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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> , ¹)	Case No. 19-22312 (RDD)
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS' MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS AUTHORIZING THE DEBTORS
TO CONTINUE AND RENEW THEIR SURETY BOND PROGRAM**

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"):

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, authorizing the Debtors to continue and renew their Surety Bond Program (as defined herein) in the ordinary course of business consistent with

¹ 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



historical practice. 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 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 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and rule 9013-1(a) 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

claims and noticing agent at <http://www.kcellc.net/windstream>. The location of the Debtors’ service address

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

for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

the Debtors' business, their capital structure, and the circumstances leading to these chapter 11 filings is contained in the First Day Declaration.

The Debtors' Surety Bond Program

8. In the ordinary course of business, certain statutes, rules, and regulations require that the Debtors provide surety bonds to certain third parties, often to governmental units or other public agencies, to secure the Debtors' payment or performance of certain obligations (the "Surety Bond Program"). These include, among other things, obligations related to rights of way, "pole attachments," and utilities permits necessary to operate a national telecommunications company. Failing to provide, maintain, or timely replace their surety bonds will prevent the Debtors from undertaking essential functions related to their operations.

9. The Debtors have outstanding surety bonds issued by Argonaut Insurance Company, Aspen Insurance Company, Berkley Insurance Company, and RFI Insurance Company (collectively, the "Sureties"). As of the Petition Date, the Debtors have approximately 655 surety bonds totaling \$34.5 million outstanding. The premiums for the surety bonds generally are determined on an annual basis and are paid by the Debtors when the bonds are issued and annually upon each renewal (the "Premiums"). The Debtors believe they are current on all Premium payments and will pay any outstanding amounts as they come due in the ordinary course of business. The total estimated Premiums for the Debtors' surety bonds is approximately \$452,591.00 per year. The Debtors request authority to continue paying the Premiums in the ordinary course of business on a postpetition basis, including any prepetition obligations related thereto, to ensure uninterrupted coverage under the Surety Bond Program.

10. The Debtors obtain their surety bonds through their surety broker, Lockton Companies (the "Surety Broker"). The Surety Broker assist the Debtors in, among other things,

obtaining the surety bonds and evaluating bond offerings. They also assist the Debtors with the procurement and negotiation of the surety bonds, enabling the Debtors to obtain the bonds on advantageous terms and at competitive rates. The Debtors pay the Surety Broker a fee for all brokerage services (the “Brokerage Fees”). The Debtors pay the Brokerage Fees on account of brokerage services as part of the Premium payments for each surety bond. The Debtors estimate that these fees account for approximately 25% of the bond Premiums. As of the Petition Date, the Debtors do not believe there are any unpaid prepetition obligations due and owing in connection with the Brokerage Fees. Out of an abundance of caution, however, the Debtors seek authority to honor any prepetition amounts owed in connection with the Brokerage Fees and to pay any Brokerage Fees that may arise on a postpetition basis in the ordinary course of business to ensure uninterrupted coverage under the Surety Bond Program.

11. The purpose of the surety bond is to shift the risk of the Debtors’ nonperformance or nonpayment from the Debtors to a surety. A surety bond is unlike an insurance policy in that if a surety incurs a loss on a surety bond, such surety is entitled to recover the full amount of that loss from the principal (*i.e.*, the applicable Debtor). The Surety Bond Program is backed by various indemnities from the Debtors, which are memorialized in surety indemnity agreements (the “Surety Indemnity Agreements”). Pursuant to the Surety Indemnity Agreements, the Debtors have agreed to indemnify the Sureties from any loss, cost, or expense that the Sureties may incur on account of the issuance of any bonds on behalf of the Debtors. Debtors request permission to comply with all material requirements of the Surety Indemnity Agreements.

12. As of the Petition Date, the Debtors do not believe that they have any outstanding prepetition amounts due in connection with the Surety Indemnity Agreements. Out of an abundance of caution, however, to the extent that the Debtors have miscalculated the amounts

due in connection with the Surety Indemnity Agreements, paid amounts that were less than is actually owed, or made any payments prepetition that were rejected, lost, or otherwise not received in full by any applicable Surety, the Debtors request authority to pay any prepetition amounts that may come due in connection with the Surety Indemnity Agreements in the ordinary course of business.

13. Finally, the Debtors must be able to provide financial assurance to state governments, regulatory agencies, and other third parties to continue their business operations during the chapter 11 process. This in turn requires the Debtors to maintain the existing Surety Bond Program, including, without limitation: (a) paying surety bond premiums as they come due; (b) renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of their businesses; (c) requesting releases from duplicate bonding obligations; (d) canceling, revising, and/or supplementing surety bonds; (e) paying any amounts due under the Surety Indemnity Agreements; (f) renewing, supplementing, and/or canceling the Surety Indemnity Agreements as may be necessary; (g) replacing the Surety Broker as may be necessary; and (h) executing other agreements in connection with the Surety Bond Program. Accordingly, the Debtors request that the Court grant the relief requested herein.

Basis for Relief

I. The Surety Bond Program and Surety Indemnity Agreements Are Maintained in the Ordinary Course of the Debtors' Business.

14. Section 363(c)(1) of the Bankruptcy Code provides that a chapter 11 debtor in possession “may enter into transactions . . . [or] may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The Bankruptcy Code does not define the “ordinary course of business.” *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3rd Cir. 1992). In determining whether a transaction is in the ordinary course of business, this

Court and others have adopted the two-part “horizontal dimension” and “vertical dimension” test. *In re Crystal Apparel, Inc.*, 207 B.R. 406, 409 (Bankr. S.D.N.Y. 1997). Under the horizontal dimension test, the court must analyze whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry. *Id.* Under the vertical dimension test, the court must analyze the transaction from the perspective of a hypothetical creditor and determine “whether the transaction subjects a creditor to economic risk of a nature different from those he accepted when he decided to extend credit.” *Id.* In other words, under this two-part test, “the touchstone of ordinariness is thus the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business.” *In re Drexel Burnham Lambert Grp., Inc.*, 157 B.R. 532, 537 (S.D.N.Y. 1993).

15. Here, the Debtors seek to continue their existing Surety Bond Program and to continue to honor their obligations under the Surety Indemnity Agreements in the ordinary course of their prepetition businesses on a postpetition basis. Such obligations include, among other things, maintaining existing surety bonds, renewing bonds as they expire, revising, supplementing, and/or changing the surety bonds as necessary, purchasing new surety bonds as necessary, replacing the Surety Broker as is necessary, and paying applicable Premiums and Brokerage Fees to the extent they arise, honoring any payment or indemnity obligations under the Surety Indemnity Agreements, and renewing and/or supplementing those agreements as is necessary.

16. The Surety Bond Program has been a part of the Debtors’ business operations (and their creditors either should or do know this fact) and all competitors in the Debtors’ line of business would be expected to have similar surety bond programs in order to engage in

international wholesale operations. Further, maintenance of the Debtors' Surety Bond Program and honoring the Debtors' obligations under the Surety Indemnity Agreements is, in many instances, required by statute or regulation for the Debtors to perform work or obtain the necessary licenses to operate their businesses. *See, e.g.*, 19 C.F.R. § 113.62 (U.S. Customs and Border Protection Bureau requirement that parties post bonds in the import business). Accordingly, the Debtors respectfully submit that participation in the Surety Bond Program on a postpetition basis is in the ordinary course of business and under section 363(c)(1) of the Bankruptcy Code does not require notice and a hearing.

II. The Debtors Should Be Authorized to Continue the Surety Bond Program in Accordance with Prepetition Practice Under Sections 105(a) and 363(b) of the Bankruptcy Code.

17. The Debtors believe continuing the Surety Bond Program in the ordinary course of business is within their authority under the Bankruptcy Code. Nonetheless, out of an abundance of caution, the Debtors are seeking Court authority to continue, renew, revise, and supplement the Surety Bond Program and the Surety Indemnity Agreements under sections 105(a) and 363(b) of the Bankruptcy Code. The use of estate property should be authorized under section 363(b) of the Bankruptcy Code so long as a sound business purpose exists for the transaction. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "In evaluating whether a sound business purpose justifies the use, sale or lease of property under section 363(b) [of the Bankruptcy Code], courts consider a variety of factors, which essentially represent a 'business judgment test.'" *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999). Once the debtor articulates a reasonable basis for its business decisions, "courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612,

616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

18. If a debtor’s actions satisfy the business judgment rule, the transaction in question should be approved under section 363(b) of the Bankruptcy Code. Indeed, when applying the “business judgment” standard, courts show great deference to a debtor’s business decisions. *See Integrated Res.*, 147 B.R. at 656 (“Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence.”); *In re First Wellington Canyon Assocs.*, No. 89-593, 1989 WL 106838, at *3 (N.D. Ill. Sept. 8, 1989) (stating that “the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”). In addition, section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

19. To the extent that the Debtors’ participation in the Surety Bond Program and under the Surety Indemnity Agreements is deemed to fall outside the ordinary course of business, the Court should authorize the Debtors to continue the Surety Bond Program and those obligations in connection with the Surety Indemnity Agreements pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. This includes, among other things, maintaining existing surety bonds, renewing bonds as they expire, revising, supplementing, and/or changing the surety bonds as necessary, purchasing new surety bonds as necessary, honoring payment and indemnity

obligations under the Surety Indemnity Agreements, replacing the Surety Broker as may be necessary, and paying applicable accrued prepetition amounts for Premiums and Brokerage Fees and also paying these as they arise on a postpetition basis. As noted above, certain surety bonds along with the related surety indemnity agreements are required by regulation, and in other instances, may be required by contract. Accordingly, the Debtors' failure to provide, maintain, or timely replace the existing surety bonds and Surety Indemnity Agreements, or their failure to purchase new surety bonds and enter into new surety indemnity agreements as may become necessary may jeopardize the Debtors' ability to conduct their operations.

20. Continuing the Surety Bond Program and continuing to perform under the Surety Indemnity Agreements is necessary in order to maintain the Debtors' current terms and existing relationships with the Sureties. Based on the Debtors' current circumstances, it is not likely that the Debtors will be able to renew, or obtain replacement of, existing bonds on terms more favorable than those offered by the Sureties. The process of establishing a new Surety Bond Program, moreover, would be burdensome to the Debtors, and it is doubtful that the Debtors could replace all of their surety bonds in time to avoid defaults or other consequences of the applicable obligations.

21. Based on the foregoing, the Debtors respectfully submit that their participation in the Surety Bond Program, including maintaining existing surety bonds, renewing bonds as they expire, revising, supplementing, and/or changing the surety bonds as necessary, purchasing new surety bonds as necessary, honoring obligations under the Surety Indemnity Agreements, replacing any Surety Broker as necessary, and paying applicable accrued prepetition amounts for Premiums and Brokerage Fees and also paying these as they arise on a postpetition basis, is in the best interest of the Debtors and should be authorized under sections 105(a) and 363(b) of the

Bankruptcy Code to the extent such participation is deemed outside the ordinary course of the Debtors' business. Courts in this district have routinely granted similar relief. *See, e.g., In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (authorizing continuation of surety bond program and honoring obligations related thereto); *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (same); *In re Republic Airways Holdings Inc.*, Case No. 16-10429 (SHL) (Bankr. S.D.N.Y. July 22, 2016) (same); *In re Breitburn Energy Partners LP*, Case No. 16-11390 (SMB) (Bankr. S.D.N.Y. June 15, 2016) (same); *In re Sabine Oil & Gas Corp.*, Case No. 15-11835 (SCC) (Bankr. S.D.N.Y. Aug. 10, 2015) (same).²

Processing of Checks and Electronic Fund Transfers Should Be Authorized

22. The Debtors have sufficient funds to pay the amounts described in this Motion by virtue of expected cash flows during the chapter 11 cases and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment with regard to the Surety Bond Program. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this

² 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 of the Debtors' proposed counsel.

Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

23. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors operations and cause irreparable harm. Furthermore, 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, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

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) the Sureties; 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

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

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

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

**INTERIM ORDER AUTHORIZING THE
DEBTORS TO CONTINUE AND RENEW THEIR SURETY BOND PROGRAM**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to continue and renew the Surety Bond Program in the ordinary course of business consistent with historical practice and (b) 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 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

¹ 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.

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

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 Debtors are authorized, but not directed, to maintain the Surety Bond Program in the ordinary course of business on a postpetition basis consistent with historical

practice, including the payment of the Premiums and Brokerage Fees (including any such obligations that arose prior to the Petition Date), performance under the Surety Indemnity Agreements, renewal of or entry into new surety bonds, and execution of other agreements in connection with the Surety Bond Program.

4. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim 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 Interim 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.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the

Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty to inquire otherwise and without liability for following the Debtors' instructions.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all other rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or post-petition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (ii) the other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders).

9. To the extent there is any inconsistency between the terms of any of the DIP Orders and this Interim Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

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 Interim 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 Interim 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 Interim Order.

White Plains, New York

Dated: _____, 2019

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

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

**FINAL ORDER AUTHORIZING THE DEBTORS TO
CONTINUE AND RENEW THEIR SURETY BOND PROGRAM**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a Final Order (this “Final Order”), authorizing the Debtors to continue and renew the Surety Bond Program in the ordinary course of business consistent with historical practice, 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 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

¹ 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.

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

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 Debtors are authorized, but not directed, to maintain the Surety Bond Program in the ordinary course of business on a postpetition basis consistent with historical practice, including the payment of the Premiums and Brokerage Fees (including any such obligations that arose prior to the Petition Date), performance under the Surety Indemnity Agreements, renewal of or entry into new surety bonds, and execution of other agreements in connection with the Surety Bond Program.
3. 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 the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty to inquire otherwise and without liability for following the Debtors' instructions.

5. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

6. Notwithstanding anything in the Motion, the Interim Order, or this Final Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all other rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or post-petition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (ii) the other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders).

7. To the extent there is any inconsistency between the terms of any of the DIP Orders and this Final Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

8. 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.

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

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

11. 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

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE