

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

In re:

WINDSTREAM HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No.: 19-22312 (RDD)

(Jointly Administered)

**ORDER AUTHORIZING THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF WINDSTREAM HOLDINGS, INC., *ET AL.*, TO EMPLOY AND
RETAIN ALIXPARTNERS, LLP AS ITS FINANCIAL ADVISOR
NUNC PRO TUNC TO MARCH 12, 2019**

Upon the unopposed application (the “Application”) of the Official Committee of Unsecured Creditors (the “Committee”)² appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (the “Debtors”) for entry of an order (the “Order”), pursuant to sections 328(a) and 1103 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), authorizing the Committee to employ and retain AlixPartners, LLP (“AlixPartners” or the “Firm”) as the Committee’s financial advisor, *nunc pro tunc* to March 12, 2019; and upon the Declaration of David MacGreevey (the “MacGreevey Declaration”), which is annexed to the Application; and it appearing that this Court has

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 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.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.



jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Application in this district are proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and upon the record of the hearing held by the Court on the Application; and it appearing that AlixPartners is “disinterested” and eligible for retention pursuant to sections 101(14) and 328(c) of the Bankruptcy Code, the compensation terms of the engagement pursuant to the Engagement Letter and as modified herein, are reasonable and appropriate; and this Court having determined that the relief requested in the Application is in the best interests of the Committee; and after due deliberation, and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Application is APPROVED solely to the extent set forth herein.
2. In accordance with sections 328(a) and 1103 of the Bankruptcy Code, the Committee is authorized to employ and retain AlixPartners as its financial advisor in connection with these chapter 11 cases *nunc pro tunc* to March 12, 2019, under the terms and for the purposes set forth and as requested in the Application, the MacGreevey Declaration and the Engagement Letter, as modified herein.
3. AlixPartners is authorized to perform the services enumerated in the Application, the MacGreevey Declaration and the Engagement Letter. The terms of the Engagement Letter, as modified in this Order, are approved, and the Debtors shall be bound by such terms. AlixPartners shall be compensated for the services identified in the Application, the MacGreevey Declaration and the Engagement Letter and reimbursed for out-of-pocket expenses incurred in connection with such services.

4. AlixPartners' fees for services will be based on AlixPartners' standard hourly rates, plus reasonable and necessary expenses, as set forth in the Application, the MacGreevey Declaration and the Engagement Letter. AlixPartners shall be compensated in accordance with and will file reports of compensation earned and expenses incurred on a monthly basis (the "Monthly Statements"), as well as interim and final fee applications for allowance of its compensation and expenses in accordance with the *United States Trustee Fee Guidelines, effective January 30, 1996* (the "Fee Guidelines"), and the Interim Compensation Procedures Order, and shall be subject to sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Local Guidelines.

5. Notwithstanding anything to the contrary in the Engagement Letter, the Application or the MacGreevey Declaration, the Debtors are authorized to indemnify and hold harmless AlixPartners and its affiliates, their respective directors, officers, agents, employees and controlling persons, and each of their respective successors and assigns (collectively, the "Indemnified Persons"), subject to the following conditions:

- a) *all requests of Indemnified Persons (as defined in the Engagement Letter) for the payment of indemnity, contribution or otherwise pursuant to the Engagement Letter during the pendency of these chapter 11 cases shall be made by means of interim and final fee applications filed in accordance with the Bankruptcy Code, the Local Rules, and any order establishing compensation procedures in these cases, and shall be subject to the approval of, and review by, the Court to ensure that such payment conforms to the terms of the Engagement Letter, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Fee Guidelines and the orders of this Court provided, however, that in no event shall any Indemnified Person be indemnified or receive contribution in the case of its own willful misconduct, gross negligence, breach of fiduciary duty, self-dealing and/or bad faith; and*
- b) *in no event shall any Indemnified Person be indemnified or entitled to contribution if the Debtors, or a representative of the estate, their estates, or the Committee asserts a claim for, and the Court determines by final order that such claim arose out of willful misconduct, gross negligence, breach of fiduciary duty, self-dealing and/or bad faith on the part of that or any other Indemnified Persons; and*

c) *in the event that an Indemnified Person seeks reimbursement for attorneys' fees and expenses from the Debtors in connection with the payment of an indemnity claim pursuant to the Engagement Letter, the invoices and supporting time records from such attorneys shall be annexed to AlixPartners' own Monthly Statements, interim and final fee applications, and such invoices and time records shall be subject to the Fee Guidelines for compensation and reimbursement of expenses and the approval of the Court without regard to whether such professional has been retained under sections 327 or 1103 of the Bankruptcy Code and without regard to whether such professional's services satisfy section 330(a)(3)(C) of the Bankruptcy Code.*

6. Notwithstanding anything to the contrary in the Engagement Letter, AlixPartners' liability, including but not limited to lost profits, consequential, indirect, punitive, exemplary or special damages, arising in tort, contract or otherwise, shall not be limited in the case of AlixPartners' own willful misconduct, gross negligence, breach of fiduciary duty, self-dealing and/or bad faith.

7. The Committee and AlixPartners are authorized and empowered to take all necessary actions to implement the relief granted in this Order.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to this Order or AlixPartners' services for the Committee.

9. To the extent there is an inconsistency between this Order, the Engagement Letter and the Application, the terms of this Order shall govern.

10. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: May 16, 2019
White Plains, New York

/s/Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE