

**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.,	)	
Plaintiffs,	)	
v.	)	Adversary Proceeding
Charles Yadegarian, Robert Murray, Cindy Graham and Larry Graham,	)	Adv. Pro. No. 19-08247 (RDD)
Defendants.	)	

**NOTICE OF APPEAL**

**PLEASE TAKE NOTICE** that Robert Murray, a defendant in the above-captioned adversary proceeding, hereby appeals, pursuant to 28 U.S.C. § 158(a)(1), to the United States District Court for the Southern District of New York from the *Order Denying the Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint and Extending the Automatic Stay to Non-Debtor Defendants in the Securities Class Action* (the “Order”) entered by the United States Bankruptcy Court for the Southern District of New York, Hon. Robert D. Drain, U.S.B.J., on July 3, 2019. A copy of the Order is annexed hereto as **Exhibit A**.

<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.

The names of all parties to the Order and their respective counsel are set forth below:

Party	Counsel
Debtors	KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP Stephen E. Hessler, P.C. Marc Kieselstein, P.C. Cristine Pirro Schwarzman 601 Lexington Avenue New York, New York 10022 Telephone: (212) 446-4800 Facsimile: (212) 446-4900  James H.M. Sprayregen, P.C. Ross M. Kwasteniet, P.C. Brad Weiland John R. Luze KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP 300 North LaSalle Street Chicago, Illinois 60654 Telephone: (312) 862-2000 Facsimile: (312) 862-2200

[ signature page follows ]

Dated: July 17, 2019

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/s/ Michael S. Etkin

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*Additional Counsel to Lead Plaintiff*

**EXHIBIT A**  
**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)
Windstream Holdings, Inc. and Earthlink Holdings Corp.,	)	
Plaintiffs,	)	Adversary Proceeding
v.	)	Adv. Pro. No. 19-08247 (RDD)
Charlos Yadegarian, Robert Murray, Cindy Graham and Larry Graham,	)	
Defendants.	)	

**ORDER DENYING THE *MOTION OF SECURITIES CLASS ACTION LEAD PLAINTIFF TO DISMISS ADVERSARY COMPLAINT* AND EXTENDING THE AUTOMATIC STAY TO NON-DEBTOR DEFENDANTS IN THE SECURITIES CLASS ACTION**

Upon the complaint [Adv. Docket No. 1] (the “Complaint”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) seeking an order (this “Order”) extending the automatic stay under 11 U.S.C. § 362(a) to all of the individual non-debtor codefendants (the “Non-Debtor Defendants”) in the AR Class Action Matter; and upon the motion [Docket No. 4] (the “Motion”) of Robert Murray, the court-appointed lead plaintiff in the AR Class Action Matter (“Lead Plaintiff”), for entry of an order dismissing the Complaint; and this Court

<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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Complaint.



having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that notice of Motion was due and sufficient under the circumstances and that no other notice need be provided; and upon the Debtor's objection to the Motion and all other pleadings and proceedings related thereto, including the record of the hearing held by the Court on the Motion on June 17, 2019 (the "Hearing"); and, after due deliberation and for the reasons stated by the Court in its ruling at the Hearing, the Court having determined that the Motion should be denied as provided herein; and good and sufficient cause appearing, it is HEREBY ORDERED THAT:

1. The Motion is denied.
2. All deadlines in connection with the Complaint with respect to Lead Plaintiff, including but not limited to the deadline for Lead Plaintiff to file a responsive pleading, are adjourned *sine die*.
3. For the reasons set forth by the Court on the record at the Hearing, and except as may be otherwise further ordered by the Court (including but not limited to any order modifying, terminating, or granting relief from the automatic stay):
  - (a) the Court finds that the automatic stay under 11 U.S.C. § 362(a) extends and applies to the Non-Debtor Defendants in the AR Class Action Matter with respect to the claims asserted against them therein, or

(b) to the extent necessary under applicable law, the Court hereby orders that the automatic stay under 11 U.S.C. § 362(a) is extended to the Non-Debtor Defendants in the AR Class Action Matter with respect to the claims asserted against them therein.

4. Notwithstanding anything to the contrary in any applicable Bankruptcy Rule, the terms and conditions of this Order are immediately effective and enforceable upon its entry, for cause.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: White Plains, New York  
July 3, 2019

/s/ Robert D. Drain

THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS  
Robert Murray (Appellant)

DEFENDANTS  
Windstream Holding, Inc. and Earthlink Holdings Corp. (Appellees)

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Lowenstein Sandler LLP  
Michael S. Etkin and Andrew Behlmann  
One Lowenstein Drive, Roseland NJ 07068 (973) 597-2500

ATTORNEYS (IF KNOWN)  
Kirkland & Ellis LLP - Stephen E. Hessler, Marc Kieselstein, Cristine Schwarzman, James H.M. Sprayregen, Ross M. Kwasteniet, Brad Weiland, John Luze; 601 Lexington Avenue, New York NY 10022 (212) 446-4800

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Appeal from order of United States Bankruptcy Court in bankruptcy proceeding under chapter 11 of title 11, United States Code

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

### NATURE OF SUIT

#### TORTS

##### CONTRACT

- [ ] 110 INSURANCE  
[ ] 120 MARINE  
[ ] 130 MILLER ACT  
[ ] 140 NEGOTIABLE INSTRUMENT  
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT  
[ ] 151 MEDICARE ACT  
[ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)  
[ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS  
[ ] 160 STOCKHOLDERS SUITS  
[ ] 190 OTHER CONTRACT  
[ ] 195 CONTRACT PRODUCT LIABILITY  
[ ] 196 FRANCHISE

##### REAL PROPERTY

- [ ] 210 LAND CONDEMNATION  
[ ] 220 FORECLOSURE  
[ ] 230 RENT LEASE & EJECTMENT  
[ ] 240 TORTS TO LAND  
[ ] 245 TORT PRODUCT LIABILITY  
[ ] 290 ALL OTHER REAL PROPERTY

##### PERSONAL INJURY

- [ ] 310 AIRPLANE  
[ ] 315 AIRPLANE PRODUCT LIABILITY  
[ ] 320 ASSAULT, LIBEL & SLANDER  
[ ] 330 FEDERAL EMPLOYERS' LIABILITY  
[ ] 340 MARINE  
[ ] 345 MARINE PRODUCT LIABILITY  
[ ] 350 MOTOR VEHICLE  
[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY  
[ ] 360 OTHER PERSONAL INJURY  
[ ] 362 PERSONAL INJURY - MED MALPRACTICE

##### ACTIONS UNDER STATUTES

##### CIVIL RIGHTS

- [ ] 440 OTHER CIVIL RIGHTS (Non-Prisoner)  
[ ] 441 VOTING  
[ ] 442 EMPLOYMENT  
[ ] 443 HOUSING/  
[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT  
[ ] 446 AMERICANS WITH DISABILITIES - OTHER  
[ ] 448 EDUCATION

##### PERSONAL INJURY

- [ ] 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY  
[ ] 365 PERSONAL INJURY PRODUCT LIABILITY  
[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

##### PERSONAL PROPERTY

- [ ] 370 OTHER FRAUD  
[ ] 371 TRUTH IN LENDING

##### PRISONER PETITIONS

- [ ] 463 ALIEN DETAINEE  
[ ] 510 MOTIONS TO VACATE SENTENCE  
[ ] 530 HABEAS CORPUS  
[ ] 535 DEATH PENALTY  
[ ] 540 MANDAMUS & OTHER

##### PRISONER CIVIL RIGHTS

- [ ] 550 CIVIL RIGHTS  
[ ] 555 PRISON CONDITION  
[ ] 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

##### FORFEITURE/PENALTY

- [ ] 625 DRUG RELATED SEIZURE OF PROPERTY  
21 USC 881  
[ ] 690 OTHER

##### PROPERTY RIGHTS

- [ ] 820 COPYRIGHTS  
[ ] 830 PATENT  
[ ] 835 PATENT-ABBREVIATED NEW DRUG APPLICATION  
[ ] 840 TRADEMARK

##### LABOR

- [ ] 710 FAIR LABOR STANDARDS ACT  
[ ] 720 LABOR/MGMT RELATIONS  
[ ] 740 RAILWAY LABOR ACT  
[ ] 751 FAMILY MEDICAL LEAVE ACT (FMLA)  
[ ] 790 OTHER LABOR LITIGATION  
[ ] 791 EMPL RET INC SECURITY ACT (ERISA)

##### IMMIGRATION

- [ ] 462 NATURALIZATION APPLICATION  
[ ] 465 OTHER IMMIGRATION ACTIONS

#### ACTIONS UNDER STATUTES

##### BANKRUPTCY

- ☒ 422 APPEAL  
28 USC 158  
[ ] 423 WITHDRAWAL  
28 USC 157

##### SOCIAL SECURITY

- [ ] 861 HIA (1395ff)  
[ ] 862 BLACK LUNG (923)  
[ ] 863 DIWC/DIWW (405(g))  
[ ] 864 SSID TITLE XVI  
[ ] 865 RSI (405(g))

##### FEDERAL TAX SUITS

- [ ] 870 TAXES (U.S. Plaintiff or Defendant)  
[ ] 871 IRS-THIRD PARTY  
26 USC 7609

##### OTHER STATUTES

- [ ] 375 FALSE CLAIMS  
[ ] 376 QUI TAM  
[ ] 400 STATE REAPPORTIONMENT  
[ ] 410 ANTITRUST  
[ ] 430 BANKS & BANKING  
[ ] 450 COMMERCE  
[ ] 460 DEPORTATION  
[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)  
[ ] 480 CONSUMER CREDIT  
[ ] 490 CABLE/SATELLITE TV  
[ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE  
[ ] 890 OTHER STATUTORY ACTIONS  
[ ] 891 AGRICULTURAL ACTS  
[ ] 893 ENVIRONMENTAL MATTERS  
[ ] 895 FREEDOM OF INFORMATION ACT  
[ ] 896 ARBITRATION  
[ ] 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION  
[ ] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND: ☐ YES ☒ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation (Transferred)
 ☐ 7 Appeal to District Judge from Magistrate Judge
- ☐ a. all parties represented
 ☐ b. At least one party is pro se.
- ☐ 8 Multidistrict Litigation (Direct File)

(PLACE AN x IN ONE BOX ONLY)

**BASIS OF JURISDICTION****IF DIVERSITY, INDICATE CITIZENSHIP BELOW.**

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION
 ☐ 4 DIVERSITY
- (U.S. NOT A PARTY)

**CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)**

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ]	[ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ]	[ ]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ]	[ ]
CITIZEN OF ANOTHER STATE	[ ]	[ ]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ]	[ ]	FOREIGN NATION	[ ]	[ ]

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

**COURTHOUSE ASSIGNMENT**

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☒ WHITE PLAINS ☐ MANHATTAN

/s/ Michael S. Etkin

DATE 07/17/2019 SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO

☒ YES (DATE ADMITTED Mo. \_\_\_\_\_ Yr. 1979 \_\_\_\_\_)

Attorney Bar Code # 1388503

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)