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*Proposed Counsel to the Debtors and Debtors in Possession*

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

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

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND  
FINAL ORDERS APPROVING NOTIFICATION AND  
HEARING PROCEDURES FOR CERTAIN TRANSFERS OF AND  
DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

Windstream Holdings, Inc. and its debtor affiliates as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):

<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



### **Relief Requested**<sup>2</sup>

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”): (a) approving certain notification and hearing procedures, substantially in the form of **Exhibit 1** attached to the Interim Order (the “Procedures”), related to certain transfers of, or declarations of worthlessness with respect to, Debtor Windstream Holdings, Inc.’s common stock or any Beneficial Ownership<sup>3</sup> therein (any such record or Beneficial Ownership of common stock, the “Common Stock”); and (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to any Beneficial Ownership of Common Stock in violation of the Procedures shall be null and void *ab initio*. In addition, the Debtors request a final hearing be scheduled by the Bankruptcy Court (as defined below) within approximately 25 days of the Petition Date to consider approval of this Motion on a final basis.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the*

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<sup>2</sup> Capitalized terms used but not defined in this motion have the meanings given to such terms elsewhere in this Motion, the First Day Declaration, or the Procedures, as applicable.

<sup>3</sup> “Beneficial Ownership” will be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code of 1986, as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

*Southern District of New York*, dated February 1, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Bankruptcy Court in connection with this Motion to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 362 and 541 of the Bankruptcy Code, Bankruptcy Rules 3002 and 9014, and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

#### **Background**

5. The Debtors are a leading provider of advanced network communications and technology solutions for businesses across the United States. The Debtors also offer broadband, entertainment and security solutions to consumers and small businesses primarily in rural areas in 18 states. Additionally, the Debtors supply core transport solutions on a local and long-haul fiber network spanning approximately 150,000 miles. As of the date hereof, The Debtors had approximately 11,600 employees.

6. As set forth in greater detail in the *Declaration of Tony Thomas, Chief Executive Officer and President of Windstream Holdings, Inc., (I) in Support of Debtors’ Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* (the “First Day Declaration”), on February 15, 2019, the United States District Court for the Southern District of New York entered a *Memorandum Decision and Order* against Debtor Windstream Services, LLC after trial in the matter styled *U.S. Bank National Association v. Windstream Services, Inc. v. Aurelius Capital Master, Ltd.*, Case No. 17-cv-7857 (JMF), that recognized an event of default

under the Debtors' prepetition unsecured bond indentures, which in turn resulted in a cross-default under the Debtors' secured term loan and revolver credit facilities. As of the date hereof, the Debtors are obligated for approximately \$5.6 billion in funded debt obligations. To avoid any precipitous action against the Debtors' assets that would have harmed the Debtors' businesses and to gain access to much-needed liquidity in the form of debtor-in-possession financing, the Debtors commenced these chapter 11 cases.

7. On February 25, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in these chapter 11 cases. Additional information regarding the Debtors' business, their capital structure, and the circumstances leading to these chapter 11 filings is contained in the First Day Declaration.

#### **The Tax Attributes**

8. Generally, a company generates net operating losses ("NOLs") if the operating expenses it has incurred exceed the revenues it has earned during a single tax year. A company may apply, or "carry forward," NOLs and tax credits to reduce future tax payments (subject to certain conditions as discussed below).<sup>4</sup> *See* IRC §§ 39, 172.

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<sup>4</sup> In addition, under certain circumstances, certain NOLs may be "carried back" to offset taxable income in prior years. Under U.S. federal income tax legislation enacted in 2017, the specific rules regarding carrybacks and carryforwards depend on when a particular NOL was generated.

9. As of January 1, 2019, the Debtors estimate that they have approximately \$3.4 billion of federal NOLs<sup>5</sup> and federal credit carryforwards of approximately \$27 million (collectively, and together with certain other tax attributes, the “Tax Attributes”).<sup>6</sup> The Tax Attributes are of significant value to the Debtors because the Debtors can potentially carry forward the Tax Attributes to offset taxable income in future years. Additionally, the Debtors may utilize such Tax Attributes to offset any taxable income generated by transactions consummated during these chapter 11 cases. The value of the Tax Attributes will inure to the benefit of all of the Debtors’ stakeholders.

**I. An “Ownership Change” May Negatively Affect the Debtors’ Utilization of the Tax Attributes**

10. Sections 382 and 383 of the IRC limit the amount of taxable income and tax liability, respectively, that can be offset by a corporation’s tax attributes in taxable years (or portions thereof) following an “ownership change.” Generally, an “ownership change” occurs if the percentage (by value) of the stock of a corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock owned by such shareholders at any time during the three-year testing period ending on the date of the ownership change. For example, an ownership change would occur in the following situation:

An individual (“A”) owns 50.1 percent of the stock of corporation XYZ. A sells her 50.1 percent interest to another individual (“B”), who owns 5 percent of XYZ’s stock. Under Section 382, an ownership change has occurred because B’s interest in XYZ has increased more than 50 percentage points (from 5 percent to 55.1 percent) during the testing period. The same result would follow even if B owned no XYZ stock prior to the transaction with

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<sup>5</sup> The Debtors have determined that approximately \$1.5B of their \$3.4B of gross federal NOLs are unlikely to be able to be utilized in the ordinary course of business as a result of prior ownership limitations under section 382.

<sup>6</sup> The Tax Attributes include certain alternative minimum tax credits. These credits are not discussed further herein as a result of changes to the treatment of such credits in the 2017 tax reform legislation. Additionally, the Debtors have substantial state tax attributes that may be subject to rules that are substantially similar to the federal rules under sections 382 and 383.

A because B both becomes a 5-percent shareholder and increases his ownership by more than 50 percentage points during the testing period.

11. An “ownership change” can also occur as a result of a “worthless stock deduction” claimed by any “50-percent shareholder.” A 50-percent shareholder is any person that owned 50 percent or more of a corporation’s stock “at any time during the 3-year period ending on the last day of the taxable year” with respect to which the worthless stock deduction is claimed. IRC § 382(g)(4)(D). If the 50-percent shareholder still owns the corporation’s stock at the end of the taxable year, sections 382 and 383 of the IRC essentially treat the stock as being newly-acquired by the shareholder on the first day of the next taxable year. For example, if a person with 50 percent of a corporation’s stock claims a worthless stock deduction in 2018 (or with respect to the 2018 taxable year) but does not sell such stock that year, that person is treated (a) as not having owned the stock at the end of 2018 and (b) as having purchased the stock on the first day of the 2019 taxable year. That deemed purchase would cause an ownership change, because the 50-percent shareholder would be deemed to have a 50-percentage-point increase in its stock ownership. Notably, while the seminal case of *Prudential Lines* is generally relied upon to support equity trading motions, the specific issue in *Prudential Lines* was, in fact, a worthless stock deduction. *In re Prudential Lines, Inc.*, 928 F.2d 565 (2d Cir. 1991).

12. If an ownership change occurs, section 382 of the IRC limits the amount of a corporation’s future income that may be offset by its “pre-change losses” and section 383 of the IRC limits the amount of a corporation’s future tax liability that may be offset by its “excess credits,” in each case, to an annual amount based on the fair market value of all of the stock of the corporation prior to the ownership change multiplied by the long-term tax-exempt rate that applies

to the month of the ownership change.<sup>7</sup> See IRC §§ 382(b) and 383(a). Pre-change losses and excess credits include the Debtors' NOLs, credit carryforwards and any so-called "realized built-in losses."<sup>8</sup> Once a Tax Attribute is limited under section 382 or 383 of the IRC, its use is limited forever. Thus, certain transfers or worthless stock deductions with respect to Beneficial Ownership of Common Stock effected before the effective date of the Debtors' emergence from chapter 11 protection may trigger an "ownership change" for IRC purposes, severely endangering the Debtors' ability to utilize the Tax Attributes and causing substantial damage to the Debtors' estates.

13. Notably, the Debtors have limited the relief requested herein to the extent necessary to preserve estate value. Specifically, the proposed Interim Order and Final Order will affect only (a) holders of the equivalent of Beneficial Ownership of more than 1,932,090 shares of Common Stock<sup>9</sup> (*i.e.*, 4.5 percent or more of outstanding Common Stock) and parties who are interested in purchasing Common Stock from such holders; (b) parties who are interested in purchasing sufficient Common Stock to result in such party becoming a holder of 4.5 percent or more of Beneficial Ownership of outstanding Common Stock; and (c) any "50-percent shareholder" seeking to claim a worthless stock deduction.

14. To maximize the use of the Tax Attributes and enhance recoveries for the Debtors' stakeholders, the Debtors' seek limited relief that will enable them to closely monitor certain transfers of Beneficial Ownership of Common Stock and certain worthless stock deductions with

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<sup>7</sup> The applicable long-term tax-exempt rate changes from month to month. For ownership changes occurring in February 2019, the applicable long term tax exempt rate is 2.51 percent.

<sup>8</sup> The rules relating to potential limitations on the ability to offset taxable income with so-called realized built-in losses are highly complex and depend on, among other things, the extent (if any) of a debtor's "net unrealized built-in loss."

<sup>9</sup> Based on approximately 42,935,334 shares of Common Stock outstanding as of December 31, 2018.

respect to Beneficial Ownership of Common Stock, so as to be in a position to act expeditiously to prevent such transfers or worthlessness deductions, if necessary, with the purpose of preserving the Tax Attributes. By establishing and implementing such Procedures, the Debtors will be in a position to object to “ownership changes” that threaten their ability to preserve the value of their Tax Attributes for the benefit of the estates.

## **II. Proposed Procedures for Transfers of or Declarations of Worthlessness with Respect to Common Stock**

15. The Procedures are the mechanism by which the Debtors propose that they will monitor, and if necessary, object to certain transfers of Beneficial Ownership of Common Stock and declarations of worthlessness with respect to Beneficial Ownership of Common Stock to ensure preservation of the Tax Attributes. The Procedures, which are fully set forth in **Exhibit 1** to the Interim Order and Final Order, are summarized below.<sup>10</sup>

### ***Procedures for Transfers of Common Stock***

- a. The Debtors will serve notice of the Interim Order or the Final Order, as applicable, and the Procedures upon all parties-in-interest, including all registered holders of Common Stock, no later than five business days after entry of the Interim Order or the Final Order, as applicable.<sup>11</sup>

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<sup>10</sup> To the extent that this summary and the terms of the Procedures are inconsistent, the terms of the Procedures control.

<sup>11</sup> The notice provisions in the Procedures satisfy due process and the strictures of Bankruptcy Rule 9014 by providing the relevant counterparties with notice and an opportunity to object and attend a hearing. *See, e.g., Harada v. DBL Liquidating Trust (In re Drexel Burnham Lambert Group, Inc.)*, 160 B.R. 729, 733 (S.D.N.Y. 1993) (indicating that an opportunity to present objections satisfies due process); *In re Waterman Steamship Corp.*, 157 B.R. 220, 221 (S.D.N.Y. 1993) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”); *see also In re Atamian*, 368 B.R. 375, 378 (Bankr. D. Del. 2007) (“Rule 9014 does not require a hearing, only an opportunity for a hearing.” (citation omitted)), *aff’d*, Case No. 05-20040 (MFW), 2008 WL 853462 (D. Del. Mar. 31, 2008), 300 F. App’x 175 (3d Cir. 2008); *Flynn v. Eley (In re Colo. Mountain Cellars, Inc.)*, 226 B.R. 244, 246 (D. Colo. 1998) (noting that a hearing is not required to satisfy Bankruptcy Rule 9014).



- b. Any person or entity that has Beneficial Ownership of 4.5 percent or more of Common Stock must file with the Bankruptcy Court and serve upon the Notice Parties a Declaration of Status as a Substantial Shareholder, substantially in the form annexed to the Procedures as **Exhibit 1A** on or before the later of (i) 30 calendar days after the date of the Notice of Interim Order, and (ii) ten calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed.
- c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would (i) affect the size of a Substantial Shareholder's Beneficial Ownership, or (ii) would result in an entity or individual becoming or ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Bankruptcy Court and serve upon the Notice Parties, as applicable, a Declaration of Intent to Accumulate Common Stock, substantially in the form annexed to the Procedures as **Exhibit 1B**, or a Declaration of Intent to Transfer Common Stock, substantially in the form annexed to the Procedures as **Exhibit 1C**.
- i. The Debtors shall have 30 calendar days after receipt of a Declaration of Proposed Transfer to file with the Bankruptcy Court and serve upon such person or entity an objection to the proposed transaction on the grounds that such claim might adversely affect the Debtors' ability to utilize the Tax Attributes.
- ii. If the Debtors timely object, the proposed transaction will remain ineffective pending a final and non-appealable order of the Bankruptcy Court, unless the Debtors withdraw such objection.
- iii. If the Debtors do not object, the proposed transaction may proceed solely as described in the Declaration of Proposed Transfer. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with the procedures set forth herein, with an additional 30-day waiting period for each Declaration of Proposed Transfer.
- iv. For purposes of these Procedures, a "Substantial Shareholder" is any entity or individual person that has Beneficial Ownership of at least 1,932,090 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock).<sup>12</sup>

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<sup>12</sup> Based on approximately 42,935,334 shares of Common Stock outstanding as of December 31, 2018.

*Procedures for Declarations of Worthlessness of Common Stock*

- a. Any person or entity that currently is or becomes a 50-Percent Shareholder<sup>13</sup> must file with the Bankruptcy Court and serve upon the Notice Parties a Declaration of Status as a 50-Percent Shareholder, substantially in the form annexed to the Procedures as **Exhibit 1D**, on or before the later of (i) 30 calendar days after the date of the Notice of Interim Order, and (ii) ten calendar days after becoming a 50-Percent Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any 50-Percent Shareholder even if no Declaration of Status as a 50-Percent Shareholder has been filed.
- b. Prior to filing any federal or state tax return or any amendment to such a return, or taking any other action that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a tax year ending before the Debtors' emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Bankruptcy Court and serve upon the Notice Parties a Declaration of Intent to Claim a Worthless Stock Deduction, substantially in the form annexed to the Procedures as **Exhibit 1E**.
  - i. The Debtors will have 30 calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Bankruptcy Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors' ability to utilize their Tax Attributes.
  - ii. If the Debtors timely object, the filing of the tax return or amendment thereto with such claim will not be permitted unless approved by a final and non-appealable order of the Bankruptcy Court, unless the Debtors withdraw such objection.
  - iii. If the Debtors do not object within such 30-day period, the filing of the return or amendment with such claim will be permitted solely as described in the Declaration of Intent to Claim a Worthless Stock Deduction. Additional returns and amendments within the scope of this section must be the subject of additional notices as set forth herein, with an additional 30-day waiting period. To the extent that the Debtors receive an appropriate Declaration of Intent to Claim a Worthless Stock Deduction and determine in their business judgment not to object, they shall provide five (5) business days'

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<sup>13</sup> For purposes of the Procedures, a "50-Percent Shareholder" is any person or entity that at any time since December 31, 2015, has owned 50 percent or more of the Common Stock of the Debtors (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder).

notice of that decision to: (a) the agent under the proposed postpetition debtor in possession financing facility; (b) the administrative agents and indenture trustees under the Debtors' prepetition credit agreement and note indentures; (c) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (d) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (e) Shearman & Sterling LLP, counsel to the Midwest noteholders; and (f) the Committee, and its counsel.

### **Basis for Relief**

16. Section 541 of the Bankruptcy Code provides that property of the estate comprises, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The Tax Attributes are property of the Debtors' estates. *See, e.g., Official Comm. of Unsecured Creditors v. PSS S.S. Co.* (In re Prudential Lines Inc.), 928 F.2d 565, 573 (2d Cir. 1991) ("We hold that the right to a carryforward attributable to its . . . NOL was property of [the debtor's] bankruptcy estate."), *cert. denied*, 502 U.S. 821 (1991); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Dec. 19, 2005) (finding that NOLs are property of the debtors' estates); *Nisselson v. Drew Indus., Inc. (In re White Metal Rolling & Stamping Corp.)*, 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998) (same); *Official Comm. of Unsecured Creditors v. Forman (In re Forman Enters., Inc.)*, 273 B.R. 408, 415 (Bankr. W.D. Pa. 2002) (same). Moreover, section 362(a)(3) of the Bankruptcy Code stays "any act [of a person or entity] to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Accordingly, any act of a holder of a debtor's equity securities that causes the termination or limits use of the Tax Attributes violates the automatic stay. *See, e.g., Prudential Lines*, 928 F.2d at 574 (holding that causing the termination of or adversely affecting the value of a debtor's NOL violates the automatic stay); *In re Phar-Mor, Inc.*, 152 B.R. 924, 927 (Bankr. N.D. Ohio 1993) ("[T]he sale of stock is prohibited

by § 362(a)(3) [of the Bankruptcy Code] as an exercise of control over the NOL, which is property of the estate.”).

17. Implementation of the Procedures is necessary and appropriate to enforce the automatic stay and, critically, to preserve the value of the Tax Attributes for the benefit of the Debtors’ estates. Under sections 382 and 383 of the IRC, certain transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock prior to the consummation of a chapter 11 plan could cause the termination or limit the use of the Tax Attributes. As stated above, the Debtors estimate that they have as much as approximately \$3.4 billion of federal NOLs and federal credit carryforwards of approximately \$27 million as of January 1, 2019. These Tax Attributes may provide the potential for material future tax savings (including in post-emergence years) or other tax structuring possibilities in these chapter 11 cases. The termination or limitation of the Tax Attributes could be materially detrimental to all parties-in-interest. Thus, granting the relief requested herein will preserve the Debtors’ flexibility in operating their businesses during the pendency of these chapter 11 cases and also implementing an exit plan that makes full and efficient use of the Tax Attributes and maximizes the value of the Debtors’ estates.

18. Additionally, the Procedures do not bar all transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock. The Debtors seek to establish procedures only to monitor those types of transactions that would pose a serious risk under the ownership change test pursuant to sections 382 and 383 of the IRC and to preserve the Debtors’ ability to seek substantive relief if it appears that a proposed transfer or declaration of worthlessness could jeopardize the Debtors’ utilization of the Tax Attributes. Because of the Tax Attributes’ importance to the Debtors’ restructuring, and consequently all parties-in-interest, the

benefits of implementing the Procedures outweigh subjecting a limited number of transfers to the Procedures.

19. Courts in this jurisdiction have routinely restricted transfers of Beneficial Ownership and declarations of worthlessness with respect to Beneficial Ownership of a debtor corporation's stock, or instituted notice procedures regarding proposed transfers and declarations of worthlessness, to protect a debtor against the possible loss of its tax attributes. *See, e.g., In re Cenveo Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (approving notification and hearing procedures for certain transfers of and declarations of worthlessness with respect to common stock); *In re 21st Century Oncology Holdings, Inc.* Case No. 17-2270 (RDD) (Bankr. S.D.N.Y. June 20, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) (same); *In re Avaya, Inc.* Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Mar. 7, 2017) (same); *In re Sabine Oil & Gas Corp.*, Case No. 15-11835 (SCC) (Bankr. S.D.N.Y. Aug. 10, 2015) (same).<sup>14</sup>

20. Accordingly, the Debtors respectfully request that the Bankruptcy Court enter the Interim Order and the Final Order approving the Procedures to protect the Debtors against the possible loss of the Tax Attributes.

**Bankruptcy Rule 6003 Does Not Apply to the Relief Requested Herein**

21. Under Bankruptcy Rule 6003, the Bankruptcy Court may grant relief regarding a motion to use, sell, or lease property of the estate within 21 days after the Petition Date if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The Debtors respectfully submit that Bankruptcy Rule 6003 does not apply to this motion because the Debtors

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<sup>14</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

are not seeking to use, sell, or lease property of the estate. *See* Fed. R. Bankr. P. 6003 advisory comm.’s note to 2011 amend. (“[T]he rule does not prohibit the court from entering orders in the first 21 days of the case that **may relate** to the motions and applications set out in (a), (b), and (c); it is only prohibited from granting the relief requested by those motions or applications.” (emphasis added)). Even if Bankruptcy Rule 6003 applied to this motion, however, the “immediate and irreparable harm” standard is satisfied.

22. As discussed herein, the Tax Attributes are a key asset of the Debtors’ estates and essential to the Debtors’ restructuring. Additionally, once a Tax Attribute is limited under section 382 or 383 of the IRC, its use is limited forever. The loss of the Tax Attributes would therefore cause immediate and irreparable harm to the Debtors’ estates. Moreover, the relief requested herein is necessary on an immediate basis because, absent such relief, any of the holders of Beneficial Ownership of Common Stock could transfer or take a worthless stock deduction with respect to such Beneficial Ownership of Common Stock at any time before the Final Hearing. The relief requested herein seeks to prevent certain of these actions that could cause the Debtors’ estates this irreparable harm.

23. The Debtors’ immediate and orderly transition into chapter 11 is critical to the viability of their operations and any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture and imperil the Debtors’ restructuring. Accordingly, to the extent that Bankruptcy Rule 6003 applies to the relief requested herein, it does not require the Bankruptcy Court to wait 21 days before granting the requested relief.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

24. To successfully implement the foregoing, the Debtors request that the Bankruptcy Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

25. Nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an admission as to the validity of any particular claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion, (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Bankruptcy Court grants the relief sought herein, any payment made pursuant to the Bankruptcy Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Motion Practice**

26. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of its application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

**Notice**

27. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the agent under the proposed postpetition debtor in possession financing facility; (d) the administrative agents and indenture trustees under the Debtors' prepetition credit agreement and note indentures; (e) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (f) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (g) Shearman & Sterling LLP, counsel to the Midwest noteholders; (h) the Pension Benefit Guaranty Corporation; (i) the United States Attorney's Office for the Southern District of New York; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the attorneys general in the states where the Debtors conduct their business operations; (m) the Federal Communications Commission; (n) all registered holders of Common Stock, to the extent known; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

28. No prior request for the relief sought in this Motion has been made to this or any other court.

*[Remainder of page intentionally left blank.]*



WHEREFORE, the Debtors respectfully requests that the Bankruptcy Court enter the Interim Order and Final Order granting the relief requested herein and such other relief as the Bankruptcy Court deems appropriate under the circumstances.

Dated: February 25, 2019  
New York, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

Cristine Pirro Schwarzman

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

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- and -

James H.M. Sprayregen, P.C.

Ross M. Kwasteniet, P.C. (*pro hac vice* pending)

Brad Weiland (*pro hac vice* pending)

John R. Luze (*pro hac vice* pending)

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

300 North LaSalle Street

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

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

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

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**INTERIM ORDER  
APPROVING NOTIFICATION AND HEARING  
PROCEDURES FOR CERTAIN TRANSFERS OF AND  
DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (a) approving the Procedures related to transfers of and declarations of worthlessness with respect to Beneficial Ownership of Common Stock, (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures shall be null and void *ab initio*, and (c) scheduling a final hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue

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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kcellc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2019, at \_\_\_:\_\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2019, and shall be served on: (a) the Debtors, Windstream Holdings, Inc., 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, Attn.: Kristi M. Moody; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Stephen E. Hessler, P.C., and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: Ross M. Kwasteniet, P.C., Brad Weiland, and John R. Luze; (c) counsel to any statutory committee appointed in these cases; and (d) the Office of The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Paul K. Schwartzberg and Serene Nakano. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Procedures, as set forth in Exhibit 1 attached hereto, are hereby approved.

4. Any transfer of, or declaration of worthlessness with respect to, Beneficial Ownership of Common Stock in violation of the Procedures, including the notice requirements, shall be null and void *ab initio*.

5. In the case of any such transfer of Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, the person or entity making such transfer shall be required to take remedial actions specified by the Debtors, which may include the actions specified in Private Letter Ruling 201010009 (Dec. 4, 2009), to appropriately reflect that such transfer is null and void *ab initio*.

6. In the case of any such declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including the notice requirements, the person or entity making such declaration shall be required to file an amended tax return revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.

7. The Debtors, in their sole discretion and in writing, may retroactively or prospectively waive any and all restrictions, stays, and notification procedures set forth in the Procedures.

8. To the extent that this Interim Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Interim Order shall govern.

9. The requirements set forth in this Interim Order are in addition to the requirements of all applicable laws and do not excuse compliance therewith.

10. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to any order authorizing use of cash collateral or postpetition financing.

11. The requirements set forth in Bankruptcy Rule 6003 are deemed inapplicable to the Motion.

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

13. Notwithstanding anything to the contrary, the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

15. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

White Plains, New York  
Dated: \_\_\_\_\_, 2019

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THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Procedures for Transfers of and Declarations of  
Worthlessness With Respect to Beneficial Ownership of Common Stock**

**PROCEDURES FOR TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
WITH RESPECT TO BENEFICIAL OWNERSHIP OF COMMON STOCK**

The following procedures apply to transfers of Common Stock:<sup>1</sup>

- a. Any entity (as defined in section 101(15) of the Bankruptcy Code) that currently is or becomes a Substantial Shareholder must file with the Bankruptcy Court, and serve upon: (i) Windstream Holdings, Inc., 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, Attn.: Kristi M. Moody; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Stephen E. Hessler, P.C., and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: Ross M. Kwasteniet, P.C., Brad Weiland, and John R. Luze; (iii) counsel to any statutory committee appointed in these cases; (iv) the Office of The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014; and (v) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”), a declaration of such status, substantially in the form of **Exhibit 1A** attached to these Procedures (each, a “Declaration of Status as a Substantial Shareholder”), on or before the later of (1) 30 calendar days after the date of the Notice of Interim Order, and (2) ten calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed.
- b. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would (i) result in an increase in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership, or (ii) result in an entity or individual becoming a Substantial Shareholder, the parties to such transaction must file with the Bankruptcy Court and serve upon the Notice Parties an advance written declaration of the intended transfer of Common Stock, substantially in the form of **Exhibit 1B** attached to these Procedures (each, a “Declaration of Intent to Accumulate Common Stock”).
- c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would (i) result in a decrease in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership, or (ii) result in an entity or individual ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Bankruptcy Court and serve upon the Notice Parties an advance written declaration of the intended transfer of Beneficial Ownership of Common Stock, substantially in the form of **Exhibit 1C** attached to these Procedures (each, a “Declaration of Intent to

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



Transfer Common Stock,” and together with a Declaration of Intent to Accumulate Common Stock, a “Declaration of Proposed Transfer”).

- d. The Debtors shall have 30 calendar days after receipt of a Declaration of Proposed Transfer to file with the Bankruptcy Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize the Tax Attributes. If the Debtors file an objection, such transaction will remain ineffective unless the Debtors withdraw such objection or such transaction is approved by a final and non-appealable order of the Bankruptcy Court. If the Debtors do not object within such 30-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. To the extent that the Debtors receive an appropriate Declaration of Proposed Transfer and determine in its business judgment not to object, they shall provide five (5) business days’ notice of that decision to: (a) the agent under the proposed postpetition debtor in possession financing facility; (b) the administrative agents and indenture trustees under the Debtors’ prepetition credit agreement and note indentures; (c) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (d) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (e) Shearman & Sterling LLP, counsel to the Midwest noteholders; and (f) the Committee, and its counsel. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with these Procedures, with an additional 30-day waiting period for each Declaration of Proposed Transfer.
- e. For purposes of these Procedures: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 1,932,090 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock);<sup>2</sup> (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the IRC and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an

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<sup>2</sup> Based on approximately 42,935,334 shares of Common Stock outstanding as of December 31, 2018.

“Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

The following procedures apply to declarations of worthlessness of Beneficial Ownership of Common Stock:

- a. Any person or entity that currently is or becomes a 50-Percent Shareholder must file with the Bankruptcy Court and serve upon the Notice Parties a declaration of such status, substantially in the form of **Exhibit 1D** attached to these Procedures (each, a “Declaration of Status as a 50-Percent Shareholder”), on or before the later of (i) 30 calendar days after the date of the Notice of Interim Order, and (ii) ten calendar days after becoming a 50-Percent Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any 50-Percent Shareholder even if no Declaration of Status as a 50-Percent Shareholder has been filed.
- b. Prior to filing any federal or state tax return or any amendment to such a return, or taking any other action that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a tax year ending before the Debtors’ emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Bankruptcy Court and serve upon the Notice Parties an advance written declaration substantially in the form of **Exhibit 1E** attached to these Procedures (each, a “Declaration of Intent to Claim a Worthless Stock Deduction”) of the intended claim of worthlessness.
- c. The Debtors will have 30 calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Bankruptcy Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors’ ability to utilize the Tax Attributes. If the Debtors file an objection, the filing of the return or amendment with such claim remains ineffective pending a final ruling on the objection (and thereafter in accordance with the ruling and applicable appellate rules and procedures), and the 50-Percent Shareholder shall be required to file an amended tax return revoking such proposed deduction to appropriately reflect that such declaration is void *ab initio*. If the Debtors do not object within such 30-day period, the filing of the return or amendment with such claim will be permitted as set forth in the Declaration of Intent to Claim a Worthless Stock Deduction. To the extent that the Debtors receive an appropriate Declaration of Intent to Claim a Worthless Stock Deduction and determine in their business judgment not to object, they shall provide five (5) business days’ notice of that decision to: (a) the agent under the

proposed postpetition debtor in possession financing facility; (b) the administrative agents and indenture trustees under the Debtors' prepetition credit agreement and note indentures; (c) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (d) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (e) Shearman & Sterling LLP, counsel to the Midwest noteholders; and (f) the Committee, and its counsel. Additional returns or amendments within the scope of this paragraph must be the subject of additional notices in accordance with these Procedures as set forth herein, with an additional 30-day waiting period for each Declaration of Intent to Claim a Worthless Stock Deduction.

- d. For purposes of these procedures a "50-Percent Shareholder" is any person or entity that at any time since December 31, 2015 has had 50 percent or more of the Beneficial Ownership of Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder).

### **NOTICE PROCEDURES**

The following notice procedures apply to these Procedures:

- a. No later than five business days following entry of the Interim Order, the Debtors shall serve by overnight mail, postage prepaid, a notice substantially in the form of **Exhibit 1F** attached to these Procedures (the "Notice of Interim Order"), on: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the agent under the proposed postpetition debtor in possession financing facility; (d) the administrative agents and indenture trustees under the Debtors' prepetition credit agreement and note indentures; (e) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (f) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (g) Shearman & Sterling LLP, counsel to the Midwest noteholders; (h) the Pension Benefit Guaranty Corporation; (i) the United States Attorney's Office for the Southern District of New York; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the attorneys general in the states where the Debtors conduct their business operations; (m) the Federal Communications Commission; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. Additionally, no later than five business days following entry of the Final Order, the Debtors shall serve a Notice of Interim Order modified to reflect that the Final Order has been entered (as modified, the "Notice of Final Order") on the same entities that received the Notice of Interim Order.
- b. All registered holders of Common Stock shall be required to serve the Notice of Interim Order or Notice of Final Order, as applicable, on any holder for whose benefit such registered holder holds such Common Stock down the chain of ownership for all such holders of Common Stock.

- c. Any entity, broker, or agent acting on such entity's or individual's behalf that sells shares of Common Stock to another entity shall be required to serve a copy of the Notice of Interim Order or Notice of Final Order, as applicable, on such purchaser of such Common Stock, as applicable, or any broker or agent acting on such purchaser's behalf.
- d. As soon as is practicable following entry of the Interim Order, the Debtors shall (i) submit a copy of the Notice of Interim Order (modified for publication) for publication in the *Wall Street Journal* (national edition), and (ii) submit a copy of the Notice of Interim Order (modified for publication) to Bloomberg Professional Service for potential publication by Bloomberg.
- e. To the extent confidential information is required in any declaration described in these Procedures, such confidential information may be filed and served in redacted form; provided that any such declarations served on the Debtors shall not be in redacted form. the Debtors shall keep all information provided in such declarations strictly confidential and shall not disclose the contents thereof to any person except to the extent (i) necessary to respond to a petition or objection filed with the Bankruptcy Court, (ii) otherwise required by law, or (iii) that the information contained therein is already public; provided that the Debtors may disclose the contents thereof to its professional advisors, who shall keep all such declarations strictly confidential and shall not disclose the contents thereof to any other person or entity, subject to further Bankruptcy Court order.

*[Remainder of page intentionally left blank.]*

**Exhibit 1A**

**Declaration of Status as a Substantial Shareholder**

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

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

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**DECLARATION OF STATUS AS A SUBSTANTIAL SHAREHOLDER<sup>2</sup>**

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**PLEASE TAKE NOTICE** that the undersigned party is/has become a Substantial Shareholder with respect to the common stock of Windstream Holdings, Inc. or of any Beneficial Ownership therein (the “Common Stock”). Windstream Holdings, Inc. is a debtor and debtor in possession in Case No. 19-22312 (RDD) pending in the United States Bankruptcy Court for the Southern District of New York (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that as of [●], 2019, the undersigned party currently has Beneficial Ownership of [●] shares of Common Stock. The following table sets

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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

<sup>2</sup> For purposes of this declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership (as defined below) of at least 1,932,090 shares of Common Stock (representing approximately 4.5 percent of 42,935,334 shares of Common Stock outstanding as of December 31, 2018); (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code of 1986, as amended and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares	Date Acquired

*(Attach additional page(s) if necessary)*

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are [●].

**PLEASE TAKE FURTHER NOTICE** that pursuant to the *[Interim/Final] Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock*, [Docket No. [●]] (the “Order”), this declaration (this “Declaration”) is being filed with the Bankruptcy Court and served upon: (a) the Debtors and their counsel; (b) the agent under the proposed postpetition debtor in possession financing facility; (c) the administrative agents and indenture trustees under the Debtors’ prepetition credit agreement and note indentures; (d) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (e) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (f) Shearman & Sterling LLP, counsel to the Midwest noteholders; and (g) the Committee, and its counsel.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this

Declaration and accompanying attachments (if any) and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Substantial Shareholder)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_



**Exhibit 1B**

**Declaration of Intent to Accumulate Common Stock**

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

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

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**DECLARATION OF INTENT TO ACCUMULATE COMMON STOCK<sup>2</sup>**

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**PLEASE TAKE NOTICE** that the undersigned party hereby provides notice of its intention to purchase, acquire, or otherwise accumulate (the “Proposed Transfer”) one or more shares of common stock of Windstream Holdings, Inc. or of any Beneficial Ownership therein (the “Common Stock”). Windstream Holdings, Inc. is a debtor and debtor in possession in Case No. 19-22312 (RDD) pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

<sup>2</sup> For purposes of this declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership (as defined below) of at least 1,932,090 shares of Common Stock (representing approximately 4.5 percent of 42,935,334 shares of Common Stock outstanding as of December 31, 2018); (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code of 1986, as amended and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE** that if applicable, on [●], 2019, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Bankruptcy Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of [●] shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Proposed Transfer, the undersigned party proposes to purchase, acquire, or otherwise accumulate Beneficial Ownership of [●] shares of Common Stock or an Option with respect to [●] shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of [●] shares of Common Stock after such transfer becomes effective.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the [Interim/Final] *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock*, [Docket No. [●]] (the “Order”), this declaration (this “Declaration”) is being filed with the Bankruptcy Court and served upon: (a) the Debtors and their counsel; (b) the agent under the proposed postpetition debtor in possession financing facility; (c) the administrative agents and indenture trustees under the Debtors’ prepetition credit agreement and note indentures; (d) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (e) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (f) Shearman & Sterling LLP, counsel to the Midwest noteholders; and (g) the Committee, and its counsel.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have 30 calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn by the Debtors or the Bankruptcy Court approves such transaction by a final and non-appealable order. If the Debtors do not object within such 30-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by the undersigned party that may result in the undersigned party purchasing, acquiring, or otherwise accumulating Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Bankruptcy Court and served in the same manner as this Declaration.

**PLEASE TAKE FURTHER NOTICE** that pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any) and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1C**

**Declaration of Intent to Transfer Common Stock**

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

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

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**DECLARATION OF INTENT TO TRANSFER COMMON STOCK<sup>2</sup>**

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**PLEASE TAKE NOTICE** that the undersigned party hereby provides notice of its intention to sell, trade, or otherwise transfer (the “Proposed Transfer”) one or more shares of common stock of Windstream Holdings, Inc. or of any Beneficial Ownership therein (the “Common Stock”). Windstream Holdings, Inc. is a debtor and debtor in possession in Case No. 19-22312 (RDD) pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

<sup>2</sup> For purposes of this declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership (as defined below) of at least 1,932,090 shares of Common Stock (representing approximately 4.5 percent of 42,935,334 shares of Common Stock outstanding as of December 31, 2018); (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code of 1986, as amended and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE** that if applicable, on \_\_\_\_\_, 2019, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Bankruptcy Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Proposed Transfer, the undersigned party proposes to sell, trade, or otherwise transfer Beneficial Ownership of \_\_\_\_\_ shares of Common Stock or an Option with respect to \_\_\_\_\_ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of \_\_\_\_\_ shares of Common Stock after such transfer becomes effective.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that pursuant the [*Interim/Final*] *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock*, [Docket No. [●]] (the “Order”), this declaration (this “Declaration”) is being filed with the Bankruptcy Court and served upon: (a) the Debtors and their counsel; (b) the agent under the proposed postpetition debtor in possession financing facility; (c) the administrative agents and indenture trustees under the Debtors’ prepetition credit agreement and note indentures; (d) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (e) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (f) Shearman & Sterling LLP, counsel to the Midwest noteholders; and (g) the Committee, and its counsel.



**PLEASE TAKE FURTHER NOTICE** that pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have 30 calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will remain ineffective unless the Debtors withdraw such objection or the Bankruptcy Court approves such transaction by a final and non-appealable order. If the Debtors do not object within such 30-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by the undersigned party that may result in the undersigned party selling, trading, or otherwise transferring Beneficial Ownership of additional shares of Common Stock, each will require an additional notice filed with the Bankruptcy Court, and served in the same manner as this Declaration.

**PLEASE TAKE FURTHER NOTICE** that pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any) and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1D**

**Declaration of Status as a 50-Percent Shareholder**

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

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

---

**DECLARATION OF STATUS AS A 50-PERCENT SHAREHOLDER<sup>2</sup>**

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**PLEASE TAKE NOTICE** that the undersigned party is/has become a 50-Percent Shareholder with respect to the common stock of Windstream Holdings, Inc. or of any Beneficial Ownership therein (the “Common Stock”). Windstream Holdings, Inc. is a debtor and debtor in possession in Case No. 19-22312 (RDD) pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE** that, as of \_\_\_\_\_, 2019, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following

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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

<sup>2</sup> For purposes of this Declaration: (i) a “50-Percent Shareholder” is any person or entity that at any time since December 31, 2015 has owned 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the Internal Revenue Code of 1986, as amended (the “IRC”) and the applicable Treasury Regulations thereunder); (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the IRC and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares	Date Acquired

*(Attach additional pages if necessary)*

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the *[Interim/Final] Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock*, [Docket No. [●]] (the “Order”), this declaration (this “Declaration”) is being filed with the Bankruptcy Court and served upon: (a) the Debtors and their counsel; (b) the agent under the proposed postpetition debtor in possession financing facility; (c) the administrative agents and indenture trustees under the Debtors’ prepetition credit agreement and note indentures; (d) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (e) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (f) Shearman & Sterling LLP, counsel to the Midwest noteholders; and (g) the Committee, and its counsel.

**PLEASE TAKE FURTHER NOTICE** that pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and

accompanying attachments (if any) and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of 50-Percent Shareholder)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1E**

**Declaration of Intent to Claim a Worthless Stock Deduction**

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

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

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**DECLARATION OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION<sup>2</sup>**

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the “Proposed Worthlessness Claim”) with respect to one or more shares of common stock of Windstream Holdings, Inc. or of any Beneficial Ownership therein (the “Common Stock”). Windstream Holdings, Inc. is a debtor and debtor in possession in Case No. 19-22312 (RDD) pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

<sup>2</sup> For purposes of this declaration: (i) a “50-Percent Shareholder” is any person or entity that at any time since December 31, 2015 has owned 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the Internal Revenue Code of 1986, as amended (the “IRC”) and the applicable Treasury Regulations thereunder); (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the IRC and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



**PLEASE TAKE FURTHER NOTICE** that, if applicable, on \_\_\_\_\_, 2019 the undersigned party filed a Declaration of Status as a 50-Percent Shareholder with the Bankruptcy Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Proposed Worthlessness Claim, the undersigned party proposes to declare for [federal/state] tax purposes that \_\_\_\_\_ shares of Common Stock became worthless during the tax year ending \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the [*Interim/Final*] *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock*, [Docket No. [●]] (the “Order”), this declaration (this “Declaration”) is being filed with the Bankruptcy Court and served upon: (a) the Debtors and their counsel; (b) the agent under the proposed postpetition debtor in possession financing facility; (c) the administrative agents and indenture trustees under the Debtors’ prepetition credit agreement and note indentures; (d) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (e) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (f) Shearman & Sterling LLP, counsel to the Midwest noteholders; and (g) the Committee, and its counsel.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, the undersigned party acknowledges that the Debtors have 30 calendar days after receipt of this Declaration to object to the Proposed Worthlessness Claim described herein. If the Debtors file an objection, such

Proposed Worthlessness Claim will not be effective unless the Debtors withdraw such objection or the Bankruptcy Court approves such action by a final and non-appealable order. If the Debtors do not object within such 30-day period, then after expiration of such period the Proposed Worthlessness Claim may proceed solely as set forth in this Declaration.

**PLEASE TAKE FURTHER NOTICE** that any further claims of worthlessness contemplated by the undersigned party each will require an additional notice filed with the Bankruptcy Court to be served in the same manner as this Declaration, and are subject to an additional 30-day waiting period.

**PLEASE TAKE FURTHER NOTICE** that pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any) and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1F**

**Notice of Interim Order**

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

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

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**NOTICE OF (A) DISCLOSURE PROCEDURES APPLICABLE TO CERTAIN  
HOLDERS OF COMMON STOCK, (B) DISCLOSURE PROCEDURES FOR  
TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO  
COMMON STOCK AND (C) FINAL HEARING ON THE APPLICATION THEREOF**

**TO: ALL ENTITIES (AS DEFINED BY SECTION 101(15) OF THE BANKRUPTCY CODE) THAT MAY HOLD BENEFICIAL OWNERSHIP OF COMMON STOCK OF WINDSTREAM HOLDINGS, INC. (THE “COMMON STOCK”).**

**PLEASE TAKE NOTICE** that on February 25, 2019 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed petitions with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of or exercise control over property of or from The Debtors’ estates.

**PLEASE TAKE FURTHER NOTICE** that on the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock*, [Docket No. [●]] (the “Motion”).

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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

**PLEASE TAKE FURTHER NOTICE** that on [●], 2019, the Bankruptcy Court entered the *Interim Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock*, [Docket No. [●]] (the “Order”) approving procedures for certain transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock, as set forth in **Exhibit 1** attached to the Order (the “Procedures”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Order, a Substantial Shareholder or potential Substantial Shareholder may not consummate any purchase, sale, or other transfer of Common Stock, or Beneficial Ownership of Common Stock, in violation of the Procedures, and any such transaction in violation of the Procedures shall be null and void *ab initio*.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Order, a 50-Percent Shareholder may not claim a worthless stock deduction with respect to Common Stock, or Beneficial Ownership of Common Stock, in violation of the Procedures, and any such deduction in violation of the Procedures shall be null and void *ab initio*, and the 50-Percent Shareholder shall be required to file an amended tax return revoking such proposed deduction to appropriately reflect that such declaration is void *ab initio*.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Order, the Procedures shall apply to the holding and transfers of Common Stock, or any Beneficial Ownership of Common Stock, by a Substantial Shareholder or someone who may become a Substantial Shareholder.

**PLEASE TAKE FURTHER NOTICE** that upon the request of any entity, the proposed notice, solicitation, and claims agent for the Debtors, Kurtzman Carson Consultants LLC, will

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<sup>2</sup> Capitalized terms used in this Order and not immediately defined have the meanings given to such terms in the Motion, the First Day Declaration, or the Procedures as applicable.

provide a copy of the Order and a form of each of the declarations required to be filed by the Procedures in a reasonable period of time. Such Order and declarations are also available via PACER on the Bankruptcy Court's website at <https://ecf.nysb.uscourts.gov> for a fee, or by accessing the Debtors' restructuring website at <http://www.kccllc.net/windstream>.

**PLEASE TAKE FURTHER NOTICE** that the final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2019, at \_\_:\_\_.m., prevailing Eastern Time. Any objections or responses to entry of the final order shall be filed no later than \_\_\_\_\_, 2019, at 4:00 p.m., prevailing Eastern Time, and served on the following parties: (a) the Debtors, Windstream Holdings, Inc., 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, Attn.: Kristi M. Moody; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Stephen E. Hessler, P.C., and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: Ross M. Kwasteniet, P.C., Brad Weiland, and John R. Luze; (c) counsel to any statutory committee appointed in these cases; and (d) the Office of The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Paul K. Schwartzberg and Serene Nakano.

**PLEASE TAKE FURTHER NOTICE THAT FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THE ORDER SHALL CONSTITUTE A VIOLATION OF, AMONG OTHER THINGS, THE AUTOMATIC STAY PROVISIONS OF SECTION 362 OF THE BANKRUPTCY CODE.**

**PLEASE TAKE FURTHER NOTICE THAT ANY PROHIBITED PURCHASE, SALE, OTHER TRANSFER OF, OR DECLARATION OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK, BENEFICIAL OWNERSHIP THEREOF, OR OPTION WITH RESPECT THERETO IN VIOLATION OF THE ORDER IS**

**PROHIBITED AND SHALL BE NULL AND VOID *AB INITIO* AND MAY BE PUNISHED  
BY CONTEMPT OR OTHER SANCTIONS IMPOSED BY THE COURT.**

**PLEASE TAKE FURTHER NOTICE** that the requirements set forth in the Order are in addition to the requirements of applicable law and do not excuse compliance therewith.

Dated: \_\_\_\_\_, 2019  
New York, New York

/s/

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

- and -

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

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit B**

**Proposed Final Order**



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

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

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**FINAL ORDER APPROVING  
NOTIFICATION AND HEARING PROCEDURES  
FOR CERTAIN TRANSFERS OF AND DECLARATIONS  
OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) approving the Procedures related to transfers of, and declarations of worthlessness with respect to, Beneficial Ownership of Common Stock, and (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to, Beneficial Ownership of Common Stock in violation of the Procedures shall be null and void *ab initio*, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28

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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kcellc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Procedures, as set forth in **Exhibit 1** attached to the Interim Order [Docket No. [●]], are hereby approved on a final basis.
3. Any transfer of, or declaration of worthlessness with respect to, Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, shall be null and void *ab initio*.
4. In the case of any such transfer of Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, the person or entity making such transfer shall be required to take remedial actions specified by the Debtors, which may include the actions specified in Private Letter Ruling 201010009 (Dec. 4, 2009), to appropriately reflect that such transfer is null and void *ab initio*.
5. In the case of any such declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including the notice requirements, the person or entity making such declaration shall be required to file an amended tax return

revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.

6. The Debtors, in their sole discretion and in writing, may retroactively or prospectively waive any and all restrictions, stays, and notification procedures set forth in the Procedures.

7. To the extent that this Final Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Final Order shall govern.

8. The requirements set forth in this Final Order are in addition to the requirements of applicable law and do not excuse compliance therewith.

9. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

10. Notwithstanding the relief granted in this Final Order, any payment made by the

Debtors pursuant to the authority granted herein shall be subject to any order authorizing use of cash collateral or postpetition financing.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding anything to the contrary, the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

White Plains, New York  
Dated: \_\_\_\_\_, 2019

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THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE