

Hearing Date: July 26, 2019, at 10:00 a.m. (prevailing Eastern Time)  
Objection Deadline: July 23, 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)

**NOTICE OF HEARING ON DEBTORS' APPLICATION  
AUTHORIZING AND APPROVING THE EMPLOYMENT  
AND RETENTION OF ALTMAN VILANDRIE & COMPANY  
AS TELECOM SERVICES CONSULTANTS EFFECTIVE  
NUNC PRO TUNC TO THE PETITION DATE AND MOTION TO  
FILE UNDER SEAL CERTAIN CONFIDENTIAL CLIENT INFORMATION**

**PLEASE TAKE NOTICE** that on July 12, 2019, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' Application Authorizing and Approving the Employment and Retention of Altman Vilandrie & Company as Telecom Services Consultants Effective Nunc Pro Tunc to the Petition Date and Motion to File Under Seal Certain*

<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.





*Confidential Client Information* (the “Application”). A hearing (the “Hearing”) on the Application 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 10:00 a.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Application 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 this Court; (c) be filed electronically with this Court on the docket of *In re Windstream Holdings, Inc.*, Case 19-22312 (RDD) by registered users of this Court’s electronic filing system and in accordance with the General Order M-399 (which is available on this Court’s website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **July 23, 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.kcellc.net/windstream>) and (ii) any person or entity with a particularized interest in the subject matter of the Application.

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served with respect to the Application, the Debtors shall, on or after the Objection Deadline, submit to this Court an order substantially in the form annexed as **Exhibit A** to the Application, which order this 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 Application to be heard at the Hearing.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Application 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 this Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: July 12, 2019  
New York, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

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<sup>2</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.



### **Relief Requested**

1. The Debtors seek entry of an order (the “Order”) substantially in the form attached hereto as **Exhibit A**: (a) authorizing and approving the employment and retention of Altman Vilandrie & Company (“AV&Co.”) to serve as the Debtors’ telecom services consultant effective *nunc pro tunc* to the Petition Date (as defined herein), in accordance with the terms and conditions set forth in that certain engagement letter, dated July 11, 2019 (the “Engagement Letter”), annexed as **Exhibit 1** to **Exhibit A** attached hereto; (b) modifying the time-keeping requirements of Rule 2016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”); and (c) authorizing the Debtors to redact and file under seal the names of certain confidential advisory clients (as described herein, the “Confidential Client Information”) of AV&Co. in connection with the concurrently filed Altman Declaration (as defined below).

2. In support of this application, the Debtors submit the declaration of Rory Altman (the “Altman Declaration”), attached hereto as **Exhibit B**.

### **Jurisdiction and Venue**

3. The United States Bankruptcy Court for the Southern District of New York 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 this Court in connection with this application to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.



5. The bases for the relief requested herein are sections 105(a), 107(b), 327(a), 330, and 331 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 2014 and 9018, and Local Rules 2014-1, 2016-1, and 9018-1(a).

### **Background**

6. 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 in 18 states. Additionally, the Debtors supply core transport solutions on a local and long-haul fiber network spanning approximately 150,000 miles and have over 11,000 employees.

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. A detailed description of certain facts and circumstances surrounding these chapter 11 cases is set forth 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* [Docket No. 27] (the “First Day Declaration”), filed on the Petition Date.

8. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 56]. 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 United States Trustee for the Southern District of New York appointed the creditors’ committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 136].

### **AV&Co.’s Qualifications**

9. The Debtors seek to retain AV&Co. as their telecom services consultant based on its qualifications, skill, and expertise in services core to the success of the Debtors’ businesses.



AV&Co. is a 150-person strategy consulting firm that specializes in the telecommunications, media, and technology (TMT) industries. AV&Co. helps TMT companies develop business strategies and improve operations, and helps investors consider investments in these companies. The company has offices in Boston, New York City, and San Francisco.

10. AV&Co. is familiar with the Debtors and their businesses and has developed significant relevant experience and expertise regarding the Debtors business operations. After the Petition Date, the Debtors engaged AV&Co. to consult on strategies to improve the sales and marketing performance of Windstream's ILEC operations. This work was below the monetary cap for ordinary course professionals. The Debtors have now asked AV&Co. to provide additional services and such services will require payments that exceed the cap

11. The Debtors believe that the services of AV&Co. are necessary to enable the Debtors to maximize the value of their estates and to reorganize successfully. Further, AV&Co. is well qualified and able to represent the Debtors in a cost-effective, efficient and timely manner and AV&Co. will be providing services solely related to improving the Debtors' operations and telecommunications strategy.

### **Scope of Services**<sup>3</sup>

12. Subject to further order of this Court, and as set forth more fully in the Engagement Letter, in consideration for the compensation contemplated therein, AV&Co. has and will continue rendering the following telecom consulting services (the "Services"), pursuant to the Engagement Letter:

- a. Prioritizing areas for network investment across the entire footprint at the census block level based on financial return targets.

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<sup>3</sup> To the extent that this application and the terms of the Engagement Letter are inconsistent, the terms of the Engagement Letter shall control.



- b. Creating a dynamic financial forecast and planning model that will calculate the financial impact of staged network upgrades.
- c. Synthesizing findings and implications into a comprehensive network upgrade strategy.

13. Should the Debtors request AV&Co. to perform additional services not contemplated by the Engagement Letter, the Debtors and AV&Co. shall mutually agree upon such services and fees for those services in writing, in advance. In the event the additional services require an amendment to the Engagement Letter, the amendment will be subject to this Court's review upon application by the Debtors.

14. The Debtors respectfully request that AV&Co.'s retention be made effective *nunc pro tunc* to the Petition Date so that AV&Co. may be compensated for the services it has provided before this application is heard by this Court. AV&Co. has provided services to the Debtors in advance of approval of this application in anticipation that its retention would be approved *nunc pro tunc* to the Petition Date. The Debtors submit that these circumstances are of a nature warranting retroactive approval.

#### **Professional Compensation**

15. AV&Co.'s retention by the Debtors is conditioned upon its ability to be retained in accordance with its customary terms and conditions of employment, including the proposed compensation arrangements set forth in the Engagement Letter. These compensation arrangements are consistent with, and typical of, arrangements entered into by AV&Co. and other professional services firms of comparable expertise and experience for engagements of similar size and complexity. Thus, the Debtors believe that these compensation arrangements are market based and reasonable considering AV&Co.'s knowledge and experience.

16. Pursuant to the terms and conditions of the Engagement Letter, and subject to this Court's approval, AV&Co. intends to apply for compensation for the services set forth in the



Engagement Letter in accordance with the terms of the Engagement Letter. AV&Co. also intends to apply for reimbursement of actual and necessary costs and expenses incurred by AV&Co. in connection with all services performed on behalf of the Debtors according to its customary reimbursement policies, subject to any modifications to such policies that AV&Co. may be required to make to comply with the *U.S. Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330* (the “Fee Guidelines”), sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Interim Compensation Order, and any further order of this Court, both in connection with the Application and the interim and final fee applications to be filed by AV&Co. in these chapter 11 cases. Moreover, AV&Co. intends to make a reasonable effort to comply with the Office of the United States Trustee for the Southern District of New York’s requests for information and additional disclosures as set forth in the Fee Guidelines.

17. Subject to this Court’s approval, and pursuant to the terms and conditions of the Engagement Letter, the Debtors understand that AV&Co. intends to apply to this Court for allowance of compensation and reimbursement of expenses for the services in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Interim Compensation Order, and any other applicable procedures and orders of this Court. Further, the Debtors are seeking the relief in this Application solely out of an abundance of caution: although the cost of these services that will be borne by the estates is comparatively low as compared to other estate professionals, this engagement nonetheless surpasses the monetary cap for ordinary course professionals.

18. Pursuant to the Engagement Letter, the Debtors have agreed to pay AV&Co. a fee of \$83,000 per week for a team of three dedicated consultants, oversight from three senior



consultants, and intermittent specialist time. It is estimated that the engagement will take 8 to 9 weeks. In addition, the Debtors are obligated to pay an additional charge of \$108,000 for the AV&Co.'s proprietary Automated Route Optimizer technology.

19. In addition to the fees set forth above, pursuant to the Engagement Letter, the Debtors are obligated to pay AV&Co. an amount equal to 4.5% of professional fees to cover analytical tools and software, data sets, and technology costs, plus reimburse AV&Co. for all direct expenses, primarily travel, interview incentives, document production and project-specific purchased research, as well as AV&Co.'s reasonable attorneys' fees associated with gaining bankruptcy court approval for this engagement and for complying with any other bankruptcy court-related obligations.

20. AV&Co. maintains records in support of any actual, necessary costs and expenses incurred in connection with rendering the services in these chapter 11 cases. However, because it is not the practice of AV&Co. professionals to keep detailed time records in one-tenth-of-an-hour (0.1) increments as customarily kept by attorneys who are compensated subject to approval of this Court, the Debtors respectfully request that AV&Co.'s professionals to provide the following in its monthly, interim and final fee applications: (a) a narrative summarizing each of the three project categories listed above and the services rendered under each project category and (b) a summary, by project category, of services rendered to the Debtors, which identifies each professional rendering services and the number of hours expended by each professional.

21. The Debtors submit that, given the nature of the services to be provided by AV&Co., such billing format and associated time details will be sufficient for the Debtors and other parties in interest to make informed judgments regarding the nature and appropriateness of AV&Co.'s fees and expenses.



**No Duplication of Services**

22. The Debtors intend that the services of AV&Co. will complement and not duplicate the services rendered by any other professional retained in these chapter 11 cases. AV&Co. understands that the Debtors have retained and may retain additional professionals during the term of their engagement, and agrees to work cooperatively with such professionals to seek to avoid duplicative work conducted by the professionals on behalf of the Debtors.

**AV&Co.'s Disinterestedness**

23. To the best of the Debtors' knowledge, and except as disclosed herein and in the Altman Declaration or schedules thereto: (a) AV&Co. has no connection to the Debtors, their significant creditors, or other significant related parties except as may be disclosed in the Altman Declaration; (b) AV&Co. does not hold any interest adverse to the Debtors' estates for the matters for which AV&Co. is to be employed; and (c) AV&Co. is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code.

24. The Debtors have been informed that AV&Co. will conduct an ongoing review of its files to ensure that no disqualifying circumstances arise. If any new relevant facts or relationships are discovered, AV&Co. will supplement its disclosure to this Court.

25. AV&Co. has not provided, and will not provide, any professional services to any of the creditors or other parties in interest with respect to any matter adverse to the Debtors in these chapter 11 cases.

26. During the pendency of these chapter 11 cases, other than incidental services by its affiliates, AV&Co. will not use independent contractors to perform services under the Engagement Letter without separate Court approval. The fees and expenses with respect to incidental services



by its affiliates will be included in the fee applications of AV&Co. unless subject to a separate retention application and order

**Basis for Relief**

27. The Debtors seek authority to employ and retain AV&Co. as its telecom services consultant under section 327 of the Bankruptcy Code, which provides that a debtor is authorized to employ professional persons “that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtors] in carrying out the [debtors’] duties under this title.” 11 U.S.C. § 327(a). Section 1107(b) of the Bankruptcy Code elaborates upon sections 101(14) and 327(a) of the Bankruptcy Code in cases under chapter 11 of the Bankruptcy Code and provides that “a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.” 11 U.S.C. § 1107(b).

28. As discussed above, to the best of the Debtors’ knowledge, AV&Co. is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code and does not hold or represent an interest adverse to the Debtors’ estates.

29. Further, the compensation arrangements appropriately reflect the nature and scope of the services, AV&Co.’s substantial experience and expertise in the provision of such services in the chapter 11 cases, and the compensation arrangement typically agreed to by AV&Co. and other leading professional services firms for engagements of this nature.

30. AV&Co. intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to this Court’s approval and in compliance with sections 330 and 331 of the Bankruptcy Code and



applicable Bankruptcy Rules, Local Rules, the Interim Compensation Order, and any other applicable procedures and orders of this Court, with certain limited modifications.

31. The Debtors request that the requirements of Local Rule 2016-1 be tailored to the nature of AV&Co.'s engagement and its compensation arrangements. Denying the relief requested herein would deprive the Debtors of the assistance of a highly qualified professional services firm that also happens to be the Debtors' historical and current telecom services consultant. The Debtors would be forced to engage a new independent telecom services consultant lacking the same understanding of their businesses and restructuring initiatives—both already in progress and soon to be implemented. Forcing the Debtors to engage a new independent telecom services consultant would therefore require additional time and resources, and would disadvantage the Debtors and all parties in interest. Accordingly, the Debtors respectfully submit that the services provided by AV&Co. are vital to the success of these chapter 11 cases and request that this Court approve the Engagement Letter in substantially the forms attached hereto.

32. Pursuant to section 107(b) of the Bankruptcy Code, a bankruptcy court must protect entities from potential harm that may result from the disclosure of certain confidential information.

11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

*Id.* Section 105(a) of the Bankruptcy Code, in turn, codifies the inherent equitable powers of bankruptcy courts and empowers them 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).

33. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides,



in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018. Further, Local Rule 9018-1(a) provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” S.D.N.Y. Bankr. L.R. 9018-1(a).

34. If the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, “the court is *required* to protect a requesting party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994); accord *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75–76 (Bankr. D. Del. 2006) (citing *Orion Pictures*, 21 F.3d at 27). Stated differently, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate “good cause.” *Orion Pictures*, 21 F.3d at 28. “Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.” *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005). Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Orion Pictures*, 21 F.3d at 27. Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” See *In re Glob. Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003).

35. Confidential commercial information is information that, if disclosed, would result in an “unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *Alterra Healthcare*, 353 B.R. at 75 (quoting *Orion Pictures*, 21 F.3d at 27–28); see *Glob. Crossing*, 295 B.R. at 725 (holding that the purpose of Bankruptcy Rule 9018



is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See Orion Pictures*, 21 F.3d at 27–28 (holding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is “confidential” and “commercial” in nature).

36. AV&Co. is seeking to preserve the confidentiality of a limited number of confidential engagements in these chapter 11 cases. Here, the Confidential Client Information is commercially sensitive information to AV&Co. and its clients. Keeping client information confidential is critical to AV&Co.’s business since, like many firms that provide consulting services, depends on preserving good relationships with its existing clients and attracting new clients. A strong client relationship means maintaining the confidentiality of clients and client information. However, as a boutique consulting firm, public disclosure of the Confidential Client Information could potentially weaken AV&Co.’s existing client relationships to an extent not normally faced by larger, more diversified firms, and would discourage new clients from engaging with AV&Co. Particularly in this instance, in which AV&Co.’s services are highly specialized and operationally-focused in the telecommunications industry, a public release of this Confidential Client Information could be disproportionately damaging.

37. Moreover, AV&Co is engaged in a niche competitive industry and is often involved in non-public transactions. The disclosure of AV&Co.’s involvement before a deal becomes public could potentially move the market, violate securities laws, or disrupt deal negotiations, thereby giving AV&Co.’s competitors an unfair advantage. *See, e.g., In re Borders Grp., Inc.*, 462 B.R. 42, 48 (Bankr. S.D.N.Y. 2013) (sealing identity of key employees and vendors that would



give an unfair advantage to movant's competitors); *In re CTI Foods, LLC*, Case No. 19-10497 (CSS) (Bankr. D. Del. Apr. 8, 2019) [Docket No. 148] (sealing certain confidential information in connection with the retention applications filed by certain of the debtors' proposed retained professionals). Public disclosure of the Confidential Client Information could also potentially harm innocent third parties who have no stake in these chapter 11 cases.

38. As a result, the Debtors believe that authorizing the Confidential Client Information to be filed under seal is the best method to ensure transparency with respect to information disclosure while still preventing the negative implications of public disclosure.

**Nunc Pro Tunc Relief is Warranted**

39. The Debtors believe that employment of AV&Co. effective *nunc pro tunc* to the Petition Date is warranted under the circumstances of these chapter 11 cases so that AV&Co. may be compensated for its services prior to entry of an order approving AV&Co.'s retention. Further, the Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment because AV&Co. has provided, and will continue to provide, valuable services to the Debtors' estates in the interim period.

**Motion Practice**

40. This application includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this application. Accordingly, the Debtors submit that this application satisfied Local Rule 9013-1(a).

**Notice**

41. The Debtors have provided notice of this application to: (a) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at [www.kccllc.net/windstream](http://www.kccllc.net/windstream)) and (b) any person or entity with a particularized interest



in the subject matter of this application. The Debtors respectfully submit that no other or further notice is necessary.

**No Prior Request**

42. No prior request for the relief sought in this application has been made to this or any other court.

*[Remainder of page intentionally left blank.]*



WHEREFORE, the Debtors respectfully requests that this Court enter the Order granting the relief requested herein and such other relief as this Court deems appropriate under the circumstances.

Dated: July 12, 2019  
New York, New York

/s/ Kristi M. Moody  
Kristi M. Moody  
Windstream Holdings, Inc.  
Executive Vice President, General Counsel, and Corporate  
Secretary



**Exhibit A**

**Proposed Order**



**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)
	)	

**ORDER AUTHORIZING AND APPROVING THE EMPLOYMENT AND  
RETENTION OF ALTMAN VILANDRIE & COMPANY AS TELECOM SERVICES  
CONSULTANTS EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE  
AND FILING UNDER SEAL CERTAIN CONFIDENTIAL CLIENT INFORMATION**

Upon the application (the “Application”)<sup>2</sup> of the above-captioned debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”) for entry of an order (this “Order”) authorizing and approving the Debtors to employ and retain Altman Vilandrie & Company (“AV&Co.”) as their consulting services provider effective *nunc pro tunc* to the Petition Date, all as more fully set forth in the Application and the *Declaration of Rory Altman in Support of the Debtors’ Application Authorizing and Approving the Employment and Retention of Altman Vilandrie & Company as Telecom Services Consultants Effective Nunc Pro Tunc to the Petition Date* (the “Altman 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 this Court having

<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.kcellc.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.

<sup>2</sup> Capitalized terms used in this Order and not immediately defined have the meanings given to such terms in the Application.



found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), 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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application was appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard statements in support of the Application at a hearing held before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and this Court having found that AV&Co. neither holds nor represents any interest adverse to the Debtors' estates; and this Court having found that AV&Co. is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code; and any objections to the relief requested herein having been withdrawn with prejudice or overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The Debtors are authorized, pursuant to sections 105(a), 107(b), 327(a), 330, and 331 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rule 2014 and 9018, and Local Rules 2014-1, 2016-1, and 9018-1(a), to employ and retain AV&Co. as their consulting services provider in accordance with the terms and conditions set forth in the Engagement Letter, attached hereto as **Exhibit 1**, incorporated herein by reference, effective *nunc pro tunc* to the Petition Date and to redact and file under seal the Confidential Client Information.



3. The terms and conditions of AV&Co.'s employment as provided in the Engagement Letter are reasonable and are hereby approved. Further, the compensation arrangements, as set forth in the Engagement Letter, are approved and AV&Co. shall be compensated and reimbursed subject to sections 330 and 331 of the Bankruptcy Code in accordance with the terms of the Engagement Letter, subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Interim Compensation Order and any other applicable orders of this Court.

4. AV&Co. shall file fee applications for interim and final allowances of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code.

5. AV&Co. is hereby authorized to keep reasonably detailed time records in half-hour increments and will submit, with any interim or final fee application, together with the time records, a narrative summary, by project category, of services rendered and will identify each professional rendering services, the category of services rendered and the amount of compensation requested.

6. If the Debtors and AV&Co. enter into any agreements for the provision of additional services by AV&Co., the Debtors shall file such agreements with this Court and serve the applicable notice parties. If any parties object within ten (10) days of such new agreements being served, the Debtors shall promptly schedule a hearing before this Court. All additional services shall be subject to the provisions of this Order.

7. Subject to AV&Co.'s compliance with applicable professional standards in its performance of the services, AV&Co. shall use its best efforts to avoid duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases.



8. Prior to any increases in AV&Co.'s rates, AV&Co. shall file a supplemental affidavit with this Court and provide ten (10) business days' notice to the Debtors, the U.S. Trustee and the Creditors' Committee, which supplemental affidavit shall explain the basis for the requested rate increases in accordance with Section 330(a)(3)(F) of the Bankruptcy Code and state whether the Debtors have consented to the rate increase. The U.S. Trustee retains all rights to object to any rate increase on all grounds including, but not limited to, the reasonableness standard provided for in section 330 of the Bankruptcy Code, and all rates and rate increases are subject to review by this Court.

9. Notwithstanding anything in the Application or the Engagement Letter to the contrary, to the extent that AV&Co. uses the services of independent contractors, subcontractors or employees of foreign affiliates or subsidiaries (collectively, the "Contractors"), AV&Co. shall, in these cases: (i) pass-through the cost of such Contractors to the Debtors at the same rate that AV&Co. pays the Contractors; (ii) seek reimbursement for actual costs only; (iii) ensure that the Contractors are subject to the same conflict checks as required for AV&Co.; and (iv) file with this Court such disclosures required by Bankruptcy Rule 2014.

10. Notwithstanding any provision to the contrary in the Engagement Letter, any dispute relating to the services provided by AV&Co. shall be referred to arbitration consistent with the terms of the Engagement Letter only to the extent that this Court does not have, retain or exercise jurisdiction over the dispute, and 28 U.S.C. § 1334(e)(2) shall govern the form for resolving fee disputes.

11. The Debtors are authorized to file (i) the Altman Declaration on the docket of these chapter 11 cases with the Confidential Client Information redacted and (ii) the unredacted versions



of the Altman Declaration under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1.

12. The Confidential Client Information shall remain confidential, shall remain under seal, and shall not be made available to anyone except (i) this Court, (ii) the U.S. Trustee, (iii) counsel for the Debtors and (iii) such other parties as ordered by this Court or as agreed to in writing.

13. Except as ordered by this Court or as agreed to in writing by the Debtors and AV&Co., any pleadings that disclose any of the Confidential Information shall be filed under seal in accordance with this Order and served only on those parties authorized in paragraph 12 above.

14. Any party who receives the Confidential Client Information in accordance with this Order shall not disclose or otherwise disseminate such Confidential Client Information to any other person or entity, including in response to a request under the Freedom of Information Act.

15. This Order is without prejudice to the rights of any party in interest to seek to unseal and make public any portion of the material filed under seal.

16. To the extent that there is any inconsistency between the terms of the Application, the Engagement Letter, or this Order, the terms of this Order shall govern.

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

18. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

White Plains, New York  
Dated: \_\_\_\_\_, 2019

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THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE



**Exhibit 1**

**Engagement Letter**





July 11, 2019

**CONFIDENTIAL**

Mr. Jeff Small  
President – ILEC Consumer, Small and Medium-Sized Business  
Mr. Drew Smith  
Senior Vice President – Financial Planning & Analysis  
Windstream Holdings, Inc  
4001 N Rodney Parham Road  
Little Rock, Arkansas 72212

Regarding: Network Upgrade Strategy Proposal

Dear Jeff and Drew:

Thank you for taking the time to speak with us. Based on our recent conversation, we have prepared this proposal describing how Altman Vilandrie & Company (“AV&Co.”) can assist Windstream Holdings, Inc. (“Windstream” or “Company”) in developing a footprint-wide network upgrade strategy and determining the associated financial impacts.

This proposal contains the following sections:

- Our Understanding of the Situation
- Proposed Scope of Services
- Timing and Fees.

## **Section 1: Our Understanding of the Situation**

Like most ILECs, Windstream is facing challenges in its ILEC segment including increasing revenue and margin pressure, higher churn and lower sales due to strong competition. In 2018, Windstream’s ILEC segment generated \$1.5B in revenues and had 1.4M customers. From 2017-2018, customers and revenues declined by 4% and 2% respectively.

Windstream faces strong competition from MSOs with DOCSIS 3.0 / 3.1 in many geographies. As part of its ongoing growth plan and defense of current revenues, Windstream is evaluating how network upgrades will impact short and long-term financial performance, particularly considering the company’s current strategic and financial decisions. Windstream is examining at least two different network upgrade paths: one that builds fiber-to-the-premise (“FTTP”), resulting in 1 Gbps+ speeds that would provide Windstream with a strong and sustainable position in consumer and business broadband; a second would involve building 5G fixed wireless using mmwave spectrum where available to Windstream.

Windstream has asked AV&Co. to assist in prioritizing areas within its ILEC footprint where FTTP and 5G fixed wireless network investments can earn an attractive financial return and, on the basis of an optimal network upgrade plan, determine the financial impacts on Windstream’s ILEC revenue, expense, and capital expenditures. The optimal network upgrade plan must reflect the technology that produces the best financial return, but also satisfy capital availability, EBITDA and other financial objectives, labor capacity by geography, and other constraints that may arise. Fundamentally, Windstream is seeking assistance in answering the following questions:





1. In which areas should Windstream focus future network enhancement capex and organizational resources? (i.e., “Where do we go next?”)
2. What technology produces a more favorable financial return in different geographies?
3. What will be the financial implications for staged investment across the Windstream footprint given certain organizational resource constraints (e.g., capital, construction crew availability, etc.)?

## **Section 2: Proposed Scope of Services**

We have structured the proposal with three workstreams:

1. Prioritize areas for network investment across the entire footprint at the census block level based on financial return targets (primarily IRR, but also payback period, ultimate penetration, revenue and EBITDA growth, etc.) using our proprietary Automated Route Optimizer (“ARO”) software.
2. Create a dynamic financial forecast and planning model that will calculate the financial impact of staged network upgrades (FTTP and/or 5G fixed wireless in different areas) according to the factors described above and forecast these financial impacts vs. a business-as-usual case
3. Synthesize our findings and implications into a comprehensive network upgrade strategy that we will develop in tandem with Windstream stakeholders for socialization across Windstream leadership, board members, and outside analysts.

We are available to begin this project in mid/late-June and expect the engagement to last approximately 7 to 8 weeks. We will provide regular status updates and interim results throughout the engagement.

### **Workstream 1: Network Build Prioritization**

In Workstream 1, we will identify the most attractive areas for network upgrade (either FTTP or 5G fixed wireless) by leveraging the ARO software and using market-level inputs for competition (based on Windstream’s internal business intelligence and validated with secondary research), expected penetration, and ARPU and Windstream inputs for network build costs and other cost-to-serve inputs (e.g., broadband margins, subscriber acquisition costs, etc.).

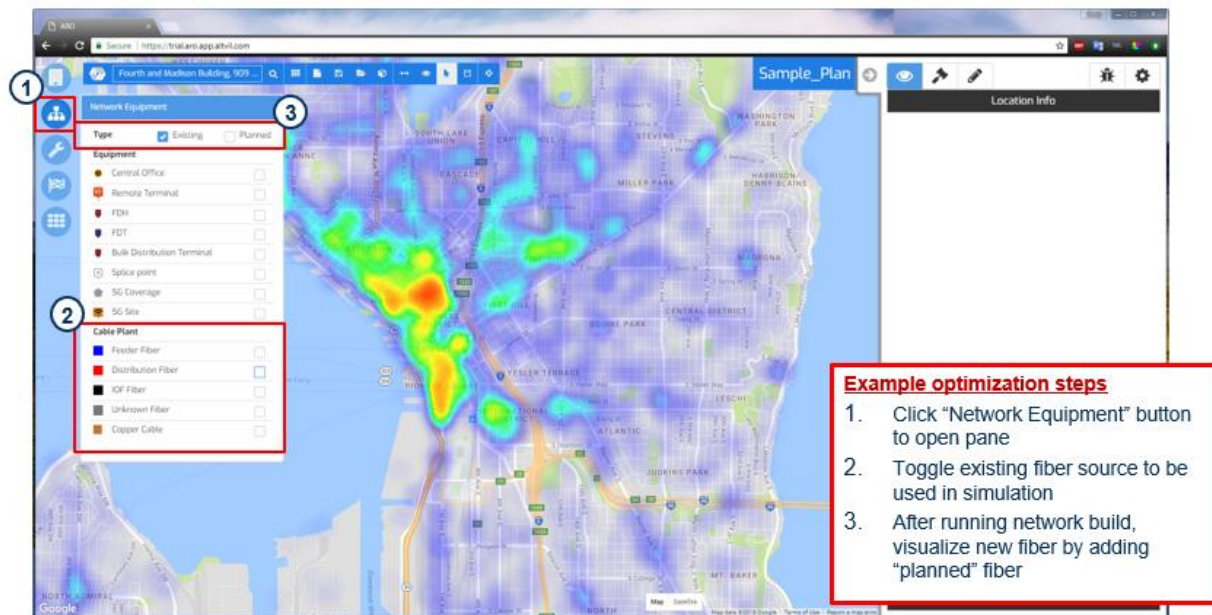
To do this, we will start with a baseline level of performance for Windstream across the ILEC footprint. It is critical that the baseline forecast is a realistic and likely trajectory for the business. The baseline will be built from management’s internal long range financial forecast assuming currently scheduled network upgrades, subject to review and validation by AV&Co. We will use the ARO software to create detailed network deployment plans and associated economics across all census blocks within the footprint. The purpose of this modeling is to identify the most attractive areas in which to deploy network upgrade capital, whether those upgrades are FTTP or 5G fixed wireless. We will then calculate a set of high-level financials for each area, based on the technology chosen, which we will use as an input to the more-detailed financial modeling to be conducted as part of Workstream 2.

We will use the ARO software to determine the optimal extent of network upgrades within a geography. Our inputs will include network upgrade costs, sales, ultimate flow share and ultimate subscriber penetration, ARPU, and other inputs in order to develop an optimized network upgrade plan across consumer and SMB end points. We expect to rely on Windstream’s engineering cost assumptions for build costs by road type, underground vs. aerial, morphology (rural vs. suburban vs. urban, MDUs, etc.), equipment and installation cost elements, etc. with input based on our benchmarks. We will collaborate with Windstream on assumptions for sales rates and expense, marketing expense, product and customer take rates, ultimate penetration, churn rates, ARPU, etc.





### Example ARO Screenshots



The output of this workstream will include several financial "cases" for every geographic unit. These cases will include (a) the base case management plan, (b) FTTP network upgrade plan at IRR intervals, (c) 5G fixed wireless network upgrade plan at IRR intervals, (d) 'best choice' network upgrade plan with IRR floor, and e) FTTP prioritized plan with IRR floor. This will output cost, coverage, penetration, and full financial metrics at a granular geographic level to reflect the range of possible future upgrade scenarios. This data, for every census block, will be the primary input to the financial model created during Workstream 2.

We will also analyze fixed wireless deployment scenarios for covering ~3 million homes passed in areas adjacent to Windstream's existing franchise territory in several markets including Georgia.

## **Workstream 2: Financial Forecast & Planning Tool**

In Workstream 2, we will build a robust, dynamic Excel model to forecast the financial impact of various network upgrade scenarios. The model will allow the user to determine technology choice for the network upgrade for particular geographies or globally, the amount of capital to be expended in a given year, the timeline across which a build should be conducted, a particular IRR floor or intervals, etc. and will output the incremental subscriber win rates (based on the number of "in-play" subscribers in a given period and the level of competition), revenue, capital expenditures (both network build and success-based capex such as the connect cost), OpEx, EBITDA, net income, and free cash flow.

The Excel forecast model will enable users to set inputs that govern organizational constraints such as capital availability, footprint-wide and metro construction crew capacity, back-end organizational capabilities, as well as capex budgets, etc. It will also summarize key profitability metrics such as IRR, NPV, payback period, etc. The model will allow users to toggle: the type of network upgrade, scale and timing by geography. Those choices will in turn have an impact on the revenue realization opportunity.

The deliverable from this workstream will be a model that enables the Windstream team to easily create new network deployment plans that satisfy user-specific capital, organizational, and IRR constraints.





### Workstream 3: Network Upgrade Strategy

In the final workstream of the engagement, we will develop a comprehensive network upgrade strategy working with Windstream stakeholders. This workstream will include active planning with the Windstream working team and review meetings with a broader group of Windstream stakeholders as directed by you.

The output of this workstream will include a detailed report containing the recommended network investment plan covering the footprint and supporting research and analysis. We will be available to present and defend our findings to the executive team and Board upon request.

Over the course of the engagement, we expect regular communication with the Windstream working team in addition to weekly check-ins and bi-weekly stakeholder readouts. All deliverables will be in a detailed PowerPoint format supported by Excel models as appropriate.

### Section 3: Timing & Costs

Based on your verbal authorization, we will plan a tentative start for July 8<sup>th</sup> although we may begin submitting data requests prior to then. We will staff this project with a team of 3 dedicated consultants in addition to project management and oversight from Rory Altman, Mary Yarbrough Matt Del Percio and intermittent specialist time from our ARO team and in support our Analytics Innovation Team. The weekly professional fees for a team of this makeup is \$83,000 per week. We have included two scope options for your review.

	States	Estimated Duration	Estimated Professional Fees
Professional Fees	Full territory, all 18 states	8-9 weeks	\$664K
ARO Software	Automated Route Optimizer ("ARO") technology charge	6 weeks	\$108K
<b>Total professional fees + ARO technology charge</b>			<b>\$772K</b>

Direct expenses, primarily travel, primary interview incentives, document production, and project-specific purchased research (if required), as well as our reasonable attorney fees associated with gaining bankruptcy court approval for this engagement and for complying with any other bankruptcy court-related obligations as a result of our engagement, are not included in the professional fees and will be billed at cost. Expenses typically run 10% to 15% of the professional fees. In addition to direct expenses, a fee equal to 4.5% of professional fees is assessed to all projects to cover analytical tools and software, our industry data sets, and technology costs. The 4.5% fee is applied only to professional fees.

An invoice equal to 25% of the expected project fees will be issued upon project commencement. Invoices will be issued on a monthly basis thereafter. Payment is due within 30 days.






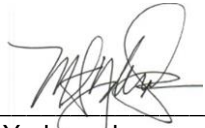
Jeff and Drew, we look forward to working with you, Brad, and other members of your team on this important engagement.

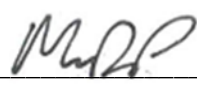
This agreement is subject to our Standard Terms And Conditions, attached as Exhibit A. If the foregoing fairly states our understanding, please indicate your agreement by causing your duly authorized officer to sign where indicated below.

Sincerely,

Altman Vilandrie & Company

By:   
Rory Altman  
Director

By:   
Mary Yarbrough  
Senior Advisor

By:   
Matt Del Percio  
Principal

Accepted and Agreed as of \_\_\_\_\_, 2019:

**Windstream Holdings, Inc.**

By: \_\_\_\_\_  
Name: Jeff Small  
Title: President – ILEC Consumer, Small and Medium-Sized Business  
Address:  
Windstream Holdings, Inc  
4001 N Rodney Parham Road  
Little Rock, Arkansas 72212





**EXHIBIT A**

**CONFIDENTIAL**

**TERMS AND CONDITIONS**

- 1 Agreement. It is agreed that Altman Vilandrie & Company ("AV&Co.") will provide the consulting services (the "Services") described in the accompanying proposal (the "Proposal") to which this Exhibit A is attached (the Proposal and this Exhibit A are hereinafter referred to collectively as this "Agreement"), to the client named in the Proposal (the "Client"), as an independent contractor, provided that Client pays, in a timely manner, all of the fees and expenses set forth in this Agreement. This Agreement constitutes the entire and sole agreement between Client and AV&Co. and merges all prior and contemporaneous communications with respect to the subject matter hereof. In the event of any conflict, ambiguity or inconsistency between this Exhibit A and any other document to which this Exhibit A may be annexed or which may be annexed to this Exhibit A, including any terms and conditions on Client's purchase orders or otherwise, the terms and conditions of this Exhibit A shall govern. This Agreement shall not be modified except by a later written agreement signed by both parties.
- 2 Term and Termination. Subject to earlier termination as provided below, this Agreement will commence on the date that the Proposal is signed by Client and will expire when the Services have been performed and Client has paid AV&Co. in full for the Services. Either party may terminate this Agreement in the event of a material breach of this Agreement by the other party (which shall include any failure by Client to make timely payment of any fees or reimbursement of expenses due under this Agreement), which breach is not cured within ten days after written notice by the non-breaching party. Client shall pay AV&Co. for all fees and expenses incurred through the effective date of termination. Notwithstanding any other provision of this Agreement, the following provisions of this Agreement will survive any termination of this Agreement: Section 5 (Taxes and Payment), Section 6 (Non-Solicitation of Personnel), Section 7 (Confidentiality), Section 8 (Deliverables), Section 10 (Warranty and Liability), Section 11 (Dispute Resolution; Equitable Relief) and Section 14 (Closure).
- 3 Changes and Delays. Client may make changes in the scope, timing or manner of providing the Services, provided that any such change shall be subject to the written approval of AV&Co., which approval may be conditioned upon, among other things, an adjustment to the consideration payable to AV&Co. hereunder. In the event that a party's performance is delayed or suspended as a result of circumstances beyond its reasonable control, such as an act of God, change of law, or failure by Client to supply AV&Co. with adequate resources or information, and without its fault or negligence, then the period of performance and term of this Agreement shall be extended to the extent of any such delay and neither party shall incur any liability to the other party as a result of such delay or suspension. If such delay or notice lasts for an aggregate of 30 days or more, AV&Co. shall be entitled to terminate this Agreement by giving written notice to Client, such termination to be effective on the date indicated in said notice.
- 4 Independent Consultant. AV&Co. at all times shall act as an independent contractor and not as an agent or employee of Client. AV&Co. shall retain sole and absolute discretion, control and judgment regarding the manner and means of performing the Services. Absent prior written consent from Client, AV&Co. shall have no authority to act as an agent or enter into written or verbal agreements or any other understanding on the Client's behalf. AV&Co. understands and agrees that it shall not be entitled to any of the rights and privileges established by Client for its employees, including, but not limited, to retirement benefits, medical, life insurance or disability coverage, severance pay, and paid vacation or sick pay. AV&Co. understands and agrees that Client will not pay or withhold from the compensation paid to AV&Co. any sums customarily paid or withheld for or on behalf of employees for income tax, unemployment insurance, social security, workers compensation or any other withholding tax, insurance or payment, and all such payments as may be required by law are the sole responsibility of AV&Co.
- 5 Taxes and Payment. Any applicable taxes incurred in connection with the Services or Deliverables (except for taxes imposed on income) will be billed to, and paid by, Client, in addition to fees and expenses. Payment by Client of AV&Co.'s fees, expenses and any applicable taxes shall be due within 30 days of AV&Co.'s invoice unless otherwise specified in the Proposal. AV&Co. may change the address to which payments are to be sent by Client at any time by giving Client written notice of such change. If any amount is not paid within 30 days after it becomes due, Client shall also pay AV&Co. interest on that amount for the period from its due date until it is paid in full. That interest shall be calculated at a rate equal to 1% per month (or the maximum rate permitted by applicable law, if lower), and shall be payable on demand.
- 6 Non-Solicitation of Personnel. During the term of this Agreement and for a period of one year following its expiration or termination, neither party shall directly or indirectly approach, counsel, or attempt to induce any person who is then an employee or independent consultant of the other party to terminate his or her employment with or engagement by the other party, or employ, engage or attempt to employ or engage any such person.





- 7 Confidentiality. Neither party shall disclose Confidential Information (as defined below) of the other party without the prior written consent of such other party. The receiving party shall use the same degree of care as it uses to protect the confidentiality of its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing party. The foregoing obligations shall not apply to any information that (i) is required to be disclosed by law, subpoena or other process or (ii) is disclosed in connection with any dispute, claim or action between the parties. Confidential Information means information related to the subject matter of the Proposal and any of the projects thereunder (including any third party information), and the business of the disclosing party, which (a) derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value from the disclosure or use of the information, (b) is the subject of efforts by the disclosing party or owner of the third party Confidential Information that are reasonable under the circumstances to maintain the secrecy of the information, and (c) is clearly labeled by the disclosing party as proprietary or confidential. Confidential Information shall not include any information that (i) is at the time of disclosure, or thereafter becomes, through a source other than the receiving party, generally known to companies in the disclosing party's industry, (ii) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party, (iii) was known to the receiving party at the time of disclosure, or (iv) is developed independently by the receiving party. The obligations of confidentiality hereunder shall continue for a period of three years from the date of the last disclosure of Confidential Information hereunder.
- 8 Deliverables. Upon full payment, AV&Co. hereby assigns to Client any and all rights, title and interest, including, without limitation, copyrights, trade secrets and proprietary rights, to the materials created by AV&Co. specifically for Client hereunder and required to be delivered to Client by virtue of their description or specification as a deliverable in the Proposal (the "Deliverables"). The Deliverables exclude all third party works and products whether or not included or embedded in the Deliverables. The Deliverables shall be deemed to be "works made for hire" under the federal copyright laws. However, the Deliverables may include data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices, and specifications (collectively, "Technical Elements") owned or developed by AV&Co. prior to, or independently from, its engagement hereunder ("AV&Co. Technical Elements") and AV&Co. retains all rights thereto (and to any modifications or enhancements to AV&Co. Technical Elements developed in the course of performing the Services). Accordingly, to the extent that any such AV&Co. Technical Elements are integrated into any Deliverables, AV&Co. hereby grants to Client a perpetual, worldwide, non-exclusive, paid-up, limited license to use, copy and modify such AV&Co. Technical Elements as integrated into such Deliverables for internal purposes only. Notwithstanding anything to the contrary contained herein, AV&Co. retains all rights to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired in the course of performing the Services.
- 9 Compliance with Laws. AV&Co. agrees to comply with all applicable Federal, state, county and local laws in connection with the performance of the Services, including, without limitation, the Foreign Corrupt Practices Act.
- 10 Warranty and Liability.
- 10.1.i AV&Co. will exercise due professional care and competence in the performance of the Services. Client must provide AV&Co. with written notice of any deficiencies in any of the Services within 30 days of performance of such Services. For any breach of the above warranty so notified to AV&Co., Client's exclusive remedy, and AV&Co.'s entire liability, shall be the re-performance of such deficient Services. If AV&Co. does not re-perform the deficient Services as warranted, Client shall be entitled to recover the fees paid to AV&Co. for such deficient Services.
- 10.1.ii To the fullest extent permitted by applicable law, the total aggregate liability of AV&Co., regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise, under this Agreement or with respect to the Services shall be limited to the fees paid to and retained by AV&Co. under this Agreement.
- 10.1.iii In no event will AV&Co. or Client be liable for consequential, incidental, indirect, punitive or special damages (including loss of profits, data, business or goodwill), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.
- 10.1.iv EXCEPT AS SET FORTH IN SECTION 10.1.i, AV&CO. MAKES NO WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR WARRANTIES OF ANY PRODUCTS OR SERVICES, OR THE APPROPRIATENESS OF CLIENT OR THIRD-PARTY SPECIFICATIONS. Client acknowledges that it is a sophisticated party to this Agreement and recognizes





and agrees that the terms of this Section 10 are an integral part of AV&Co.'s pricing and an important factor in AV&Co.'s willingness to enter into this Agreement.

11 Dispute Resolution; Equitable Relief.

11.1.i Any controversy or claim arising out of or relating to this Agreement or the Services shall be resolved pursuant to good faith discussions between senior executives of both parties, and if such individuals cannot amicably resolve the dispute within 10 days, then pursuant to arbitration. Any arbitration shall be conducted in Boston, Massachusetts by a panel of three members who shall be selected, and such arbitration shall be conducted, in accordance with the commercial arbitration rules of the American Arbitration Association. Any award rendered therein shall be final and binding upon the parties and their legal representatives and judgment upon any such award may be entered in any court having jurisdiction thereof. The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award (i) damages inconsistent with this Agreement or (ii) punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. All aspects of the arbitration shall be treated as confidential.

11.1.ii Notwithstanding anything to the contrary contained in Section 11.1.i, either party, in the event of any breach of Sections 6, 7 and 8 hereof, may seek, in any court having proper jurisdiction, specific performance, injunctive or other types of equitable relief, as applicable.

12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its choice of law rules.

13 Severability. If any portion of this Agreement is held to be void, invalid or otherwise unenforceable, in whole or part, the remaining portions of this Agreement shall remain in effect.

14 Closure. No action, regardless of form, arising out of or in connection with this Agreement may be brought by either party more than one year after the cause of action accrued, provided that this Section shall not serve to limit any claim that AV&Co. may have for payment by Client for Services performed hereunder.

15 No Third Party Beneficiaries. The Services and Deliverables are for the sole benefit of the Client. Nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to, or any right of suit or action in, any person not a party to this Agreement. Without limiting the generality of the foregoing, no third party may rely upon any Deliverables without the prior written consent of AV&Co.

16 Assignment. Neither party may assign this Agreement or any of its rights or duties hereunder except (i) to another party that succeeds to all or substantially all of the assets and business of such party and that agrees to be bound by the terms hereof or (ii) with the consent of the other party.

17 Limitation on Use and Distribution of Deliverables. Because of the special nature of the Services, the Deliverables are not intended or suited for any purpose other than to assist Client in connection with the matter and/or transaction described in the Proposal, and Client agrees that the Deliverables will only be used for such purpose. Deliverables will be provided for Client's information only, and Client agrees that the Deliverables may not be furnished to third parties, copied, quoted or referred to, in whole or in part (each, a "Prohibited Use"), by Client without AV&Co's prior written consent; provided, however, that Client's board of directors, management and other employees, Client's independent external audit firm, and attorneys acting on behalf of Client, shall not be deemed to be third parties so long as each of the foregoing is subject to a duty to maintain the confidentiality of the Deliverables (through a written agreement or professional obligation).

18 Reimbursement of Additional Expenses. In the event that (i) AV&Co is requested or authorized by Client, or AV&Co or Client is required by government regulation, subpoena or other legal process to produce the Deliverables (or drafts thereof or notes or work papers pertaining thereto) or our personnel as witnesses with respect to our engagement by Client, or (ii) AV&Co consents in writing to a Prohibited Use, Client will, so long as AV&Co is not a party to the proceeding in which the information is sought, reimburse AV&Co, in a timely manner, for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such a request or as a result of such Prohibited Use.



**Exhibit B**

**Altman Declaration**



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

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In re:

WINDSTREAM HOLDINGS, INC., *et al.*,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)  
) Case No. 19-22312 (RDD)  
)  
) (Jointly Administered)  
)

---

**DECLARATION OF RORY ALTMAN IN SUPPORT  
OF THE DEBTORS' APPLICATION AUTHORIZING  
AND APPROVING THE EMPLOYMENT AND RETENTION  
OF ALTMAN VILANDRIE & COMPANY AS TELECOM SERVICES  
CONSULTANTS EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

---

Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), I, Rory Altman, under penalty of perjury, declare as follows, to the best of my knowledge, information, and belief:

1. I am a Director of the firm of Altman Vilandrie & Company ("AV&Co."), which has an office at 101 Federal Street, Boston, Massachusetts 02110. Founded in 2002, AV&Co. provides strategic, operational, and other advice in the telecommunications, media, and technology industries.

2. I am duly authorized to make and submit this declaration (this "Declaration") on behalf of AV&Co. in accordance with section 327(a) of title 11 of the United States Code (the "Bankruptcy Code") and Bankruptcy Rule 2014(a) in support of the *Debtors' Application Authorizing and Approving the Employment and Retention of Altman Vilandrie & Company as*

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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.



*Telecom Services Consultants Effective Nunc Pro Tunc to the Petition Date*, filed contemporaneously herewith (the “Application”).<sup>2</sup> Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.<sup>3</sup> To the extent any information disclosed herein requires amendment or modification upon AV&Co.’s completion of further review, or as additional party in interest information becomes available to it, a supplemental declaration will be submitted to this Court reflecting such amended or modified information.

3. Except as set forth herein, neither I, AV&Co., nor any directors, partners, principals, or other professionals assigned by AV&Co. to the work requested by the Debtors, represent any entity other than the Debtors in connection with these chapter 11 cases. Except as set forth herein, to the best of my knowledge, after due inquiry, neither I, AV&Co., nor any directors, principals, or other professionals assigned to the work requested by the Debtors represents any party in interest in these chapter 11 cases in matters related to these chapter 11 cases.

#### **AV&Co.’s Qualifications and Proposed Work**

4. It is my understanding that the Debtors seek to retain AV&Co. as their telecom services consultant based on its qualifications, skill, and expertise in services core to the success of the Debtors’ businesses. Altman Vilandrie & Company is a 150-person strategy consulting firm that specializes in the telecommunications, media, and technology (TMT) industries. AV&Co. helps TMT companies develop business strategies and improve operations, and helps investors

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<sup>2</sup> Capitalized terms used in this Declaration and not immediately defined have the meanings given to such terms elsewhere in this application.

<sup>3</sup> Certain disclosures herein relate to matters within the personal knowledge of other professionals at AV&Co. and are based on information provided by them.



consider investments in these companies. The company has offices in Boston, New York City, and San Francisco.

5. After the Petition Date, the Debtors engaged AV&Co. to consult on strategies to improve the sales and marketing performance of Windstream's ILEC operations. This work was below the monetary cap for ordinary course professionals. The Debtors have now asked AV&Co. to undertake new work, described below, and such work will require payments that exceed the cap.

6. It is my belief that AV&Co. has the skills, qualifications, and expertise necessary to assist the Debtors with their businesses and related matters and provide the requisite consulting services.

7. Pursuant to the Engagement Letter, AV&Co. will provide to the Debtors the following three workstreams:

- a. Prioritizing areas for network investment across the entire footprint at the census block level based on financial return targets.
- b. Creating a dynamic financial forecast and planning model that will calculate the financial impact of staged network upgrades.
- c. Synthesizing findings and implications into a comprehensive network upgrade strategy.

8. Should the Debtors request AV&Co. to perform additional services not contemplated by the Engagement Letter, the Debtors and AV&Co. shall mutually agree upon such services and fees for those services in writing, in advance. In the event the additional services require an amendment to the Engagement Letter, the amendment will be subject to this Court's review upon application by the Debtors.

#### **Professional Compensation**

9. AV&Co.'s retention by the Debtors is conditioned upon its ability to be retained in accordance with its customary terms and conditions of employment, including the proposed



compensation arrangements set forth in the Engagement Letter. These compensation arrangements are consistent with, and typical of, arrangements entered into by AV&Co. and other professional services firms of comparable expertise and experience for engagements of similar size and complexity.

10. Pursuant to the terms and conditions of the Engagement Letter, and subject to this Court's approval, AV&Co. intends to apply for compensation for the services set forth in the Engagement Letter in accordance with the terms of the Engagement Letter. AV&Co. also intends to apply for reimbursement of actual and necessary costs and expenses incurred by AV&Co. in connection with all services performed on behalf of the Debtors according to its customary reimbursement policies, subject to any modifications to such policies that AV&Co. may be required to make to comply with the *U.S. Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330* (the "Fee Guidelines"), sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Interim Compensation Order, and any further order of this Court, both in connection with the Application and the interim and final fee applications to be filed by AV&Co. in these chapter 11 cases. Moreover, AV&Co. intends to make a reasonable effort to comply with the Office of the United States Trustee for the Southern District of New York's requests for information and additional disclosures as set forth in the Fee Guidelines.

11. Pursuant to the Engagement Letter, the Debtors have agreed to pay AV&Co. a fee of \$83,000 per week for a team of three dedicated consultants, oversight from three senior consultants (including me), and intermittent specialist time. It is estimated that the engagement will take 8 to 9 weeks. In addition, the Debtors are obligated to pay an additional charge of \$108,000 for the AV&Co.'s proprietary Automated Route Optimizer technology.



12. In addition to the fees set forth above, pursuant to the Engagement Letter, the Debtors are obligated to pay AV&Co. an amount equal to 4.5% of professional fees to cover analytical tools and software, data sets, and technology costs, plus reimburse AV&Co. for all direct expenses, primarily travel, interview incentives, document production and project-specific purchased research, as well as AV&Co.'s reasonable attorneys' fees associated with gaining bankruptcy court approval for this engagement and for complying with any other bankruptcy court-related obligations.

13. It is not the practice of AV&Co. professionals to keep detailed time records in one-tenth-of-an-hour (0.1) increments as customarily kept by attorneys who are compensated subject to approval of this Court. Instead, the customary practice of AV&Co. is to keep reasonably detailed records of services rendered daily during the course of an engagement. Thus, AV&Co. requests that this Court allow AV&Co.'s professionals to provide the following in its monthly, interim and final fee applications: (a) a narrative summarizing each of the three project categories listed above and the services rendered under each project category, and (b) a summary, by project category, of services rendered to the Debtors, which identifies each professional rendering services and the number of hours expended by each professional.

14. Given the nature of the services to be provided by AV&Co., such billing format and associated time details will be sufficient for the Debtors and other parties in interest to make informed judgments regarding the nature and appropriateness of AV&Co.'s services and fees.

**AV&Co.'s Disinterestedness**

15. In connection with its proposed retention by the Debtors in this case, AV&Co. undertook to determine whether AV&Co. has any conflicts or other relationships that might cause it not to be disinterested or to hold or represent an interest adverse to the Debtors or their estates. Specifically, AV&Co. obtained from the Debtors a comprehensive list of those individuals and



entities which may be parties in interest in these chapter 11 cases (the “Potential Parties in Interest”).

16. AV&Co. reviewed its records to determine what individuals and entities are current clients of AV&Co. in order to identify relationships with Potential Parties in Interest in these chapter 11 cases. A summary of the relationships and representations that AV&Co. was able to identify using its reasonable efforts is set forth on **Schedule 1** to this Declaration. Except as set forth on **Schedule 1**, AV&Co.’s representation of each entity listed on **Schedule 1** (or its apparent affiliate, as the case may be), is only on matters that are unrelated to the Debtors and these chapter 11 cases.

17. Given the nature of its work, AV&Co. typically is required to keep confidential the names of its clients. Accordingly, **Schedule 1** is being filed under seal with the Court, and AV&Co. is providing it on a confidential basis to counsel for the Debtors, counsel to the Creditors Committee, and the United States Trustee.

18. Except as set forth on **Schedule 1** hereto: (a) AV&Co. has no connection with the Debtors, the Debtors’ creditors, the U.S. Trustee, any person employed in the Office of the U.S. Trustee, or any other party with an actual or potential interest in these chapter 11 cases or their respective attorneys or accountants; (b) upon Court approval of AV&Co.’s retention, it will not be a creditor, equity security holder or insider of the Debtors, except for those fees and expenses payable pursuant to the terms of this engagement; (c) neither AV&Co. (nor any of its principals) is or was, within two years of the Petition Date, a director, officer, or employee of the Debtors; and (d) AV&Co. does not have an interest materially adverse to the Debtors, their estates, or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the Debtors, or for any other reason. Accordingly, AV&Co. is a



“disinterested person,” as defined in section 101(14) of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code.

19. AV&Co. is not providing, and will not provide, services to any of the clients that are listed on **Schedule 1** that are adverse to the Debtors or their estates nor during the course of its engagement related to issues connected to the Debtors’ chapter 11 cases. Further, to the best of my knowledge, AV&Co. is not providing, and will not provide, services to the Debtors that would be adverse to any of the entities listed on **Schedule 1**.

20. As a result of its deep expertise in the TMT industries, AV&Co. has provided, and likely will continue to provide, services to its clients that may be related to the Debtors or their businesses. As an example, AV&Co. is routinely asked to provide analyses of companies in TMT industries based on certain publicly available information, industry sources, and/or AV&Co.’s deep industry expertise. In all such circumstances, AV&Co. is not using confidential or proprietary client data that it has obtained from client-specific engagements, and separate teams will work on these matters. In addition, AV&Co. has in place safeguards to ensure that confidential client information is not shared with or accessible across teams.

21. AV&Co. has also provided, and likely will continue to provide, services unrelated to these chapter 11 cases for the various Potential Parties in Interest listed on **Schedule 1**. To the best of my knowledge, information and belief, except as set forth on **Schedule 1**, AV&Co.’s services to these parties were and are wholly-unrelated to the Debtors, their estates, and these chapter 11 cases, and AV&Co.’s involvement in these chapter 11 cases does not compromise its ability to continue providing such consulting services to these Potential Parties in Interest.

22. As part of its diverse work, AV&Co. is involved in other transactions that involve many different professionals, including attorneys, accountants, and financial consultants, who may



represent claimants and Potential Parties in Interest in these chapter 11 cases. Moreover, AV&Co. has in the past, may currently, and will likely in the future be working with or against other professionals involved in these chapter 11 cases on matters unrelated to the Debtors or these chapter 11 cases. Based on my current knowledge of the professionals involved, and to the best of my knowledge, none of these business relationships create interests materially adverse to the Debtors with respect to the matters for which AV&Co. is to be employed.

23. To the best of my knowledge, no professional of AV&Co. who will work on this engagement is related or connected to any United States Bankruptcy Judge for the Southern District of New York, any District Judge for the Southern District of New York, the U.S. Trustee, or any employee of the U.S. Trustee.

24. To the extent that any new, relevant facts or relationships bearing on the matters described herein during the period of AV&Co.'s retention are discovered or arise, AV&Co. will use reasonable efforts to file promptly a supplemental declaration, as required by Bankruptcy Rule 2014(a).

25. AV&Co. has received no payments during the 90-day period prior to the Petition Date.

**Affirmative Statement of Disinterestedness**

26. To the best of my knowledge, AV&Co. is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that AV&Co.: (a) upon Court approval of its retention, will not be a creditor, an equity security holder, or an insider of the Debtors, except pursuant to the terms of its engagement; (b) is not and was not, within two years before the date of the filing of these chapter 11 cases, a director, officer or employee of the Debtors; and (c) does not have an interest materially adverse to the interest of the Debtors' estates or of any class of creditors or equity security holders,



by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors or for any other reason.

27. Accordingly, based upon the foregoing, I believe AV&Co. is disinterested as defined in section 101(14) of the Bankruptcy Code and does not hold or represent an interest materially adverse to the Debtors or their estates.

*[Remainder of page intentionally left blank.]*



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: July 12, 2019

/s/ Rory J. Altman

Rory J. Altman

Director

Altman Vilandrie & Company



**Schedule 1**

**[Requested to File Under Seal]**