Hearing Date: September 20, 2022, at 10:00 a.m. (prevailing Eastern Time)
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
WINDSTREAM FINANCE CORP., *et al.*,[1]	)	Case No. 19-22397 (LGB)
Reorganized Debtors.	)	(Formerly Jointly Administered under Lead Case: Windstream Holdings, Inc., Case No. 19-22312)

REPLY IN SUPPORT OF REORGANIZED DEBTORS' MOTION FOR ENTRY OF A FINAL DECREE CLOSING THE CHAPTER 11 CASES

In response to the objection filed by CMN-RUS, Inc. ("CMN") [Docket No. 244] (the "Objection"), the above-captioned reorganized debtors (collectively, the "Reorganized Debtors") submit this reply in further support of the *Reorganized Debtors' Motion for Entry of An Order (I) Closing the Chapter 11 Case, (II) Entering a Final Decree, (III) Terminating Services of Claims and Noticing Agent, and (IV) Granting Related Relief* [Docket No. 241] (the "Motion") seeking entry of a final decree to close the sole remaining docket in these

[1] The last four digits of the 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 reorganized debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the 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 11 cases is 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

chapter 11 cases, *In re Windstream Finance, Corp., et al.*, No. 19-22397, (the "Remaining Case").[2] The Reorganized Debtors respectfully state as follows:[3]

Preliminary Statement

1. Along with granting a final decree in these chapter 11 cases for all but one docket, this Court has previously stated in these chapter 11 cases that closing a bankruptcy docket is "a purely administrative matter."[4] Other courts have widely understood that closing a bankruptcy docket has no effect on substantive rights. The Objection does not appear to directly dispute whether the chapter 11 cases have satisfied the "fully administered" standard to close the Remaining Case. Nonetheless, the principal question presented is whether the Court should exercise its discretion to close the docket of the Remaining Case over the objection—of a single creditor whose three claims are in arbitration—on the wholly-unsupported grounds that the Reorganized Debtors need to reserve more than $4.9 million for their claims lest the final decree modify the terms of the Plan. The Objection also claims that, because entry of the final decree could affect the jurisdiction, venue, and legal claims and defenses for the matters subject to arbitration, the final decree needs to include certain preservation language. The Objection fails to provide any legal authority in support of its demands. The Reorganized Debtors believe the Court should overrule the Objection and grant the final decree to close the docket of the Remaining Case.

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2 The Reorganized Debtors have filed a *Notice of Filing of Revised Proposed Final Decree Closing the Chapter 11 Cases* contemporaneously with the filing of this reply. The revised proposed order fully resolves the objection filed by U.S. Bank at Docket No. 243.

3 Capitalized terms used but otherwise not defined herein shall have the meanings set forth in 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* [Docket No. 2243] (the "Confirmation Order") or the Motion, as applicable.

4 *See* Tr. of Proceedings in *In re Windstream Holdings, Inc.*, at 26:2-3 (Bankr. S.D.N.Y. Oct. 22, 2020).

Argument

I. Entry the Final Decree Does Not Modify the Plan or Affect CMN's Treatment Thereunder. Rather, Requiring a Reserve for CMN Would Alter the Terms of the Plan and Treat CMN More Favorably Than Similar Claimants.

2. Contrary to the CMN's suggestions, this Court's entry of a final decree would not modify the terms of the Plan or CMN's treatment thereunder. CMN argues that "if the reserve [is] not continued", CMN would be deprived of a benefit provided to all other non-obligor *unsecured* creditors and, further, that "treatment of CMN as an *unsecured* creditor should not be permitted." *See* Objection, at 18. CMN's position mischaracterizes the Plan and the Reserve (as defined below). The Plan's terms related to the Reserve did not transform CMN's unsecured claims into claims secured against the Reserve, and the Reserve is not an escrow. Rather, requiring the continuation of the Reserve would, in-effect, modify the Plan to the detriment of the Reorganized Debtors.

3. The Plan provided that a Non-Obligor General Unsecured Claims Reserve was to be established upon the Effective Date (the "Reserve"). *See* Plan, at Art. I.116. However, the Reserve did not need to be funded in any specified amount. *See id.* ("a reserve funded . . . in an amount determined by the Debtors . . . in their discretion and business judgment"). Nonetheless, the Reserve was funded in the amount of approximately $196 million.[5] Further, the Reserve was intended to fund distributions on account of certain *allowed* claims. *See id.* ("a reserve . . . to fund distributions on account of *Allowed* Non-Obligor General Unsecured Claims") (emphasis added). Under the Plan, the definition of "allowed" referred to claims not subject to objection or, of those claims subject to an objection, to the extent allowed by an order of the Court. *See* Plan, at Art. I.18.

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[5] *See, e.g.*, *Post-Confirmation Quarterly Operating Report for the Period of April 1, 2022 to June 30, 2022*, at 2 [Docket No. 239].

4. Here, all of CMN's claims are subject to an outstanding objection and have not been allowed by an order of the court. Accordingly, the Reserve, by definition, does not provide comfort to CMN on account of its three outstanding claims. However, even assuming arguendo that CMN's three claims were "allowed," the Reserve would still not transform CMN's unsecured claims into secured claims because, among other reasons, the amount of the funding of the Reserve was left to the Debtors' discretion and business judgment rather than being tied to the aggregate value of the corresponding claims.

5. To be sure, cash in the Reserve, which for the avoidance of doubt is held in the accounts of the Reorganized Debtors, is property of the Reorganized Debtors in the first instance because all Debtor property vested in the Reorganized Debtors upon the occurrence of the Effective Date. *See* Plan, at Art. IV.G. The Reserve is not an escrow or a trust, and the Debtors did not transfer the Reserve cash to a third-party. While the Plan required the establishment of separate escrows with respect to other items, it did not do so with respect to the Reserve. *See* Plan, at Art. II.C.3. Rather, recoveries for claims corresponding to the Reserve come out of the Reorganized Debtors' property (and account) and, relatedly, their ongoing operations. *See also In re MBF Inspection Servs., Inc.*, 609 B.R. 889, 894 (Bankr. D.N.M. 2019) (reasoning that, upon the occurrence of the effective date, outstanding claims are "paid by the reorganized debtor, not the bankruptcy estate, which no longer has any assets or liabilities"). CMN has provided no legal basis to require that the Reorganized Debtors fund and maintain a de facto escrow, and the suggestion that CMN "could be at a substantial disadvantage post-closing" overlooks that all claims similarly situated to CMN's were also paid from the Reorganized Debtors' property and ongoing operations.

6. If the Court were to now require a specific amount to be reserved for CMN's claims, it would change the terms of Plan, which empowered the Debtors to decide the Reserve's

funding with an eye toward certain "allowed" claims, of which CMN's claims decidedly are not, and which did not require the creation of a de facto escrow or trust. For these reasons, the Reorganized Debtors should not be required to reserve any amounts specifically tied to CMN's three claims. To do so would treat CMN more favorably than other similarly-situated creditors who did not have such a specific level of comfort and place a burden on the Reorganized Debtors in excess of what was provided in the Plan. For these reasons, the Objection should be overruled to the extent it seeks an order of the Court requiring the Reorganized Debtors to maintain any amounts specifically tied to their outstanding claims.

II. Entry the Final Decree Does Not Affect the Substantive Rights of CMN.

7. CMN raises a myriad of concerns, that the final decree could somehow be used to (a) "cap CMN's recovery" on account of the three claims, (b) "impair or divest . . . jurisdiction and venue," or (c) "adversely affect" the arbitration in connection with pending claims or defenses. In doing so, the Objection cites no legal authority whatsoever and fails to show a single instance where a final decree was ever wielded against a claimant as such.

8. Rather, as is widely recognized by established legal authority, "entry of the final decree is a 'ministerial' or 'administrative' act that does not alter the substantive rights of either creditors or debtors." *In re Kliegl Bros. Univ. Elec. Stage Lighting Co., Inc.*, 238 B.R. 531, 546 (Bankr. E.D.N.Y. 1999) (*citing In re Jordan Mfg. Co., Inc.*, 138 B.R. 30, 34 (Bankr. C.D. Ill. 1992)). A final decree "does not, and is not designed to, identify the parties' rights, memorialize the parties' understandings, or establish any jurisdictional parameters. It simply delineates on the docket that the case is closed; and it represents the administrative conclusion of a case for record keeping purposes." *In re Fibermark, Inc.*, 369 B.R. 761, 769 (Bankr. D. Vt. 2007). Accordingly, any contention that entry of the final decree would somehow interfere with the arbitration of disturb CMN's ability to take certain positions is contrary to established law.

III. The Chapter 11 Cases Satisfy the Fully Administered Standard.

9. CMN does not—and cannot—challenge that nearly all of the nonexclusive factors described in Bankruptcy Rule 3022 support the conclusion that these chapter 11 cases have been fully administered.[6] Instead, CMN appears to argue solely that the final decree needs to somehow account for the fact that one of its outstanding claims purportedly has administrative priority.

10. To the extent CMN's position is construed as an argument that the factor relating to "whether all motions, contested matters, and adversary proceedings have been finally resolved," other courts have entered final decrees even when a few items remained outstanding. *See, e.g.*, *In re Union Home & Indus.*, 375 B.R., 912, 918 (10th Cir. 2007) (a pending adversary proceeding alone is insufficient to foreclose entry of a final decree); *In re JMP-Newcor Int'l, Inc.*, 225 B.R. 462, 465 (Bankr. N.D.Ill. 1998) (where debtor had taken all actions required by the confirmed plan, case had been "fully administered" and should be closed even though certain disbursements and an adversary proceeding were still pending); *In re McClelland*, 377 B.R. 446, 453 (S.D.N.Y. 2007) ("Fed. R. Bankr. P. 3022 permits entry of a final decree closing the case '[a]fter an estate is fully administered,' which is not necessarily contingent upon the resolution of stand-alone adversary proceedings"); *In re MBF Inspection Services, Inc.*, 609 B.R. 889, 894 (Bankr. D.N.M. 2019) (outstanding fee applications (which had not even been filed) are insufficient to foreclose entry of a final decree); *In re Avaya Inc.*, 2020 WL 5051580, at *3-4 (S.D.N.Y. April 30, 2020) (resolution of a single claim that was subject to a pending motion for

[6] As the Debtors asserted in the motion to close, nearly all of the factors have been satisfied including (a) the transactions contemplated by the Plan have been closed, (b) payment of all amounts and fees have been made, (c) property proposed by the Plan to be transferred has been transferred; and (d) the Reorganized Debtors have assumed management of the business and property.

summary judgment alone is insufficient to foreclose entry of a final decree).[7] Rather, the Court should find that the Remaining Case is "fully administered" and, accordingly, exercise its discretion to close the Remaining Case. The facts presented in the Motion provide an even stronger basis for case closing than the facts presented earlier in the chapter 11 cases when this Court entered the final decree for all but one of the dockets.

Conclusion

11. For all of these reasons, the Reorganized Debtors respectfully request that the Court overrule CMN's Objection and enter the Final Decree, and grant such other relief as it deems just and proper.

Dated: September 19, 2022
New York, New York

/s/ Ross M. Kwasteniet

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[7] CMN's reliance on *In re Swiss Chalet, Inc.*, 485 B.R. 47 (Bankr. D. P.R. 2012) is misplaced because the facts there are distinct from here. There, the bankruptcy court (a) was considering a motion for summary judgment on an adversary proceeding, (b) had not yet held a scheduled hearing on the debtors' own show cause motion, and (c) had not yet held a scheduled evidentiary hearing on a contested matter related to an administrative claim that included issues relates to newly discovered evidence. Here, the Court has no active matters in the these chapter 11 cases other than this Motion and related papers.