

WHITE & CASE LLP

Southeast Financial Center, Suite 4900
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744
Thomas E Lauria, Esq. (admitted *pro hac vice*)

1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 819-8200
Facsimile: (212) 354-8113
J. Christopher Shore, Esq.
Harrison Denman, Esq.
Philip M. Abelson, Esq.
Julia M. Winters, Esq.

*Special Counsel to UMB Bank, N.A.
and U.S. Bank N.A.*

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

In re:)

WINDSTREAM HOLDINGS, INC., *et al.*,¹)

Debtors.)

) Case No. 19-22312 (RDD)

) (Jointly Administered)

**LIMITED OBJECTION OF UMB BANK, NATIONAL ASSOCIATION AND
U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEES,
TO DEBTORS' MOTION TO STAY PURPORTED APPLICATION OF THE
DEADLINE UNDER SECTION 365(D)(4) OF THE BANKRUPTCY CODE TO
THE UNITI ARRANGEMENT**

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: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



UMB Bank, National Association, solely in its capacity as successor indenture trustee (“UMB Bank”) under that certain indenture dated as of December 13, 2017 with Windstream Services, LLC (“Services”) (as successor to Windstream Corporation) and Windstream Finance Corp. as co-issuers of 8.75% Senior Notes due 2024 and U.S. Bank National Association, solely in its capacities as indenture trustee (“U.S. Bank,” and together with UMB Bank, the “Trustees”) under (i) that certain indenture dated as of October 6, 2010 between it and Services as issuer of 7.75% Senior Notes due 2020, (ii) that certain indenture dated as of March 28, 2011 between it and Services as issuer of 7.75% Senior Notes due 2021, (iii) that certain indenture dated as of November 22, 2011 between it and Services as issuer of 7.50% Senior Notes due 2022, (iv) that certain indenture dated as of March 16, 2011 between it and Services as issuer of 7.50% Senior Notes due 2023, and (v) that certain indenture dated as of January 23, 2013 between it and Services as issuer of 6.375% Senior Notes due 2023, hereby file this limited objection to the *Debtors’ Motion to Stay Purported Application of the Deadline Under Section 365(d)(4) of the Bankruptcy Code to the Uniti Arrangement* [Docket No. 848] (the “Motion”)¹ and respectfully state as follows:

LIMITED OBJECTION

1. There is no statutory predicate for the nonconsensual extension of the agreed December 6 deadline by which, failing assumption, the “Master Lease” with Uniti would be deemed to be rejected. As such, by the Motion, the Debtors seek to obtain the equivalent of an extension by invoking the Court’s equitable powers under section 105 of the Bankruptcy Code to stay the deadline indefinitely.

2. To the extent the Court determines that it has the equitable power to stay the deadline, it should only do so equitably.

¹ Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Motion.

3. The Debtors' proposal as set forth in the Motion does not pass equitable muster. To the extent it would burden Holdings with the obligation to continue making contractual rental payments (funded by uncollectible loans from Services) that exceed the market rate of rent after the December 6 payment, it should be denied, or modified to condition the stay on the Debtors paying only market rate rent to Uniti after the December 6 payment.

4. Having alleged in their complaint against Uniti (the "Complaint") that the Master Lease is not, in fact, a lease of nonresidential real property (either because it is a financing or because it is a lease of personal property), the Debtors ask that the agreed December 6 deadline for assumption or rejection be stayed until 30 days after entry of a final, non-appealable judgment regarding the Complaint.

5. In connection with their request, the Debtors do not seek to reduce or escrow the contractual "rent" during the period of the stay,² even though their own disclosures regarding, among other things, the fair market value of the leased assets at the time of the spin, the economic life of the leased assets, and the fair lease rate imply that such rent is approximately \$22 to \$25 million per month (\$264 to \$300 million per year) above the market rate of rent for the assets covered by the Master Lease.

6. Since the parties have already agreed to pay December rent at the contract rate, the Trustees do not object to an order equitably staying the section 365(d)(4) deadline until a date that precedes the next rent payment (which is due on January 8, 2020), to the extent that such relief is

² Although in a footnote the Debtors reserve the right to seek at a later date to "reduce, withhold, or pay into escrow any purported rent payments," such relief is not a component to the stay sought in the Motion. (Motion ¶ 5, n. 3)

even available. However, any stay beyond that date should be conditioned on the payment of market rent during the remaining term of the stay.³

7. The continued payment of rent that is so excessively over market, paid solely to preserve the Debtors' right to assume the Master Lease, is not equitable because it does not strike a fair balance between the respective rights of the various Debtors and Uniti. Rather, the payment of market rent, which is all Uniti would be able to receive post-rejection, would be appropriate.

8. If the Master Lease is what it says it is—a nonresidential real property lease—two critical consequences flow:

- (a) First, Holdings is required to continue paying postpetition rent (which is funded entirely by postpetition administrative loans from Services) at the contract rate, unless and until the Master Lease is rejected, pursuant to section 365(d)(3) of the Bankruptcy Code.
- (b) Second, if the Master Lease is not assumed by the December 6 deadline, it would be deemed rejected, and Holdings could be required to surrender the nonresidential real property to Uniti pursuant to section 365(d)(4) of the Bankruptcy Code.

9. However, if the Master Lease is actually a financing, as the Debtors allege in the Complaint, then the Debtors need not pay postpetition rent, and Holdings would have until it confirms a plan to provide treatment in respect of Uniti's claims.

10. Under such circumstances, all postpetition rent paid to Uniti, which at the rate of approximately \$55 million per month will total approximately \$550 million from the Petition Date through the end of the year, would be recoverable from Uniti. Such a recovery will be critically

³ As the Court is aware, the Debtors have alleged in the Second Cause of Action in the Complaint that the Master Lease is a lease of personal, not real, property. Complaint, ¶¶ 186-89. To the extent the Court determines that the Master Lease is not a lease of real property, the deadline imposed by section 365(d)(4) of the Bankruptcy Code would be inapplicable, and the Court would be able to determine the appropriate rate of postpetition rent pending the Debtors' determination to assume or reject the Master Lease. This limited objection is without prejudice to the rights of the Trustees to request that the Court set the reduced level of rent following any such determination on the Second Cause of Action.

important to the creditors of Services, whose estate funds all postpetition payments under the Master Lease.

11. However, because Uniti is a REIT which dividends out substantially all of its cash on a quarterly basis, Holdings' claim to recover the improper postpetition payments may be largely unrecoverable (as would be Services' administrative claim against Holdings).

12. Viewed from this perspective, the relief sought by the Debtors fails to strike an appropriate balance between their interest in preserving the right to use the leased facilities and ultimately assume the out-of-market Master Lease, on the one hand, and minimizing the cash dissipation that the estates are suffering from paying rent that is severely over-market, on the other.

13. The December 6 deadline from which the Debtors seek relief under principles of equity places both the Debtors and Uniti in a quandary:

- (a) From the Debtors' perspective, deemed rejection would relieve them of the requirement to pay contract rent, but would give Uniti the opportunity to terminate the contract and jeopardize continued use of the network, thereby impairing estate value.
- (b) From Uniti's perspective, as a practical matter, there is no other tenant or collection of tenants to whom Uniti can re-let the property (at least in the near term), and even if there were, such tenant or tenants would only pay a market rate of rent—which Uniti would only be able to begin collecting, if at all, after all hurdles to transition (including multiple regulatory approvals) had been cleared.

14. As such, the Debtors' payment of market rent pending resolution of the litigation is eminently fair and equitable. It mitigates the outflow of payments that the Debtors would be entitled to recover, but that would be uncollectible if the Debtors prevail in their litigation, and it replicates the financial result to Uniti if the Master Lease were rejected, without the attendant risks for Uniti of transitioning to a new tenant.

15. In that regard, the Trustees, based on their financial advisors' review of the Debtors' assumptions and disclosures, believe that the current market rate of rent would be approximately

\$30 to \$33 million per month. Absent the agreement of the parties regarding the amount of rent that should be paid pending resolution of the Complaint, the Trustees would ask that the Court hold a hearing prior to the January payment date under the Master Lease to determine the appropriate market rent.

CONCLUSION

16. For the reasons set forth above, the Trustees respectfully request that the Court either (a) deny the Motion, or (b) limit any stay until January 7, 2020 at the latest, and condition any further effectiveness of the stay beyond January 7 on (1) a determination of market rent, and (2) the payment by Holdings of such market rent on a go-forward basis, commencing with the January 8 payment, and grant such other relief as the Court deems just and proper.

Dated: November 18, 2019
New York, New York

WHITE & CASE LLP

By: /s/ J. Christopher Shore
Southeast Financial Center, Suite 4900
200 South Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744
Thomas E Lauria, Esq. (admitted *pro hac vice*)

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