

Hearing Date: July 26, 2019, at 1:30 p.m. (prevailing Eastern Time)  
Objection Deadline: July 19, 2019, at 4:00 p.m. (prevailing Eastern Time)

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*Counsel to the Debtors and Debtors in Possession*

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

	)	
In re:	)	Chapter 11
	)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-22312 (RDD)
	)	
Debtors.	)	(Jointly Administered)
	)	
Windstream Holdings, Inc. and Earthlink	)	
Holdings Corp.,	)	
	)	Adversary Proceeding
Plaintiffs,	)	Adv. Pro. No. 19-08247 (RDD)
	)	
v.	)	
	)	
Charlos Yadegarian, Robert Murray, Cindy	)	
Graham and Larry Graham,	)	
	)	
Defendants.	)	
	)	

**NOTICE OF HEARING ON DEBTORS' MOTION FOR  
ENTRY OF AN ORDER APPROVING THE STIPULATION  
AND AGREED ORDER REGARDING COMPLAINT TO  
EXTEND THE AUTOMATIC STAY OR, IN THE ALTERNATIVE, TO  
OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF [DOCKET NO. 1]**

<sup>1</sup> 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' claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



**PLEASE TAKE NOTICE** that on July 3, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of an Order Approving the Stipulation and Agreed Order Regarding Complaint to Extend the Automatic Stay Or, in the Alternative, to Obtain an Injunction or Other Equitable Relief [Docket No. 1]* (the “Motion”). A hearing (the “Hearing”) on the Motion will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, on **July 26, 2019, at 1:30 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, and the *Final Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Docket No. 392] (the “Case Management Order”) approved by the Bankruptcy Court; (c) be filed electronically with the Bankruptcy Court on the docket of *In re Windstream Holdings, Inc. and Earthlink Holdings Corp. v. Charlos Yadegarian, Robert Murray, Cindy Graham and Larry Graham*, (Adv. Pro. No. 19-08247 (RDD)) by registered users of the Bankruptcy Court’s electronic filing system and in accordance with the General Order M-399 (which is available on the Bankruptcy Court’s website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **July 19, 2019, at 4:00 p.m., prevailing Eastern Time**, by (i) the entities on the Master Service List (as defined in the Case Management Order and

available on the Debtors' case website at <http://www.kccllc.net/windstream>) and (ii) any person or entity with a particularized interest in the subject matter of the Motion.

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served with respect to the Motion, the Debtors shall, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form annexed as **Exhibit A** to the Motion, which order the Bankruptcy Court may enter with no further notice or opportunity to be heard.

**PLEASE TAKE FURTHER NOTICE** that the Hearing may be continued or adjourned thereafter from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing. The Debtors will file an agenda before the Hearing, which may modify or supplement the Motion to be heard at the Hearing.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Motion may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at <http://www.kccllc.net/windstream>. You may also obtain copies of any pleadings by visiting the Bankruptcy Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

*[Remainder of page intentionally left blank]*

Dated: July 3, 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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**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Chapter 11
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WINDSTREAM HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-22312 (RDD)
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Debtors.	)	(Jointly Administered)
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Windstream Holdings, Inc. and Earthlink	)	
Holdings Corp.,	)	
	)	Adversary Proceeding
Plaintiffs.	)	Case No. 19-08247 (RDD)
	)	
v.	)	
	)	
Charlos Yadegarian, Robert Murray, Cindy	)	
Graham, and Larry Graham	)	
	)	
Defendants.	)	
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<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.'s tax identification number are 7717. Due to the large number of 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' 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.

**DEBTORS' MOTION FOR ENTRY OF  
AN ORDER APPROVING THE STIPULATION  
AND AGREED ORDER REGARDING COMPLAINT TO  
EXTEND THE AUTOMATIC STAY OR, IN THE ALTERNATIVE, TO  
OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF [DOCKET NO. 1]**

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**Relief Requested**

1. The Debtors seek entry of an order approving the stipulation and agreed order (the "Stipulation and Order") between the Debtors and plaintiffs Cindy Graham and Larry Graham (the "Plaintiffs"), attached hereto as **Exhibit A**.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the "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 Court in connection with this Complaint to the extent that it is later determined that the 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 basis for the relief requested herein is section 362 of the Bankruptcy Code.

**Basis for Relief**

5. On February 25, 2019 (the "Petition Date"), the Debtors commenced these voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), and are continuing to operate their business and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. Prior to the Petition Date, on August 10, 2018, the Plaintiff commenced in the Eastern District of Arkansas (the “Arkansas District Court”) two shareholder derivative suits, styled as: (a) *Cindy Graham, Derivatively on Behalf of Nominal Defendant Windstream Holdings, Inc., vs. Alan L. Wells, Tony Thomas, Samuel E. Beall, III, Jeannie H. Diefenderfer, Jeffrey T. Hinson, William G. LaPerch, Julia A. Shimer, Michael G. Stoltz, Walter L. Turek, Carol B. Armitage, Larry Laque, Marc F. Stoll, Bob Gunderman, and Windstream Holdings, Inc.*; and (b) *Larry Graham, Derivatively on Behalf of Windstream Holdings, Inc., vs. Anthony W. Thomas, Kristi Moody, Robert E. Gunderman, Alan L. Wells, Jeffrey T. Hinson, Samuel E. Beall, III, William G. LaPerch, Michael G. Stoltz, Jeannie Diefenderfer, Julie A. Shimer, Walter L. Turek, Carol B. Armitage, Larry Laque, Marc F. Stoll, and Windstream Holdings, Inc.* (together, the “AR Derivative Litigation”).

7. Upon the Petition Date, the automatic stay arising under section 362 of the Bankruptcy Code (the “Stay”) came into effect and stayed the AR Derivative Litigation.

8. On April 5, 2019 the Debtors’ filed their *Complaint to Extend the Automatic Stay, or In the Alternative, To Obtain An Injunction or Other Equitable Relief in the above-captioned case in order to extend the Stay* (the “Complaint”) to, *inter alia*, Carol B. Armitage, Samuel E. Beall III, Jeannie H. Diefenderfer, Joseph F. Eazor, Jeffrey T. Hinson, William G. LaPerch, Larry Laque, Kristi Moody, Julie A. Shimer, Marc F. Stoll, Michael G. Stoltz, Tony Thomas, Walter L. Turek, and Alan L. Wells, as they have been named in the AR Derivative Litigation (together, the “AR Derivative Litigation Non-Debtor Defendants”).

9. Following the filing of the Complaint, Plaintiffs in the AR Derivative Litigation agreed to extend the Stay to the AR Derivative Litigation Non-Debtor Defendants, and the Debtor and Plaintiffs have agreed to the Agreed Order and Stipulation attached as Exhibit A. No party in

interest would be materially adversely affected by the relief set forth in the Stipulation and Order. Accordingly, the Debtors respectfully submit that it is appropriate for the Court to approve the Stipulation and Order.

**Notice**

10. Notice of the hearing on the relief requested in the Motion has been provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Local Rules, and is sufficient under the circumstances. Without limiting the forgoing, due notice was afforded, whether by facsimile, electronic mail, overnight courier, or hand delivery, to parties in interest, including (a) the U.S. Trustee and (b) counsel to the Plaintiffs. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*



Dated: July 3, 2019  
New York, New York

*/s/ Stephen E. Hessler*

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*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Stipulation and Order**

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

In re:	)	
	)	Chapter 11
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 19-22312 (RDD)
Debtors.	)	(Jointly Administered)
	)	
Windstream Holdings, Inc. and Earthlink	)	
Holdings Corp.,	)	
	)	Adversary Proceeding
Plaintiffs.	)	Case No. 19-08247 (RDD)
	)	
v.	)	
	)	
Charlos Yadegarian, Robert Murray, Cindy	)	
Graham, and Larry Graham	)	
	)	
Defendants.	)	
	)	

<sup>1</sup> 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' 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.

**STIPULATION AND AGREED ORDER REGARDING COMPLAINT  
TO EXTEND THE AUTOMATIC STAY OR, IN THE ALTERNATIVE, TO  
OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF [DOCKET NO. 1]**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”), Cindy Graham, and Larry Graham (together, the “Plaintiffs,” and collectively with the Debtors, the “Parties”), through their undersigned counsel, hereby enter into this stipulation and agreed order (this “Stipulation and Order”).

**WHEREAS**, the Debtor Defendants<sup>2</sup> and several of their respective directors and officers are named defendants in two shareholder derivative suits pending in the Eastern District of Arkansas. These cases are styled as: (a) *Cindy Graham, Derivatively on Behalf of Nominal Defendant Windstream Holdings, Inc., vs. Alan L. Wells, Tony Thomas, Samuel E. Beall, III, Jeannie H. Diefenderfer, Jeffrey T. Hinson, William G. LaPerch, Julia A. Shimer, Michael G. Stoltz, Walter L. Turek, Carol B. Armitage, Larry Laque, Marc F. Stoll, Bob Gunderman, and Windstream Holdings, Inc.*; and (b) *Larry Graham, Derivatively on Behalf of Windstream Holdings, Inc., vs. Anthony W. Thomas, Kristi Moody, Robert E. Gunderman, Alan L. Wells, Jeffrey T. Hinson, Samuel E. Beall, III, William G. LaPerch, Michael G. Stoltz, Jeannie Diefenderfer, Julie A. Shimer, Walter L. Turek, Carol B. Armitage, Larry Laque, Marc F. Stoll, and Windstream Holdings, Inc.* (together, the “AR Derivative Litigation”).

**WHEREAS**, 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. On March 12, 2019, the Office of the United States

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<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the *Complaint to Extend the Automatic Stay or, in the Alternative, to Obtain an Injunction or Other Equitable Relief* [Case No. 19-08247 (RDD); Docket No. 1] (the “Complaint”).

Trustee for the Southern District of New York appointed an official committee of unsecured creditors in these chapter 11 cases [Case No. 19-22312 (RDD); Docket No. 136].

**WHEREAS**, on the Petition Date, the automatic stay arising under section 362 of the Bankruptcy Code (the “Stay”) came into effect and stayed the AR Derivative Litigation with respect to the Debtor Defendants.

**WHEREAS**, on April 5, 2019, the Debtors filed the Complaint to extend the Stay to the Non-Debtor Defendants in the AR Derivative Litigation (as well as in the AR Class Action Matter and the GA Class Action Matter).

**WHEREAS**, the Non-Debtor Defendants in the AR Derivative Litigation (the “AR Derivative Litigation Non-Debtor Defendants”) are:

- Carol B. Armitage (former Windstream Holdings director);
- Samuel E. Beall III (current Windstream Holdings director);
- Jeannie H. Diefenderfer (current Windstream Holdings director);
- Joseph F. Eazor (former Earthlink director and Earthlink Chief Executive Officer);
- Jeffrey T. Hinson (current Windstream Holdings director);
- William G. LaPerch (current Windstream Holdings director);
- Larry Laque (former Windstream Holdings director);
- Julie A. Shimer (former Earthlink director and current Windstream Holdings director);
- Marc F. Stoll (former Earthlink director and former Windstream Holdings director);
- Michael G. Stoltz (current Windstream Holdings director);
- Tony Thomas (current Windstream Holdings director and Chief Executive Officer);
- Walter L. Turek (former Earthlink director and current Windstream Holdings director);
- Kristi Moody (current Windstream Holdings General Counsel); and
- Alan L. Wells (current Windstream Holdings director)

**WHEREAS**, Plaintiff has accepted service of the Complaint, and the Parties have agreed to a resolution of the Complaint, solely with respect to the AR Derivative Litigation, as set forth in this Stipulation and Order, and the Parties hereby seek the Court’s approval and entry of this

Stipulation and Order to resolve the Complaint, as it concerns the AR Derivative Litigation, as set forth below.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and between the Parties, which agreement, when “so-ordered” by the Court, shall constitute an order of the Court, as follows:

1. The Stay shall stay the AR Derivative Litigation with respect to the AR Derivative Litigation Non-Debtor Defendants.

2. The Plaintiffs shall file this Stipulation and Order in the court in which the AR Derivative Litigation is pending within ten business days after the Court’s approval and entry of this Stipulation and Order.

3. The Parties each acknowledge and agree that this Stipulation and Order does not constitute an admission or concession of liability by any Party.

4. This Stipulation and Order shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.

5. This Stipulation and Order shall not be modified, altered, amended, or vacated without written consent of all Parties hereto. Any such modification, alteration, amendment, or vacation, in whole or in part, shall be subject to the approval of the Court.

6. Each of the undersigned counsel represents that she or he is authorized to execute this Stipulation and Order on behalf of her or his respective client.

7. This Stipulation and Order may be executed in multiple counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original, but all of which together shall constitute one instrument.

8. The Debtors are authorized to take all actions necessary to effectuate the relief provided by this Stipulation and Order.

9. The terms and conditions of this Stipulation and Order shall be immediately effective and enforceable upon its approval and entry by the Court.

10. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Order.

11. The Adversary Proceeding is hereby dismissed without prejudice with respect to the AR Derivative Plaintiffs, Cindy Graham, and Larry Graham.

*[Remainder of page left intentionally blank]*

**AGREED AND SUBMITTED BY:**

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

Cristine Pirro Schwarzman

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*Counsel to the Plaintiffs*

**SO ORDERED** this \_\_\_\_ day of  
\_\_\_\_\_, 2019

\_\_\_\_\_  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE