

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE:	)	
	)	Chapter 11
WINDSTREAM HOLDINGS, INC. et al.,	)	
	)	Case No. 19-22312 (RDD)
	)	
Debtors	)	(Jointly Administered)

**AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY**

COMES NOW the Jicarilla Apache Nation (the Nation), by and through its attorneys, Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A., and makes a limited appearance in this matter to request relief pursuant to 11 U.S.C. § 1362(d) from the Automatic Stay allowing it to continue to pursue its pending action in Jicarilla Apache Nation Court. As grounds for this Amended Motion, the Nation states:

**I. INTRODUCTION**

The Nation is a federally-recognized Indian Tribe organized under the Indian Reorganization Act of June 18, 1934. On August 3, 2018, the Nation filed an action in Jicarilla Apache Nation Court against Valor Telecommunications of Texas, LLC, d/b/a/ Windstream. In that action, the Nation seeks to acquire through exercise of its power of eminent domain the telecommunications system assets located on Nation Lands serving members of the Jicarilla Apache Nation and members of the public residing on Nation lands. The Nation also asserts related claims for trespass and breach of contract related to the telecommunications' assets continued and continuing occupation of Nation lands and electric utility poles in the absence of an applicable attachment agreement and following expiration of a franchise agreement for use of Tribal rights-of-way. The pending Tribal Court matter including all claims for relief will hereinafter be referred to as the Tribal Court Eminent Domain Proceeding.



Because Valor Telecommunications of Texas, LLC provides telecommunications service in the area, the Nation initially named Valor Telecommunications of Texas, LLC (a subsidiary of Windstream Holdings, Inc.) as a defendant in the Tribal Court Eminent Domain Proceeding believing Windstream to be the owner of the telecommunications assets the Nation seeks to acquire. Valor Telecommunications of Texas, LLC disclosed, however, in its Answer to the Nation's original complaint that it does not own the telecommunications assets the Nation seeks to acquire. The Nation now understands that Uniti Group, Inc. (Uniti) owns the telecommunications assets, but has a lease agreement with Valor Telecommunications of Texas, LLC. The Nation has thus named Uniti as a defendant, and now seeks to acquire the telecommunications assets from Uniti. A copy of the Nation's First Amended Complaint is attached hereto as Exhibit A.<sup>1</sup>

Although the Nation's action is primarily directed at Uniti, Valor Telecommunications of Texas, LLC, and Windstream Holdings, Inc. (collectively, "Windstream") are also proper defendants in the Tribal Court Eminent Domain Proceeding due to Windstream's apparent leasehold interest.

Windstream filed its petition in this matter on February 25, 2019, and the automatic stay ostensibly now prohibits the Nation from proceeding with its condemnation action. This Court should, however, grant the Nation relief from the automatic stay and permit the Nation to proceed with its pending eminent domain proceeding.

The Nation's pending Tribal Court Eminent Domain Proceeding is primarily directed at a third party, will not interfere with this matter, and will not prejudice the interests of Windstream

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<sup>1</sup> Valor Telecommunications of Texas, LLC represented that CSL New Mexico System, LLC owns the telecommunications assets. The Nation has thus also named CSL as a defendant.

creditors. Moreover, the Nation's proper exercise of its power of eminent domain in furtherance of the public welfare far outweighs any interest Windstream would have in staying the proceeding, and staying it would not further the policies underlying the automatic stay. The Court should accordingly grant the Nation relief from the automatic stay under 11 U.S.C. § 362(d)(1).

## **II. STANDARD**

With some exceptions, the filing of a bankruptcy petition operates to stay the commencement or continuation of actions against the debtor. *See* 11 U.S.C. § 362(a). Section 362(d) provides, however, a mechanism through which interested parties may obtain relief from the automatic stay. Of significance here, § 362(d) provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

....

“The burden of proof on a motion to lift or modify the automatic stay is a shifting one. Section 362(d)(1) requires an initial showing of cause by the movant, while Section 362(g) places the burden of proof on the debtor for all issues [with one exception not applicable here] . . . .” *In re Sonmax Indus.*, 907 F.2d 1280, 1285 (2d. Cir. 1990); *see also* 11 U.S.C. § 362(g).

“Although the term ‘for cause’ is not defined in the bankruptcy code, the Second Circuit has adopted 12 factors to consider when deciding whether or not to lift a stay in order that litigation may continue to completion in another tribunal.” *Schneiderman v. Bogdanovich*, 292 F.3d 104, 110 (2d. Cir. 2002). Those factors are:

(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of

action; (5) whether the debtor's insurer has assumed full responsibility for [a defense]; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether the movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) [the] impact of the stay on the parties and the balance of harms.

*Id.* at 110 n.1.

Not every one of these factors will be relevant in every case. The ultimate determination whether to lift a stay depends upon the facts underlying a given motion. *Id.* at 110 (internal citation omitted). “[T]he decision of whether to lift the stay is committed to the discretion of the bankruptcy judge.” *In re Sonnax Indus.*, 907 F.2d 1280, 1286 (2d. Cir. 1990) (internal quotation marks and brackets omitted).

### **III. THE COURT SHOULD GRANT RELIEF FROM THE STAY FOR CAUSE UNDER § 362(d)(1), ALLOWING THE NATION TO PROCEED WITH ITS PENDING ACTION.**

Many of the relevant factors weighing in favor of relief from the stay apply here. Of particular significance, the Nation’s Tribal Court Eminent Domain Proceeding is not connected to and does not interfere with the bankruptcy proceeding, the action primarily involves a third party, and the action will not prejudice the interest of Windstream’s creditors. *See Schneiderman*, 292 F.3d at 110 n.1. The principal goal of the Nation’s action is to acquire telecommunications assets not owned by Windstream – and, of course, compensate defendants in that proceeding for the value of those assets. Under the Jicarilla Apache Nation Code, the Nation is required to name as defendants all parties who have an interest in the property sought to be acquired. *See* J.A.N. Code § 2-19-17(D). Because Windstream potentially has a leasehold interest in the telecommunications assets, it must be named as a defendant in the Nation’s action. But the assets

the Nation seeks to acquire through its power of eminent domain are owned by a separate entity (Uniti). The action thus primarily involves a third party.

To the extent the Nation acquires any interest from Windstream, Windstream will be justly compensated for its interest. The Nation's eminent domain claim accordingly effectively has no impact on the bankruptcy estate or connection to this proceeding. The Nation's claims for trespass and breach of contract also primarily concern Uniti, given that they stem from the continued occupation of the telecommunications assets (owned by Uniti) on the Nation's property in the absence of an applicable pole attachment agreement and following expiration of a franchise agreement authorizing use of Tribal rights-of-way. *See Exhibit A, Counts II-III.* Thus, allowing the action to proceed in the Nation's courts will not interfere with the interests of Windstream's creditors or this bankruptcy proceeding.

The Jicarilla Apache Nation Court also has the necessary expertise to hear the action, which arises under the laws of the Nation, and to handle the acquisition of the telecommunications assets, which are located on Nation lands. *See Schneiderman, 292 F.3d at 110 n.1.*

Finally, the balance of the harms weighs strongly in favor of the Nation. The Nation primarily seeks to acquire telecommunications assets not owned by Windstream located on Nation lands. *See Schneiderman, 292 F.3d at 110 n.1.* That acquisition has little connection to Windstream and should not be delayed by Windstream's complicated bankruptcy proceedings.

Because Windstream does not own the assets at issue, it has little interest in staying the pending eminent domain action, whereas the stay has a significant and unjustified impact on the Nation, which could endure a lengthy delay in its acquisition of assets from a third party.

Indeed, the policies underlying the automatic stay have no application here. The automatic stay is designed "to prevent a chaotic and uncontrolled scramble for the debtor's assets in a variety

of uncoordinated proceedings in different courts. The stay insures that the debtor's affairs will be centralized, initially, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditors' interests with one another." *Fidelity Mortgage Investors v. Camelia Builders, Inc.*, 550 F.2d 47, 55 (2nd Cir. 1976). "The policy underlying the automatic stay provision is to protect the Trustee from the chaos and the wasteful depletion resulting from multifold, uncoordinated and possibly conflicting litigation." *In re Frigitemp. Corp.*, 8 B.R. 284, 289 (S.D.N.Y. 1981). In this case the Nation is not scrambling for Windstream assets or seeking to deplete the bankruptcy estate, but rather, seeks to justly compensate the defendants to the Tribal Court Eminent Domain Proceeding for any interest it acquires in the telecommunications assets. Insofar as Windstream has an interest in the assets, it will be justly compensated, and there will be no depletion of Windstream's assets.

The fact that the telecommunications assets are owned by a third party makes the stay particularly inappropriate here. But importantly, the automatic stay is often ill-suited for application to eminent domain proceedings. In the absence of a significant interference with the purposes of the bankruptcy proceeding, eminent domain proceedings should be permitted to proceed. *See In re Chicago, Milwaukee, St. Paul, & Pacific Rwy. Co.*, 739 F.2d 1169, 1174 (7<sup>th</sup> Cir. 1984) ("the guiding principle should be to permit the exercise of the power of eminent domain to the greatest extent consistent with the purposes of the reorganization proceeding, but the reorganization court is to make the initial decision as to the appropriate accommodation between them"); *In re F.A. Potts & Co.*, 49 B.R. 517, 519 (E.D. Pa. 1985) ("Here, the purpose of the debtor's bankruptcy case is the orderly, fair, and reasonably prompt liquidation of its remaining property. We find that the proposed state condemnation action is consistent with this purpose.").

Eminent domain proceedings may even be exempted from the automatic stay. Under 11 U.S.C. § 362(b)(4), the filing of a bankruptcy petition does not operate to stay “the commencement or continuation of an action or proceeding by a governmental unit or any organization . . . to enforce such governmental unit's or organization’s police and regulatory power.” This exception has been found to include eminent domain proceedings. *See, e.g., In re Bevelle*, 348 B.R. 812, 820 (N.D. Ala. 2006) (“[T]he Court finds that the County's condemnation of the Debtor's property would be in the furtherance of public health, safety, or welfare of its citizens. Therefore, that action is within the police or regulatory powers of the County. Consequently, the automatic stay that arose when the instant case was filed did not prevent the County from filing a complaint for condemnation and does not stay that action now.”). The need for reliable telecommunications service is directly related to the public health, safety, and welfare and Tribal territory is notoriously underserved across the nation. 47 U.S.C. § 254. And, the Nation has so found via the Tribal legislative council enactment which authorized the filing of the action in the first instance. Further delay in this proceeding could detrimentally affect the health, safety, and welfare of Nation and its members.

In exercising its power to acquire through eminent domain telecommunications assets in furtherance of the best interests of Nation members and residents of Nation lands, the Nation is exercising police and regulatory power, meaning that this Court could properly find that the Nation’s pending eminent domain action has not been stayed under § 362(a). For this reason, and given that multiple factors that weigh in favor of granting the Nation relief from the automatic stay, the Court should find cause to grant the Nation relief from the automatic stay under § 362(d)(1), and permit the Nation to proceed with its pending condemnation action.

#### IV. CONCLUSION

The Court should not permit Windstream's petition to disrupt the Nation's Tribal Court Eminent Domain Proceeding pending in Jicarilla Apache Nation Court, which primarily involves a third party, and has no real connection to this proceeding. Instead, the Court should find cause to grant the Nation relief from the automatic stay, or in the alternative find that the eminent domain proceeding is within the police and regulatory exception under § 362(b)(4), and permit the Nation to continue its prosecution of the pending action in Jicarilla Apache Nation Court.

Dated: June 18, 2019

Albuquerque, New Mexico

/s/ Nann M. Winter

Nann M. Winter

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**EXHIBIT A**

ENDORSED  
BY THE NATION COURT CLERK

OCT 24 2018

JICARILLA APACHE TRIBAL COURT  
BY 

**IN THE COURT OF THE  
JICARILLA APACHE NATION**

**JICARILLA APACHE NATION,**

**Plaintiff,**

**vs.**

**No. CV 2018-00044**

**VALOR TELECOMMUNICATIONS OF TEXAS, LLC,  
d/b/a WINDSTREAM COMMUNICATIONS  
SOUTHWEST, CSL NEW MEXICO SYSTEM, LLC,  
UNITI GROUP, INC., WINDSTREAM HOLDINGS, INC.,  
AND UNKNOWN OWNERS OR CLAIMANTS OF THE  
PROPERTY INVOLVED,**

**Defendants.**

**FIRST AMENDED COMPLAINT FOR EMINENT DOMAIN, TRESPASS  
AND BREACH OF CONTRACT**

The Jicarilla Apache Nation (Nation) by and through their attorneys, Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A., for its First Amended Complaint for Eminent Domain, Trespass and Breach of Contract states:

**Parties**

1. The Nation is a federally-recognized Indian Tribe organized under the Indian Reorganization Act of June 18, 1934.
2. Upon information and belief, Valor Telecommunications of Texas, LLC, does business as Windstream Communications Southwest, and is a limited liability company organized under the laws of the State of Delaware.
3. Upon information and belief, Windstream Holdings, Inc. is a corporation organized under the laws of the state of Delaware.
4. Upon information and belief, Valor Telecommunications of Texas, LLC is a subsidiary of Windstream Holdings, Inc.

5. Valor Telecommunications of Texas, LLC and Windstream Holdings, Inc. will hereinafter be collectively referred to as “Windstream”.
6. In its answer to the Nation’s Complaint, Valor Telecommunications of Texas, LLC represented that it does not own the telecommunications system serving Nation residents and forming the subject of this action, but rather, has exclusive use of that system pursuant to a Master Lease between Windstream Holdings, Inc., and CSL National, LP.<sup>1</sup>

Windstream’s answer indicated:

Windstream further states that CSL New Mexico System, LLC (“CSL”), a Delaware limited liability company, owns a telecommunications distribution system consisting of fiber optic cable lines, copper cable lines, conduits, telephone poles, and attachment hardware (the “Telecommunications Assets”) located on Nation land primarily in the area in and around Dulce, New Mexico. Valor Telecommunications of Texas, LLC has exclusive use of the Telecommunications Assets pursuant to the terms of a Master Lease between CSL National, LP and Windstream Holdings, Inc., dated April 24, 2015.

7. Upon information and belief, CSL New Mexico System, LLC is a corporation organized under the laws of the state of Delaware.
8. Upon information and belief, CSL New Mexico System, LLC is or was a subsidiary of Windstream Holdings, Inc.
9. After investigating the representation that CSL New Mexico System, LLC owns the system serving the Nation, the Nation is informed and believes that Uniti Group, Inc. (not CSL New Mexico System, LLC or CSL National, LP)(collectively “CSL”) owns the telecommunications system.
10. Upon information and belief, Uniti Group, Inc. (hereinafter “Uniti”) is a corporation organized under the laws of the state of Maryland.

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<sup>1</sup> The Nation submits this First Amended Complaint in response to Windstream’s representation that it does not own the telecommunications system, in order to ensure all proper parties are before the Court.

**General Allegations**

11. Windstream currently supplies telecommunications service to members of the Nation, and members of the public residing on Nation property.
12. The telecommunications system operated by Windstream and owned by Uniti or CSL occupies Nation-owned rights-of-way.
13. Defendants maintain certain lines, attachments, and apparatus on electric utility poles owned by the Nation and operated by the Jicarilla Apache Nation Power Authority (JANPA), a department of the Nation.
14. Windstream was, by assignment, a party to a Franchise Agreement between Contel of the West (d/b/a GTE West) effective November 18, 1991, and the Nation (hereinafter, “the Franchise Agreement”), under which the Nation granted certain construction, maintenance and usage rights.
15. This action is brought by the Nation to acquire by eminent domain the telecommunications system located in Dulce, New Mexico, to remedy Defendants’ trespass on Nation and JANPA electric utility poles, and to address Defendants’ continued occupation of Nation lands despite expiration of the Franchise Agreement.
16. Jurisdiction is proper in this Court under Jicarilla Apache Nation (J.A.N.) Code § 1-1-3 because this matter concerns property located on Jicarilla Apache Nation territory (as defined in J.A.N. Code § 1-1-5), this action arises under the J.A.N. Code, and Windstream has entered and occupied Nation lands.

**Eminent Domain**

17. By Resolution No. 2018-R-092-03, passed March 1, 2018, the Nation determined that it is in the Nation's best interests to manage and control the transmission and distribution of telecommunications serving Dulce, New Mexico and the surrounding areas.
18. Through Resolution No. 2018-R-092-03, the Legislative Council of the Nation authorized the filing of an action in eminent domain in Jicarilla Apache Nation Tribal Court seeking the acquisition of telecommunications system assets located on Nation lands.
19. The Nation accordingly seeks in this action to acquire all telecommunications system assets located on Nation lands, which assets appear to be reflected in a document titled "Valuation Assistance Materials: Jicarilla Indian Project, June 2016" (hereinafter Valuation Materials) provided by Windstream to the Nation in June 2016. An inventory of such system assets as compiled by the Nation's appraiser is attached hereto as Exhibit A.
20. In accordance with Nation Code §§ 2-19-6 and 2-19-8, the Nation has made reasonable and diligent efforts to purchase the telecommunications system via various correspondence and meetings since 2015.
21. More particularly, in December 2015, the Nation submitted data requests to Windstream in an attempt to ascertain the nature and extent of the system assets located on Nation lands.
22. In May 2016, after numerous attempts to obtain a response to the data requests, the Nation sent another letter expressing its frustration with Windstream's failure to respond

and formally provided Windstream with the Nation's notice of intent to file a condemnation action in the Jicarilla Apache Nation Court.<sup>2</sup>

23. In June 2016, Windstream provided the Nation with the Valuation Materials. The materials were not directly responsive to the Nation's December 2015 data request.

24. Among other relevant information requested, Windstream has never provided an accurate number of actual subscribers. And, Windstream's 2014 and 2016 New Mexico Public Regulation Commission reports show only 872 and 541 telephone lines, respectively in the entire Dulce exchange, including subscribers in Lumberton, just outside of Nation lands.

25. Windstream has not been receptive to the Nation's efforts to obtain information relative to the system or the Nation's efforts to purchase the telecommunications system.

26. Windstream has not cooperated in the Nation's efforts to determine the value of the telecommunications system - or to remedy trespass on Nation and JANPA electric utility poles - or to address Windstream's continued occupation of Nation lands despite expiration of the Franchise Agreement.

27. The Nation has accordingly determined that additional efforts to purchase the telecommunications system from Windstream would not be productive.

28. The Nation further determined that there is a compelling need to avoid delay in commencing this condemnation action.

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<sup>2</sup> Windstream's answer filed in this action was the first notice the Nation had of the apparent transfer of the telecommunications assets to a different entity. Indeed, it appears that Windstream may have intentionally misled the Nation in June 2016 when it filed its "Valuation Materials" for assets it likely did not own at that time. The Nation properly provided notice of its intent to condemn in 2016. Out of an abundance of caution, the Nation sent a notice of intent to condemn to CSL and Uniti on October 23, 2018.

**Unauthorized Occupation of Poles**

29. The Nation, through its department, JANPA, owns, operates, and maintains lines of electric utility poles extending in Northern Rio Arriba County, including but not limited to the Jicarilla Apache Nation reservation.
30. The Nation's and JANPA's electric utility poles were acquired by the Nation from the Northern Rio Arriba Electric Cooperative in 2014.
31. At all times since the Nation's acquisition of the electric utility poles in 2014, Defendants have maintained certain lines, attachments, and apparatus on approximately two hundred thirty (230) of the poles the Nation acquired from the Northern Rio Arriba Electric Cooperative.
32. Upon information and belief, prior to 2014, Windstream maintained its lines, attachments and apparatus on the poles pursuant to an agreement with the Northern Rio Arriba Electric Cooperative, under which Windstream was to pay fees for use of the poles.
33. Since at least March 2018, the Nation has attempted to ascertain the extent and value of Defendants' lines, attachments, and apparatus on Nation poles, but has not reached an agreement with Defendants authorizing their use and occupation of the poles or the value of its use and occupation of the poles since 2014.
34. Defendants have not paid fees to the Nation or JANPA to compensate the Nation and JANPA for its occupation of the poles since the Nation acquired the poles in 2014.

**Expiration of Franchise Agreement**

35. The Nation entered into a Franchise Agreement with Contel of the West (d/b/a GTE West), which was effective November 18, 1991.

36. The Franchise Agreement granted certain construction, maintenance, and usage rights for telecommunications service, in return for certain obligations, including but not limited to payment of a franchise fee.
37. On or about September 1, 2000, the Nation, GTE West, and Valor Telecommunications of New Mexico, LLC, entered into an Assignment and Assumption of Franchise and Consent Agreement, under which GTE West assigned its rights under the Franchise Agreement to Valor Telecommunications of New Mexico, LLC and Valor Telecommunications of New Mexico, LLC assumed GTE West's obligations under the Franchise Agreement.
38. Upon information and belief, Valor Telecommunications of New Mexico, LLC subsequently merged into Valor Telecommunications of Texas, LP.
39. Upon information and belief, Valor Telecommunications of Texas, LP subsequently converted to a limited liability company, and now does business as Windstream Communications Southwest.
40. Windstream was thus a party to the Franchise Agreement.
41. The Franchise Agreement was extended by Nation Resolution through May 17, 2009, but was not extended thereafter.
42. Despite expiration of the Franchise Agreement, Windstream continued to occupy Nation lands.
43. Upon their acquisition of the telecommunications assets, CSL and Uniti have occupied Nation lands in the absence of a franchise or other agreement authorizing that occupation.
44. Since at least April 2018, the Nation has attempted to ascertain the extent and value of Defendants' occupation of Nation lands.



45. No Defendant has paid the Nation franchise fees since expiration of the Franchise Agreement.

**COUNT I: EMINENT DOMAIN**

46. The Nation incorporates paragraphs 1-45 as though fully stated herein.

47. This claim is brought pursuant to and in compliance with the Jicarilla Apache Nation's Eminent Domain Code (J.A.N. Code §§ 2-19-1 et seq.).

48. Under Section 2-19-3 of the Jicarilla Apache Nation Code, the Nation has the power to condemn real and personal, tangible and intangible property within the Jicarilla Apache Reservation whenever such real and personal, tangible and intangible property is deemed by resolution of the Jicarilla Apache Nation Legislative Council to be necessary for a public use.

49. Section 2-19-3 of the Jicarilla Apache Nation Code expressly provides that the Nation may acquire, contract for and condemn for use any Utility Facility or Service for the use and control of the Nation, even if the Utility Facility or Service is already committed to a public use.

50. Section 2-19-2(T) of the Jicarilla Apache Nation Code defines "Utility" to include "any plant, property or facility for the supplying and furnishing to or for the public of telecommunication services."

51. Through Resolution No. 2018-R-092-03 passed on March 1, 2018, the Jicarilla Apache Nation Legislative Counsel has properly determined that the acquisition of the telecommunications system serving its members and others who reside on Nation lands is a necessary public use.

52. Through Resolution No. 2018-R-092-03 passed on March 1, 2018, the Nation has properly determined that it is in the Nation's best interest to manage and control the transmission and distribution of telecommunications serving Dulce, New Mexico and surrounding areas.
53. The Nation seeks to acquire the telecommunications system to serve the public use of providing telecommunications service to the members of the Nation and other members of the public who may reside on Nation lands.
54. Nation Code § 2-19-30 expressly identifies as a public use: "any plant, property or facility for the supplying and furnishing to or for the public of telecommunication services."
55. Given Windstream's and Defendants' failure to provide material pertinent to a valuation of the telecommunications system serving the Nation and its unwillingness to discuss the Nation's acquisition of the telecommunications system, the Nation has been unable to agree with Defendants' on what assets comprise the system and accordingly, just compensation.
56. Based on the limited information provided in the Valuation Materials and publicly available information, the Nation's appraiser has advised that just compensation for the telecommunications system is valued between \$800,000 and \$1,800,000.
57. Pursuant to Nation Code § 2-19-7 the Nation requests the court to direct Defendants to designate an appraiser and begin the appraisal process contemplated by that section.
58. Alternatively, pursuant to Nation Code § 2-19-17(B)(10), the Nation requests the court to appoint three commissioners to assess any damages Defendants would sustain as a consequence of the Nation's acquisition of the telecommunications system.

59. The names and addresses of the Defendants who may hold an interest in the systems are:

Uniti Group, Inc.  
10802 Executive Center Drive  
Benton Building, Suite 300  
Little Rock, AR 72211

Windstream Holdings, Inc.  
4001 Rodney Parham Rd.  
Little Rock, AR 72212

CSL New Mexico System, LLC  
4001 Rodney Parham Rd.  
Little Rock, AR 72212

Valor Telecommunications of Texas, LLC  
4001 Rodney Parham Rd.  
Little Rock, AR 72212

Any And All Unknown Owners Or Claimants Of The Property Involved.

#### **COUNT II: TRESPASS**

60. The Nation incorporates the allegations of paragraphs 1-59 as though fully stated herein.

61. The Nation and JANPA own, operate, and maintain lines of electric utility poles on the Jicarilla Apache Nation reservation.

62. Defendants have placed, and maintain certain lines, attachments, and apparatus on Nation and JANPA owned poles.

63. Neither the Nation nor JANPA have given Defendants permission to maintain lines, attachments, and apparatus on such poles.

64. There is no contract between Defendants and the Nation or JANPA allowing any Defendant to maintain lines, attachments, and apparatus on the Nation's poles.

65. Defendants have further occupied real property located within the Jicarilla Apache Nation Reservation for purposes of facilitating the provision of telecommunications service following expiration of the Franchise Agreement authorizing that occupation.

66. There is no contract between Defendants and the Nation or JANPA expressly allowing or otherwise granting Defendants the right to occupy real property located within the Jicarilla Apache Nation Reservation for purposes of facilitating the provision of telecommunications service
67. Defendants have thus intentionally and without justification entered and/or remained on the property of the Nation and JANPA without the express or implied consent or permission of the Nation or JANPA.
68. Defendants have interfered with the rights of the Nation and JANPA to exclusive possession of their property.
69. The Nation and JANPA have suffered damages as a result of Defendants' occupation of Nation lands and JANPA poles without compensation the Nation or JANPA.

### **COUNT III: BREACH OF CONTRACT**

70. The Nation incorporates the allegations of paragraphs 1-69 as though fully stated herein.
71. The Nation entered into a Franchise Agreement with Contel of the West (d/b/a GTE West), which was effective November 18, 1991.
72. Through the 2000 Assignment and Assumption of Franchise and Consent Agreement, Windstream became a party to the Franchise Agreement, and assumed GTE West's obligations under the Franchise Agreement.
73. The Franchise Agreement was extended by Nation Resolution through May 17, 2009, but was not extended thereafter.
74. Defendants have since the expiration of the Franchise Agreement continued to occupy Nation lands.

75. Defendants' continued occupation of Nation lands as though the Franchise Agreement was still in effect created an implied contract under which Defendants were required to pay the Nation franchise fees as though the Franchise Agreement remained in effect.

76. Defendants were not entitled to enjoy the benefits of a franchise agreement after its expiration yet be relieved of the burdens of that agreement.

77. Defendants have not paid the Nation franchise fees since expiration of the Franchise Agreement.

78. The Nation has suffered damages as a proximate result of Defendants' occupation of Nation lands without paying franchise fees.

**WHEREFORE**, the Nation and JANPA respectfully request:

- a. An Order and Judgment of this Court granting the Nation complete ownership and possession of the telecommunications distribution system;
- b. An Order and Judgment determining the just compensation due to Defendants for the system;
- c. That the Court, upon request of the Nation, grant the Nation the right of immediate possession of the telecommunications system and all revenues derived from the system;
- d. An Order compelling Defendants to remove their lines, attachments, and apparatus on JANPA poles;
- e. An award of damages to compensate the Nation and JANPA for Defendants' unauthorized occupation of JANPA property and Nation lands;
- f. An award of franchise fees from the period of 2009 through the present;
- g. An award of interest, attorneys' fees, and costs; and
- h. Any further relief deemed just and appropriate by the Court.

**VERIFICATION**

John Wheeler, being duly sworn, deposes and states on behalf of the Jicarilla Apache Nation that the statements made in this First Amended Complaint are true and correct to the best of his knowledge and belief.



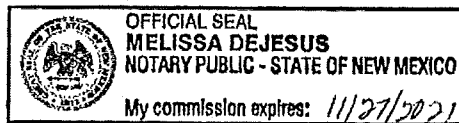
STATE OF NEW MEXICO       )  
  )ss:  
COUNTY OF BERNALILLO    )

Subscribed and sworn to before me this 23rd day of October, 2018, by John Wheeler.

  
NOTARY PUBLIC

My Commission Expires:

11/27/2021



Respectfully Submitted,

STELZNER, WINTER, Warburton,  
Flores, Sanchez & Dawes, P.A.  
Attorneys for Plaintiff  
Post Office Box 528  
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By   
NANN M. WINTER

EXHIBIT A

Jicarilla Apache Nation

Windstream Acquisition - Asset List By Exchange

List based on Valuation Assistance Materials provided by Windstream dated June 2016

26-Jun-18

Exchange: Dulce

Item	Quantity/Mileage
Fiber Optic Cable	3.88 miles*
Copper Cable	54.0 miles
Building	1
Backup Power Generator Set (30 KW)	1
Backup Power Fuel Tank (250 Gallon)	1
Adtran TA 5000 Node	2
Cyan Z33 Optical Transport Node Shelf	2
Adtran TA 5006 Node	1
Cisco 15454 Optical Transport Node	1
Siecor Fiber Patch Panel	1
Lineage DC Power System w/6 rectifier modules	1
DC Power Battery Strings	5
Stromberg-Carlson DCO Remote Voice Switching Equipment	1
Lorain Ring Tone Generator for Voice Switch	1
D4 Channel Bank	1
DSX Panels	6
T1 Repeater Shelves	2
T1 Aggregator Shelf	1
Media converter shelf	1
DSLAM Shelf	1
Fuse & Alarm Panels	3
Calix ODC-2000 Access Cabinet	1
Calix C7 DSLAM Shelf	1
Adtran T1 shelf in ODC-2000 cabinet	1
DSX Panel in ODC-2000 Cabinet	1
Adtran TA 5000 Fiber Fed Remote Cabinet (Dulce North)	1
Pole Attachments on Northern Rio Arriba Electric Cooperative poles	68

Exchange: Cuba

Fiber Optic Cable	0 miles
Copper Cable	10.5 miles
Siemens RLG-90 Remote Voice Switch Cabinet	1

Exchange: Lindrith

Fiber Optic Cable	4.4 miles
Copper Cable	1.0 miles

Exchange: Lybrook

Fiber Optic Cable	0 miles
Copper Cable	12.8 miles

**Exchange: Chama**

Fiber Optic Cable	0 miles
Copper Cable	2.4 miles

**Exchange: Tierra Amarilla**

Fiber Optic Cable	0 miles
Copper Cable	1.4 miles

\*does not include 1.1 miles of fiber on Stone Lake Road on non-tribal land.



**EXHIBIT B**

**(proposed Order)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE:	)	
	)	Chapter 11
WINDSTREAM HOLDINGS, INC. et al.,	)	
	)	Case No. 19-22312 (RDD)
	)	
Debtors	)	(Jointly Administered)

**[PROPOSED] ORDER GRANTING AMENDED MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

THIS MATTER having come before the Court on the Jicarilla Apache Nation (the Nation)'s Amended Motion for Relief from Automatic Stay, and THIS COURT, having considered the Amended Motion, and heard argument with respect to the Amended Motion on July 26, 2019, FINDS THAT the Amended Motion is well-taken, and should be GRANTED.

IT IS THEREFORE ORDERED THAT, pursuant to 11 U.S.C. § 362(d)(1), the Court grants the Nation relief from the automatic stay, allowing the Nation to pursue its claims in *Jicarilla Apache Nation v. Valor Telecommunications of Texas, LLC* (Case No. No. 2018-00044) in Jicarilla Apache Nation Court notwithstanding the pendency of these bankruptcy proceedings.

So ordered.

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THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE:	)	
	)	Chapter 11
WINDSTREAM HOLDINGS, INC. et al.,	)	
	)	Case No. 19-22312 (RDD)
	)	
Debtors	)	(Jointly Administered)

**AMENDED NOTICE OF REQUEST FOR RELIEF FROM AUTOMATIC STAY**

Notice is hereby given that:

1. The Jicarilla Apache Nation Filed an Amended Motion for Relief from Automatic Stay on June 18, 2019.
2. Objections to the Amended Motion must be filed on or before 4:00 p.m. Eastern time on July 19, 2019.
3. Objections must be served on:
  - a. The Honorable Robert D Drain  
300 Quarropas Street  
White Plains, NY 10601-4140
  - b. Office of the United States Trustee for the SDNY  
Attn: Paul K. Schartzberg and Serene Nakano  
201 Varick Street, Suite 1006  
New York NY 10014
  - c. Nann M. Winter  
STELZNER, WINTER, Warburton,  
Flores, Sanchez & Dawes, P.A.  
Post Office Box 528  
Albuquerque, New Mexico 87103  
(505) 938-7770  
[nwinter@stelznerlaw.com](mailto:nwinter@stelznerlaw.com)
  - d. Troy Eid  
Greenberg Traurig, LLP  
1200 17th Street, Suite 2400  
Denver, Colorado 80202  
[eidt@gtlaw.com](mailto:eidt@gtlaw.com)

- e. Paul Kienzle  
Scott & Kienzle, P.A.  
P.O. Box 587  
Albuquerque, NM 87103-0587  
[paul@kienzlelaw.com](mailto:paul@kienzlelaw.com)
4. The Amended Motion for Relief from Automatic Stay will be heard at the Omnibus Hearing scheduled for July 26, 2019, at 1:30 p.m. (Eastern Time).
5. If no objection is timely filed and served in accordance with the Case Management Procedures, the requested relief may be granted pursuant to Local Bankruptcy Rule 9074-1 without a hearing.

Dated: June 18, 2019

Albuquerque, New Mexico

/s/ Nann M. Winter  
Nann M. Winter  
STELZNER, WINTER, Warburton,  
Flores, Sanchez & Dawes, P.A.  
Post Office Box 528  
Albuquerque, NM 87103  
Telephone number: (505) 938-7770  
E-mail address: [nwinter@stelznerlaw.com](mailto:nwinter@stelznerlaw.com)

*Counsel for Jicarilla Apache Nation*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE:	)	
	)	Chapter 11
WINDSTREAM HOLDINGS, INC. et al.,	)	
	)	Case No. 19-22312 (RDD)
	)	
Debtors	)	(Jointly Administered)

**PROOF OF SERVICE**

Nann M. Winter certifies that on June 18, 2019, she filed an AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY and AMENDED NOTICE OF REQUEST FOR RELIEF FROM AUTOMATIC STAY in the above listed case and this Proof of Service electronically, using the ECF filing system for the United States Bankruptcy Court for the Southern District of New York, causing the following individuals/entities to receive these documents: all parties listed on the Master Service List.

I further certify that on June 18, 2019, I served copies of the AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY and AMENDED NOTICE OF REQUEST FOR RELIEF FROM AUTOMATIC STAY by mailing same via U.S. Postal Service to the following:

Honorable Robert D. Drain  
U.S. Bankruptcy Court for  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601-4140

United States Trustee  
Office of the United States Trustee  
Attn: Paul K. Schartzberg and Serene Nakano  
U.S. Federal Office Building  
201 Varick Street, Room 1006  
New York, NY 10014

Dated: June 18, 2019

Albuquerque, New Mexico

/s/ Nann M. Winter

Nann M. Winter

STELZNER, WINTER, WARBURTON,

FLORES, SANCHEZ & DAWES, P.A.

Post Office Box 528

Albuquerque, NM 87103

Telephone number: (505) 938-7770

E-mail address: [nwinter@stelznerlaw.com](mailto:nwinter@stelznerlaw.com)

*Counsel for Jicarilla Apache Nation*