

Hearing Date and Time (Only for Filed Objections): August 20, 2019, at 10:00 a.m. (prevailing Eastern Time)

James H.M. Sprayregen, P.C.
Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)
Brad Weiland (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Facsimile: (312) 862-2200

(Jointly Administered)

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§ 362(d) to effectuate a setoff of the Reimbursement Amount in accordance with the terms in the Stipulation.

PLEASE TAKE FURTHER NOTICE that the Debtors agreed to Citibank's request to setoff the Reimbursement Amount against funds held in the Account maintained at Citibank in accordance with the Lease and subject to the terms set forth in the Stipulation. The Parties will take action pursuant to the Stipulation and the order may be entered without a hearing unless an objection is made timely. Any objection to the proposed action or order must be in writing, state the reasons for the objection with particularity, and be served on or before **August 19, 2019, at 4:00 p.m. (prevailing Eastern Time)**, on (i) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Stephen E. Hessler, P.C., and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: Ross M. Kwasteniet, P.C., Brad Weiland, and John R. Luze, (ii) counsel to CitiBank, Thompson & Knight LLP, 811 Main Street, Suite 2500, Houston, Texas 77002, Attn: Stuart J. Glick and Anthony F. Pirragliab, and (iii) the Office of The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Paul K. Schwartzberg and Serene Nakano. The objection and proof of service must be filed with the Clerk, and a copy marked "Chambers Copy" and must be delivered in an unsealed envelope to the chambers of the Honorable Robert D. Drain at the United States Bankruptcy Court for the Southern District of New York prior to the date set for the hearing.

PLEASE TAKE FURTHER NOTICE that the undersigned will present the Stipulation to 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 for approval

and signature on **August 20, 2019 at 10:00 a.m. (prevailing Eastern Time)** if no objection is made timely.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases may be obtained free of charge on Kurtzman Carson Consultants LLC's website at <http://www.kccllc.net/windstream>. You may also obtain copies of any pleadings on the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: August 7, 2019
White Plains, New York

/s/ Stephen E. Hessler, P.C.

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

- and -

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Stipulation

with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), and such cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure [Docket No. 56] (collectively, the “Chapter 11 Cases”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, Broadview Networks, Inc. (“Broadview”), as tenant, entered into a lease agreement prior to the Petition Date with Tyson International Plaza I & II, L.P., as landlord, (the “Lessor”) for a certain property located at 1921 Gallows Road in Vienna, Virginia (collectively with any and all amendments, modifications, or supplements thereto, the “Lease”), which the Debtors sought to reject pursuant to the *First Omnibus Motion to Reject Certain Unexpired Leases Effective Nunc Pro Tunc to the Petition Date* [Docket No. 188].

WHEREAS, on July 3, 2014, pursuant to the Lease, Citibank issued that certain irrevocable standby letter of credit (collectively with any amendments, modifications, or supplements thereto, the “Letter of Credit”) in the aggregate amount of \$50,321.25 on Broadview’s behalf and in favor of the Lessor, as beneficiary. On August 3, 2016, the Letter of Credit amount was reduced to \$33,547.50, and, on August 11, 2017, the beneficiary of the Letter of Credit was amended to TIP Owner, LLC c/o Rockpoint Group, LLC (the “Beneficiary”).

WHEREAS, the Debtors granted Citibank, in its capacity as the issuer of the Letter of Credit, a first-priority interest in, lien on, and exclusive control over a certain account ending in 7016 that the Debtors maintain at Citibank (the “Account”), and the funds contained in the Account collateralize Broadview’s reimbursement obligations under the Letter of Credit.

WHEREAS, on May 17, 2019, Citibank received a draw request for \$33,547.50 of the Letter of Credit (the “Draw”) from the Beneficiary, which Citibank honored in full on May 20, 2019.

WHEREAS, the Debtors have agreed to reimburse Citibank for the Beneficiary’s draw of the Letter of Credit in an amount that totals \$42,977.17, which includes interests, fees, and expenses arising from the Draw (the “Reimbursement Amount”).

WHEREAS, as of the date hereof, the Parties have agreed to lift the automatic stay under section 365 of the Bankruptcy Code solely for the purpose of authorizing Citibank to effectuate a setoff to obtain the Reimbursement Amount from the Account pursuant to the Letter of Credit and this Stipulation and Order.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AND UPON APPROVAL BY THE BANKRUPTCY COURT OF THIS STIPULATION, THE FOLLOWING IS SO ORDERED:

1. This Stipulation and Agreed Order shall only be effective and enforceable upon its approval and entry by the Bankruptcy Court on the docket for these Chapter 11 cases, and then it shall be immediately effective and enforceable.
2. The foregoing recitals are hereby incorporated by reference into this Stipulation and Agreed Order.
3. The automatic stay under section 362 of the Bankruptcy Code is hereby modified solely to permit Citibank to effectuate a setoff with respect to the Reimbursement Amount from the Account pursuant to the Letter of Credit. Citibank shall have a prepetition general unsecured claim against Broadview for the difference between the Reimbursement Amount and the total funds in the Account as of the date hereof (the “General Unsecured Claim”).

4. Upon the Bankruptcy Court's approval and entry of this Stipulation and Agreed Order, (a) Citibank's proof of claim (Claim No. 6270) filed against Broadview in the Chapter 11 Cases in connection with the Reimbursement Amount shall be deemed disallowed, except with respect to the General Unsecured Claim, and (b) Citibank fully, finally, and forever releases and discharges its claims (as defined in section 101(5) of the Bankruptcy Code) against Broadview arising as a result of the Draw existing as of July 25, 2019, excluding its General Unsecured Claim. These agreed upon terms may be reflected on the Bankruptcy Court's official claims register. For the avoidance of doubt, nothing in this Stipulation and Agreed Order shall be or be deemed to be a satisfaction, settlement, release, or discharge of any claim of Citibank in any capacity other than as issuer of the Letter of Credit.

5. Nothing in this Stipulation and Agreed Order nor any actions taken pursuant hereto shall be deemed as (a) an admission as to the validity of any claim against any Debtor entity for the Reimbursement Amount or Draw, (b) a waiver of any Party's right to dispute the Draw, whether pursuant to the Lease, the Letter of Credit, or otherwise, (c) a promise or requirement to pay any alleged claim arising from the Draw other than as set forth in this Stipulation and Order, or (d) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

6. Neither this Stipulation and Agreed Order nor any actions taken pursuant hereto shall constitute evidence admissible against the Parties in any action or proceeding other than one to enforce the terms of this Stipulation and Agreed Order.

7. The Parties intend for this Stipulation and Agreed Order to be binding upon their successors, agents, assigns, including bankruptcy trustees and estate representatives and any parent, subsidiary, or affiliated entity of the Parties.

8. The Debtors reserve all rights against the Beneficiary and Lessor with respect to the Letter of Credit, Draw, and Reimbursement Amount.

9. The undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective Parties and that the respective Parties have full knowledge of and have consented to this Stipulation and Agreed Order.

10. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order, and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

11. This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.

12. This Stipulation and Agreed Order shall not be modified, altered, amended, or supplemented except pursuant to a written agreement between the Parties or their authorized representatives or an order that the Bankruptcy Court may enter on the docket for the Chapter 11 Cases.

13. The Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation and Agreed Order.

IT IS SO ORDERED.

Signed:

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

IN WITNESS WHEREOF, the Parties, by their authorized counsel, executed this
Stipulation and Agreed Order as of the date written below.

Dated: August 7, 2019
New York, New York

/s/ Stephen E. Hessler, P.C.

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

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Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

Dated: August 7, 2019
New York, New York

/s/ Stuart J. Glick

Stuart J. Glick

Anthony F. Pirraglia

THOMPSON & KNIGHT LLP

900 Third Avenue, 20th Floor

New York, New York 10022

Telephone: (212) 751-3001

Facsimile: (212) 751-3113

Counsel to Citibank, N.A.