to my letter dated June 3, 2020, which identified another violation by Charter of the Bankruptcy Code's automatic stay and the Preliminary Injunction Order entered by the Bankruptcy Court on May 16, 2019. (Adv. Docket No. 61).

Specifically, as set forth in my June 3 letter, we understand that one of Charter's direct sales representatives, [REDACTED], told a Windstream customer in Nebraska City, Nebraska that Windstream "was going bankrupt," the customer's services were going to "double in cost" and that the customer could possibly lose service altogether if he did not switch to Charter.

In response, your June 4 letter states only that Mr. [REDACTED] does not "discuss the Windstream bankruptcy with customers so he could not have expressly or impliedly made the May 28, 2020, statements attributed to him in your letter." This is **not** a denial of the statements ascribed to him in my June 3 letter, and we are confident that Mr. [REDACTED] did in fact make these statements. This is not the first time that Charter employees have been less than candid about their conduct in connection with this adversary proceeding.

Windstream expressly reserve all rights, remedies, claims, and causes of action, including, but not limited to seeking additional sanctions against Charter and its representatives.

Regards,
Shaya

Shaya Rochester
Partner

Katten

Katten Muchin Rosenman LLP
575 Madison Avenue | New York, NY 10022-2585
direct +1.212.940.8529 / cell +1.718.344.4719
shaya.rochester@katten.com | katten.com

From: Hockett, Brian W. <bhockett@thompsoncoburn.com>
Sent: Thursday, June 4, 2020 6:19 PM
To: Rochester, Shaya <shaya.rochester@katten.com>; Kingston, John S. <jkingston@thompsoncoburn.com>
Cc: Ross, Terence P. <terence.ross@katten.com>; Rappoport, Steven T. <SRappoport@mofo.com>
Subject: RE: In re Windstream Holdings, Inc., et al, Case No. 19-22312, Adv. Pro. No. 19-08246 (RDD)

EXTERNAL EMAIL – EXERCISE CAUTION
Please see attached.

Brian W. Hockett
bhockett@thompsoncoburn.com
P: 314.552.6461
F: 314.552.7000
M: 314.602.6461

Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
www.thompsoncoburn.com

From: Rochester, Shaya <shaya.rochester@katten.com>
Sent: Wednesday, June 3, 2020 2:23 PM
To: Kingston, John S. <jkingston@thompsoncoburn.com>
Cc: Ross, Terence P. <terence.ross@katten.com>; Hockett, Brian W. <bhockett@thompsoncoburn.com>;

Rappoport, Steven T. <SRappoport@mofo.com>

Subject: In re Windstream Holdings, Inc., et al, Case No. 19-22312, Adv. Pro. No. 19-08246 (RDD)

John,

Please see the attached correspondence.

Regards,

Shaya

Shaya Rochester

Partner

Katten

Katten Muchin Rosenman LLP
575 Madison Avenue | New York, NY 10022-2585
direct +1.212.940.8529 / cell +1.718.344.4719
shaya.rochester@katten.com | katten.com

=====
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EXHIBIT G

**Letter dated September 20, 2020
from John Kingston to Terence Ross**



One US Bank Plaza
St. Louis, MO 63101

314 552 6000 main
314 552 7000 fax
thompsoncoburn.co

John S. Kingston
314 552 6464 direct
jkingston@thompsoncoburn.com

September 10, 2020

VIA ELECTRONIC AND CERTIFIED MAIL

Terence P. Ross
Katten Muchin Rosenman LLP
2900 K Street NW
North Tower – Suite 200
Washington, DC 20007-5118
Terence.ross@katten.com

Re: *Windstream Holdings, Inc. et al. v. Charter Communications, Inc., et al.*,
Adv. Pro. No. 19-08246

Dear Terry:

I write in response to your letter dated August 17, 2020, regarding EarthLink Business account [REDACTED] 6993 (the 6993 Account) and [REDACTED]. [REDACTED] has been Charter's customer since 2012. By contacting its own customer, Charter has not used confidential Windstream information or directly billed a Windstream customer serviced through a last mile contract. Charter has confirmed that there has been no collection activity with respect to the 6993 Account or the Master Account associated with the 6993 account (the 1927 Account) and that neither of those accounts were ever in danger of a collection-related service interruption.

There appears to be some confusion between EarthLink and [REDACTED]. It does not appear that [REDACTED] has been using the modem associated with the 6993 Account. [REDACTED] requested that Charter terminate its preexisting Charter account, but demanded that service be restored when termination of the Charter account resulted in a loss of service. At this point, it appears that [REDACTED] is paying EarthLink Business, but using equipment on a Charter account for service. Charter is not going to interrupt service to the 6993 Account while the Preliminary Injunction remains in place, but that will not help [REDACTED] when it is not using the equipment for the 6993 Account.

To ensure [REDACTED] doesn't experience a service interruption while EarthLink Business and [REDACTED] resolve their confusion, Charter has placed a protective hold on the Charter account. That is, as a courtesy to your client, Charter has made sure service to a Charter account won't be interrupted regardless of whether that Charter customer is paying for service or

September 10, 2020
Page 2

has discontinued its Charter subscription. Consistent with its policy of avoiding overstating subscriber numbers, Charter cannot continue to provide such service indefinitely.

To avoid any further confusion, please direct all correspondence regarding the 6993 Account and/or [REDACTED] to me. Please let me know when EarthLink Business has resolved the confusion with its customer.

Sincerely yours,

THOMPSON COBURN LLP

By 
John S. Kingston