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

In re:

WINDSTREAM HOLDINGS, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

**RESERVATION OF RIGHTS AND RESPONSE TO AMENDED MOTION OF
JICARILLA APACHE NATION FOR RELIEF FROM AUTOMATIC STAY**

CSL National, LP and certain of its affiliates (collectively referred to herein as “Uniti”), by and through their undersigned counsel, hereby submit this reservation of rights and response (the “Response”) to the *Amended Motion for Relief From Automatic Stay* (Docket No. 686) (the “Motion”) filed by the Jicarilla Apache Nation (the “Nation”). In support of the Response to the Motion, Uniti respectfully states as follows:

BACKGROUND

1. Uniti is a party to that certain master lease dated April 24, 2015 and executed by and among itself, as “Landlord,” and Windstream Holdings, Inc. (referred to herein as “Holdings”) as “Tenant” (the “Master Lease”).

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. A complete list of the debtor entities and the last four digits of their federal tax identification numbers 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: 400 I North Rodney Parham Road, Little Rock, Arkansas 72212.



2. In its Motion, the Nation seeks relief from the automatic stay in order to prosecute a pending action that it had initiated in the Jicarilla Apache Tribal Court on October 24, 2018. *See* Motion Exhibit Ex. A (the “Complaint”) at 1. With the Complaint, the Nation (1) seeks to exercise eminent domain to condemn and seize control of certain assets owned by Uniti and leased to Holdings pursuant to the Master Lease, and (2) seeks to prosecute causes of action for trespass and breach of contract related to such assets. *See* Complaint ¶¶ 46-78.

3. Certain provisions of the Master Lease apply following an exercise of eminent domain to govern allocation of any condemnation award and adjustments to the rent to account for the taking. Section 15.1(b) of the Master Lease defines the condemnation contemplated by the Complaint as a “partial Taking.” Pursuant to Section 15.2, after such a partial Taking, the Master Lease will remain in full force and effect, and any condemnation award “shall belong to and be paid to” Uniti. Windstream will be required to restore the Leased Property (as defined in the Master Lease) to the condition it was in immediately prior to the partial Taking (excluding certain categories of property) in exchange for “the portion of the condemnation award applicable to [the] restoration,” remittable by Uniti. Master Lease § 15.1(c). Uniti and Windstream will have 30 days following the partial Taking to negotiate a mutually-agreeable reduction in Rent (as defined in the Master Lease) in consideration of any change in the Leased Property resulting from the condemnation, but if the parties cannot agree on a Rent reduction within that window, the Rent for the affected Facility (as defined in the Master Lease) will be reduced proportionate to the amount of Leased Property that was partially taken. *See id.*

RESPONSE AND RESERVATION OF RIGHTS

4. Uniti does not object to the lifting of the stay to permit prosecution of the Complaint, so long as Holdings agrees to comply with the provisions of the Master Lease applicable to any condemnation of the Leased Property, including any seizure of Uniti owned-

assets in connection with any prosecution or settlement of the Complaint. If, however, Holdings is unwilling to commit to comply with those provisions, the Motion should be denied so that the Complaint can be resolved at a later date.

5. Uniti reserves all rights to seek enforcement of any applicable provisions of the Master Lease regarding the assets addressed in the Complaint, any condemnation of those assets, any payments made as a result of such condemnation, and any obligations of Holdings arising from or related to such condemnation. Uniti reserves all rights to later object to any specific response to or proposed means of addressing the Motion by Holdings, either in writing or at any relevant hearing.

6. This Response is not, and may not be deemed or construed to be, a consent to jurisdiction of the Jicarilla Apache Tribal Court over Uniti. By this Response Uniti is not and shall not be deemed to be taking any positions or making any assertions regarding the Complaint or any legal or factual assertions made therein. Further, this Response is not, and may not be deemed or construed to be, a waiver of any of Uniti's substantive or procedural rights, including without limitation in relation to the above-captioned chapter 11 cases, or any proceedings related to or arising from the Complaint.

Dated: New York, New York
July 19, 2019

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By: /s/ Eli J. Vonnegut
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