

**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.)	(Jointly Administered)
)	

**ORDER AUTHORIZING AND ESTABLISHING PROCEDURES FOR
THE COMPROMISE AND SETTLEMENT OF DE MINIMIS CLAIMS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order establishing procedures for compromise and settlement of certain claims, cross-claims, litigation, and causes of action (collectively, the “De Minimis Claims”), without further Court approval, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) 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 this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b) that this Court may decide by a final order consistent with Article III of the United States Constitution; and this Court having found that venue of the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; 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 that no other notice need be provided; and this Court having reviewed the Motion; and upon the record of the hearing held by the Court on the Motion

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, 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.



and all of the proceedings herein; and after due deliberation 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, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to enter into Settlements in accordance with the following Settlement Procedures:

- a. No Settlement will be effective unless it is executed by an authorized representative of the Debtors, subject to the other terms of this Order.
- b. With regard to any Settlement in an amount equal to or less than \$50,000 for: (i) the settlement of a De Minimis Claim, or (ii) in satisfaction of multiple related De Minimis Claims in the aggregate; *provided, however*, that if the Debtors enter into Settlements of De Minimis Claims totaling in excess of \$1,000,000 in the aggregate in any given month, any additional Settlement of De Minimis Claims during such month regardless of amount must comply with the provisions of paragraph (2)(c):
 - i. The affected Debtor or Debtors are authorized to settle such De Minimis Claim or De Minimis Claims (including, for the avoidance of doubt, any related cross-claims) if the terms of the Settlement are reasonable in the judgment of the affected Debtor upon consideration of: (a) the balance between the litigation's possibility of success and the settlement's future benefits; (b) the likelihood of complex and protracted litigation, with its attendant expense, inconveniences, and delay; (c) the paramount interest of the creditors; (d) whether other parties in interest affirmatively support the proposed settlement; (e) the nature and breadth of releases to be obtained by officers and directors; (f) whether the competency and experience of counsel support the settlement; and (g) the extent to which the settlement is the product of arm's-length bargaining;
 - ii. Such affected Debtor or Debtors may, in their discretion, enter into, execute, and consummate a written agreement of Settlement that will be binding on their estates without notice by such Debtor to any third party or further action by this Court.
- c. With regard to any Settlement that is in an amount greater than \$50,000 but does not exceed \$500,000, for: (i) the settlement of a De Minimis Claim; or (ii) in satisfaction of multiple related De Minimis Claims in the aggregate:

- i. A Debtor is authorized to settle such De Minimis Claim or De Minimis Claims (including, for the avoidance of doubt, any related cross-claims) if the terms of the Settlement are reasonable in the judgment of the affected Debtor upon consideration of: (a) the balance between the litigation's possibility of success and the settlement's future benefits; (b) the likelihood of complex and protracted litigation, with its attendant expense, inconveniences, and delay; (c) the paramount interest of the creditors; (d) whether other parties in interest affirmatively support the proposed settlement; (e) the nature and breadth of releases to be obtained by officers and directors; (f) whether the competency and experience of counsel support the settlement; and (g) the extent to which the settlement is the product of arm's-length bargaining, subject only to the noticing and objection procedures set forth herein.
- ii. Before entering into any such Settlement, the Debtors shall give not fewer than fourteen (14) calendar days' advance written notice, by email or facsimile, if available, or overnight courier if email or facsimile are not available, of such proposed Settlement, on a confidential basis, to: (a) the Office of the United States Trustee for the Southern District of New York; (b) Morrison & Foerster LLP, proposed counsel to the Committee; (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) Davis Polk & Wardwell LLP, counsel to the DIP Agent; (f) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (g) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (h) Shearman & Sterling LLP, as counsel to certain noteholders under the indenture for the 6.75% notes due 2028 dated as of February 23, 1998 (the "Midwest Noteholder Group"); (i) any known creditor(s) directly affected by the Settlement; and (j) those parties requesting notice pursuant to Bankruptcy Rule 2002 (each, a "Notice Party" and collectively, the "Notice Parties").
- iii. Such notice will be substantially in the form of the settlement notice attached as Exhibit 1 to Exhibit A attached hereto (the "Settlement Notice"), and will specify (a) the identity of the other party to the Settlement, (b) a summary of the dispute with such other party, including proof of claim numbers, if any, and the types of claims asserted by such party, (c) the terms and amounts for which such claims have been settled, including the priority of such settled claim, (d) whether the Debtors are seeking to release any claims against creditors or third parties, (e) an explanation of why the Settlement of such De Minimis Claim is favorable to the Debtors, their estates,

and their creditors, and (f) copies of any proposed settlement or documents supporting the Settlement.

- iv. The Notice Parties may object to a proposed Settlement by serving such objection no later than 4:00 p.m., prevailing Eastern Time, fourteen (14) calendar days after delivery of a Settlement Notice (the “Objection Deadline”), on or before the Objection Deadline, by first-class mail, email or facsimile, on: (a) 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; (b) proposed counsel to the Committee, Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019, Attn.: Lorenzo Marinuzzi, Brett H. Miller, Todd M. Goren, Jennifer L. Marines, and Erica J. Richards; (c) counsel to the DIP Agent, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn.: Timothy Graulich and Natasha Tsiouris; 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, and otherwise in compliance with the Case Management Procedures approved by this Court.
- v. If no written objection from any Notice Party is properly filed and served by the Objection Deadline, such affected Debtor may, in its discretion, enter into, execute, and consummate a written agreement of settlement that will be binding on their estates without further notice by such Debtor to any third party or further action by this Court.
- vi. If any of the Notice Parties properly and timely object to any Settlement in writing by the Objection Deadline, and the Debtor, in its sole (but reasonable) discretion, still desires to enter into the proposed Settlement with the settling party, the Settlement will not be affected except upon (a) resolution of the objection by the parties in question or (b) further order of this Court after notice and a hearing.
- vii. Should a hearing on a Settlement be required, the Debtors are authorized to schedule their request to approve the Settlement for a hearing at the next scheduled omnibus hearing following the Objection Deadline, or any subsequent hearing, without filing a separate motion or other pleading.
- viii. All time periods set forth in the Notice Procedures shall be calculated in accordance with Bankruptcy Rule 9006.

- d. Any Settlement that is not authorized pursuant to the foregoing procedures, or pursuant to any other order of this Court, will be authorized only upon separate order of this Court upon a motion of the appropriate Debtor(s) served upon the necessary parties in interest.

3. For the avoidance of doubt, under the Settlement Procedures, the Debtors are authorized, but not directed, to fully and finally waive and release claims against Settling Parties, creditors, and third parties to the extent provided by such settlement and authorized pursuant to this Order.

4. The provisions of this Order with respect to prepetition claims against the Debtors shall authorize settlements that fix the amounts and priorities of the settled claims, but nothing in this Order shall be interpreted as authorizing a Debtor to make any payment with respect to a settled prepetition claim except pursuant to the terms of a confirmed plan of reorganization or a separate Order of this Court that authorizes such payment. For the avoidance of doubt, this Order shall authorize payment of postpetition claims.

5. Notwithstanding anything herein to the contrary, the Settlement Procedures shall not apply to (a) claims asserted against the Debtors by any insider or affiliate within the meaning of sections 101(31) and 101(2) of the Bankruptcy Code, respectively, (b) asserted by the Debtors against any insider or affiliate within the meaning of sections 101(31) and 101(2) of the Bankruptcy Code, respectively, or (c) claims arising under chapter 5 of the Bankruptcy Code (other than administrative expense claims under section 503(b) of the Bankruptcy Code, and priority claims under section 507(a) of the Bankruptcy Code).

6. Upon the expiration of the applicable notice period without an objection or upon resolution of any filed objection after the applicable notice period, each Settlement that complies with the Settlement Procedures shall be deemed (i) fair and reasonable, and (ii) to have satisfied the standards under sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

7. Upon the expiration of the applicable notice period without an objection or upon resolution of any filed objection after the applicable notice period, the settlement agreement shall be deemed to be a final order of this Court for all purposes, including for purposes of any appeal.

8. The Debtors shall provide the advisors to the Committee a summary report on a monthly basis beginning with the month ending on April 30, 2019, and each month thereafter, no later than 20 days after the end of each such month of all Settlement amounts paid pursuant to this Order in the month preceding such report, and the total amount paid on account of Settlements in the aggregate, through and including the month preceding such report.

9. Notwithstanding anything to the contrary in the Motion, this Order, the Settlement Procedures or any notice pursuant thereto, the Settlement Procedures shall not apply to (a) worker's compensation claims; (b) claims where there is a judgment entered or settlement already agreed to and signed by all applicable parties prior to the Petition Date; and (c) direct action claims against any of the Debtors' insurers under applicable state law.

10. Nothing in this Order, the Settlement Procedures or any notice pursuant thereto (a) amends, modifies or otherwise alters (i) the terms and conditions of any insurance policies issued or providing coverage to the Debtors and any related agreements (collectively, the "Insurance Policies") including, but not limited to, any provisions (A) requiring certain notice to insurers regarding claims possibly covered under the Insurance Policies, (B) allowing an insurer to assume and/or control the defense or settlement of claims possibly covered under the Insurance Policies, (C) requiring the approval of any insurer prior to settlement of or payment on account of any claims possibly covered under the Insurance Policies, or (D) regarding payment of and liability for self-insured retentions or deductibles; (ii) either the duty or right, if any, under the Insurance Policies or applicable non-bankruptcy law of insurers to (A) pay claims covered by the Insurance

Policies and seek payment or reimbursement from the insured therefor pursuant to the terms of the Insurance Policies, or (B) reduce any payment from insurance proceeds by any amount received by a claimant on account of the same claim from another source including, but not limited to, the Debtors or the Debtors' estates; (b) creates or permits a direct right of action against any of the Debtors' insurers; (c) obligates an insurer to be bound by a Settlement except as provided in any applicable insurance policy; or (d) requires an insurer to pay, in whole or in part, a Settlement except as provided in any applicable insurance policy.

11. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the rights of the Debtors or the Committee 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 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.

12. In the event there is an inconsistency between the Motion and this Order, this Order shall control.

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

14. Notwithstanding anything to the contrary contained herein, 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 granted or approved hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors (such order, the “DIP Order”) and any budget in connection therewith. Notwithstanding anything to the contrary in this Order, in the event of any inconsistency between the terms of this Order and the terms of any applicable DIP Order, the terms of the DIP Order shall govern.

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

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

Dated: White Plains, New York
April 22, 2019

/s/Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Proposed Settlement Notice

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

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)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 19-22312 (RDD)
)	
Debtors.)	(Jointly Administered)
)	

NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that on February 25, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

PLEASE TAKE FURTHER NOTICE that, on [●], 2019, the United States Bankruptcy Court for the Southern District of New York (the “Court”) approved an *Order Authorizing and Establishing Procedures for the Compromise and Settlement of De Minimis Claims* [Docket No. [●]] (the “Order”), whereby this Court authorized the Debtors to settle certain prepetition claims and causes of action brought by or against the Debtors in a judicial, administrative, arbitral, or other action or proceeding (collectively, the “De Minimis Claims”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Settlement Order, any recipient of this notice may object to the proposed settlement within fourteen (14) calendar days of service of this notice. Objections must: (i) **be in writing**; (ii) **be received within fourteen (14) calendar days of service of this notice** (the “Objection Deadline”); and (iii) be submitted by first-class mail, email or facsimile to (a) 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; (b) proposed counsel to the Creditors’ Committee, Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019, Attn.: Lorenzo Marinuzzi, Brett H. Miller, Todd M. Goren, Jennifer L. Marines, and Erica J. Richards; (c) counsel to the DIP Agent, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn.: Timothy Graulich and Natasha Tsiouris; 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. **If you file a written objection with this Court by no later than the Objection Deadline, the Debtors may only settle the De Minimis Claim(s) upon submission of a consensual form of order resolving the objection as between you and the**

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Debtors, or upon further order of this Court approving the settlement of such De Minimis Claim(s).