

**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 "**Agreed Order**") is entered into as of July 28, 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* (Case No: 19-22312; Dkt. No. 1812) (the "**Plan**") in the above-referenced Chapter 11 bankruptcy cases (before the effective date of the Plan, the "**Debtors**", and after the effective date of the Plan, the "**Reorganized Debtors**" or "**Windstream**"), and Charter Communications Operating, LLC ("**Charter**"). The Debtors and Charter are collectively referred to in this Agreed Order as the "Parties" and each as a "Party."

By this Agreed Order, 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 (the "**Court**"), which cases are currently being administered under Case No. 19-22397 (the "**Chapter 11 Cases**").

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

C. On July 12, 2019, Charter filed thirty-eight proofs of claim in thirty-six of the Chapter 11 Cases asserting pre-petition obligations allegedly owed by each of the Debtors under the Charter Contracts (Claim Nos. 5731-5740, 5747-5755, 5758-5769, 5780, 5786, 5790-5793, and 5830) in the aggregate amount of \$13,672,143.83 (collectively, the "**Proofs of Claim**").



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* (Case No: 19-22312; 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* (Case No: 19-22312; 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* (the “**Notice of Assumption**”) indicating the Debtors’ intent to assume the Charter Contracts. The Notice of Assumption asserted that the cure amount for the VAR Agreement was \$1,643,717.97 and the cure amount for the Enterprise Agreement was \$4,098,377.88 (together, the “**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* (Case No: 19-22312; Dkt. No. 2692) (the “**Cure Objection**”). The Cure Objection asserted that the cure amount for the VAR Agreement was \$3,566,856 and the cure amount for the Enterprise Agreement was \$15,295,846 (together, “**Charter’s Cure Amount**”). Windstream disputes Charter’s Cure Amount. The dispute regarding the cure obligations for assumption of the Charter Contracts is hereinafter called the “**Cure Dispute**.”

G. On April 8, 2021, the Court issued its Memorandum of Decision on Counts VI and VII (Adv. Proc. No. 19-08246; Dkt. No. 332) (the “**Decision**”), holding Charter and Charter Communications, Inc. (“**CCI**”) “in contempt of the automatic stay and jointly and severally liable for compensatory sanctions therefor constituting [the Reorganized Debtors’] resulting losses in the aggregate amount of \$19,184,658.30,” and equitably subordinating Charter’s Class 6A claims. (Decision at 44-45). The Court thereafter entered judgment in favor of the Reorganized Debtors. (Adv. Proc. No. 19-08246; Dkt. No. 334) (the “**Judgment**”). Charter and CCI posted a supersedeas bond in the amount of \$19,500,000 in the form approved by the Court (Adv. Proc. No. 19-08246; Dkt. No. 351), and the Judgment has been stayed pending appeal before the District Court.

H. On July 8, 2021, the Reorganized Debtors filed their *Motion For Entry Of An Order Authorizing Assumption Of The Charter Agreements And Granting Related Relief* (Case No: 19-22397; Dkt. No. 142) seeking approval of the Parties’ good-faith, arm’s-length settlement of the Cure Dispute for \$12,000,000 (the “**Agreed Cure Amount**”), and asking the Court to determine how such sum should be paid in light of the Judgment and appeal therefrom (the “**Cure Settlement Motion**”);

I. On July 22, 2021, Charter filed its Objection to the Cure Settlement Motion (Case No: 19-22397; Dkt. No. 155) (the “**Objection**”);

J. After additional good-faith, arm's-length negotiations over the issues raised by the Cure Settlement Motion and the Objection, the Parties have agreed to resolve the Cure Dispute, together with the issues raised by the Cure Settlement Motion, 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. Assumption of Charter Contracts. Upon the occurrence of the Agreed Order Effective Date (defined herein), the Charter Contracts shall be assumed by the Reorganized Debtors pursuant to the Plan and 11 U.S.C. §§ 365 and 1123 effective as of the Effective Date of the Plan.

2. Agreed Cure Amount. No later than thirty (30) days after the Agreed Order Effective Date, the Reorganized Debtors shall pay the Agreed Cure Amount in full and final satisfaction of any and all pre-petition and post-petition claims of Charter, whether known or unknown (whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under either or both of Charter Contracts), for services provided and charges accrued under the Charter Contracts on or before December 31, 2020, including any claims that accrued but 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 will be paid to as follows:

- a. \$9,500,000 shall be paid directly to Charter by wire transfer in immediately available funds in accordance with the wire instructions attached hereto as **Schedule 1**; and
- b. \$2,500,000 shall be deposited into escrow (the "**Escrowed Amount**"), to be held at the Court Registry Investment System ("**CRIS**"), with the costs and expenses, if any, associated with maintaining funds in escrow to be borne by the Reorganized Debtors without reduction of the Escrowed Amount; *provided* that in the event of any dispute arising from the subsequent release of the Escrowed Amount, each of the Parties shall bear its own costs, including attorneys' fees.

3. Release of Funds from the Escrow Account.

- a. In the event that the District Court either (i) reverses the Judgment (in whole or in part) such that the amount of the supersedeas bond exceeds the amount for which the District Court determines Charter is liable to Windstream, or (ii) affirms the Judgment but determines that Charter shall not pay any additional attorneys' fees

and costs (collectively, “**Appeal Costs**”) to Windstream, Charter will be paid the Escrowed Amount, including any interest accrued thereon, within 30 days of the entry of an order of the District Court to that effect, unless such order is the subject of a stay pending appeal by Windstream. If, however, the District Court affirms the Judgment (in whole or in part) but does not rule at such time whether Windstream is entitled to any Appeal Costs, the Escrowed Amount shall remain with the CRIS until the date that is 30 days after entry of the order of the District Court ruling on such Appeal Costs.

- b. In the event that the District Court enters an order affirming the Judgment (in whole or in part) and/or awarding Appeal Costs to Windstream, following the expiration of 30 days from the District Court order to that effect, Windstream shall be paid the Escrowed Amount, including any interest accrued thereon, which amount shall be applied in partial payment against the Judgment and the Appeal Costs (if awarded) to the extent (but only to the extent) that the amount of the supersedeas bond is insufficient to cover the payment of the Judgment and the Appeal Costs (if awarded).
- c. In no event shall Windstream receive payment from the supersedeas bond and the Escrowed Amount in excess of the amount which the District Court determines should be awarded to Windstream.

4. Resolution of Pre-Assumption Claims. Upon payment of the Agreed Cure Amount by Windstream, (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. Without limiting the generality of the foregoing, no later than 45 days after Windstream’s payment of the Agreed Cure Amount as set forth herein, Charter shall issue credits to the Reorganized Debtors in an amount that, after application of the Agreed Cure Amount, the remaining balance for amounts owed by the Reorganized Debtors to Charter with respect to the Pre-Assumption Claims shall be \$0.00.

5. Resolution of Cure Objection. Upon payment of the Agreed Cure Amount by Windstream as set forth herein, the Cure Objection shall be deemed resolved in its entirety, including without limitation, any objection to the assumption of the Charter Contracts.

6. Satisfaction of Proofs of Claim. Upon payment of the Agreed Cure Amount by Windstream as set forth herein, 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 Chapter 11 Cases due to the Proofs of Claim being satisfied.

7. Post-Assumption Services and Obligations. Except as modified under this Agreed Order, following assumption of the Charter Contracts, each Party agrees to perform its respective obligations, including the payment obligations, pursuant to and in accordance with the Parties’ ordinary course of business and the terms of the Charter Contracts. All services provided by Charter to the Reorganized Debtors under the Charter Contracts from and after January 1, 2021,

shall be invoiced by Charter and paid by the Reorganized Debtors (or otherwise resolved between the Parties) pursuant to and in accordance with the Parties' ordinary course of business and the terms of the Charter Contracts.

8. Mutual Release. Effective upon the occurrence of the Agreed Order Effective Date, the Reorganized 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 (including, without limitation, the Pre-Assumption Claims), in law or in equity, known or unknown, which arise out of or are related to any matter pertaining to the assumption of the Charter Contracts, including the Cure Dispute; *provided, however*, that this release and discharge shall not apply to the obligations, rights and privileges created by this Agreed Order.

9. Governing Law. This Agreed Order 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.

10. 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 Agreed Order.

11. Notices. Any and all notices, consents, or demands permitted or required to be made or given under this Agreed Order 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 Reorganized 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

12. 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 Agreed Order. Neither the Reorganized Debtors nor Charter shall be considered a “prevailing party” in connection with the Cure Dispute pursuant to section 18.6 of the VAR Agreement.

13. Counterparts/Electronic Signatures. This Agreed Order 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 Agreed Order shall be a valid signature as of the transmission thereof.

14. Miscellaneous Provisions.

- a. Each Party represents and warrants that in entering into this Agreed Order, 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 Agreed Order through a cooperative effort, and neither Party shall be considered the drafter of this Agreed Order so as to give rise to any presumption regarding construction of this document.
- c. Neither this Agreed Order 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 Agreed Order 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.

15. Agreed Order Effective Date. This Agreed Order shall have no force or effect until the date on which the Court has approved this Agreed Order and it has become final and non-appealable (such date, the “Agreed Order Effective Date”).

16. Deemed Motion; Entry Of Separate Order. This Agreed Order shall constitute a motion requesting permission to deposit funds with CRIS. Upon entry of this Agreed Order, a

separate order shall be entered directing (a) the Reorganized Debtors to deposit the Escrowed Amount, by check payable to “Clerk, United States Bankruptcy Court,” to the Clerk of the Court; (b) the Clerk of the Court to deposit the Escrowed Amount tendered by the Reorganized Debtors within CRIS, and (c) the Clerk of the Court not to disburse the Escrowed Amount absent further order of this Court.

[remainder of page intentionally omitted]

IN WITNESS WHEREOF, this Stipulation and Agreed Order 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

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

/s/ Terence P. Ross

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

*Conflicts Counsel for the Reorganized
Debtors*

/s/ Susheel Kirpalani

Susheel Kirpalani
Anil Makhijani
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100
Email: susheelkirpalani@quinnemanuel.com
anilmakhijani@quinnemanuel.com

Co-Counsel for Charter

SO ORDERED

Dated: July 30, 2021
White Plains, NY

/s/Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Charter Wire Instructions

US Bank
St. Louis, MO
ABA 081 000 210
Acct. # 4346849369
Charter Communications Operating, LLC