

Hearing Date: January 16, 2020, at 10:00 a.m. (prevailing Eastern Time)
Objection Deadline: January 9, 2020, 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> , ¹)	
)	Case No. 19-22312 (RDD)
Debtors.)	
)	(Jointly Administered)

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER
APPROVING THE DEBTORS' 2020 KEY EMPLOYEE INCENTIVE PROGRAM**

PLEASE TAKE NOTICE that on December 20, 2020, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' Motion for Entry of an Order Approving the Debtors' Second Key Employee Incentive Program* (the "Motion"). A hearing (the "Hearing") on the Motion 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 **January 16, 2020, at 10:00 a.m. (prevailing Eastern Time)**.

¹ 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.



PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Motion 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 the Court; (c) be filed electronically with the Court on the docket of *In re Windstream Holdings, Inc.*, Case 19-22312 (RDD) by registered users of the Court’s electronic filing system and in accordance with the General Order M-399 (which is available on the Court’s website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **January 9, 2020, 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 <https://www.kcc.net/windstream>) and (ii) any person or entity with a particularized interest in the subject matter of the motion.

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

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

Dated: December 20, 2019
New York, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

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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)
)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
APPROVING THE DEBTORS' 2020 KEY EMPLOYEE INCENTIVE PROGRAM**

Windstream Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), respectfully state the following in support of this motion:

Introduction

1. In the approximately nine months since the Petition Date, the Debtors have made substantial progress, including securing \$1 billion in debtor-in-possession financing, stabilizing their business operations, commencing and advancing litigation against Uniti Group, Inc. ("Uniti")

¹ 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.

with respect to that certain agreement styled as a Master Lease between Windstream Holdings, Inc. and Uniti (the “Uniti Arrangement”), and engaging in mediation pursuant to the *Order Appointing a Mediator* [Docket No. 874] aimed at reaching a global resolution of the Debtors’ litigation claims against Uniti. The Debtors could not have achieved such progress (along with the day-to-day management of the Debtors’ business) without the properly incentivized efforts of their senior management team. Maintaining a properly incentivized senior management team remains critical to the efficient and effective completion of Debtors’ restructuring and emergence from chapter 11 and to maintain a high level of business performance. Ultimately, incentivizing the Debtors’ senior management team will inure to the benefit of all stakeholders by facilitating a value-maximizing resolution to these chapter 11 cases through successful continued business performance.

2. The Debtors operate in the highly competitive telecommunications industry and continue to combat aggressive campaigns of well-capitalized competitors to gain market share and work to address end-user and distributor concerns regarding the Debtors’ long-term viability. Further, the Debtors have been engaged in mediation and litigation with Uniti regarding the Uniti Arrangement, the resolution of which is key to the Debtors’ chapter 11 emergence strategy. Certain members of the Debtors’ senior management team have been intimately involved in the mediation and litigation process, and their expertise is crucial to reaching a settlement with Uniti or seeking to achieve a favorable litigation outcome.

3. To ensure continued smooth operations in chapter 11 and a value-maximizing emergence from chapter 11, the Debtors worked with their advisors, including Willis Towers Watson US LLC (“Willis Towers Watson”), an independent compensation consultant, to evaluate the Debtors’ compensation and incentive programs. As part of this review process, the Debtors,

their advisors, and the compensation committee of the Debtors' board of directors ("Compensation Committee") reviewed market data and analyses regarding compensation levels, program structure, and incentive program costs of similarly-situated companies. In light of the Debtors' circumstances and their restructuring process, the Debtors and the Compensation Committee, in consultation with their advisors, concluded that certain modifications to the Debtors' existing incentive programs were necessary to appropriately incentivize management and align management's interests with the interests of the Debtors' key stakeholders. The Debtors and the Compensation Committee determined to pursue implementation of the initial key employee incentive program (the "2019 KEIP") for five insider employees. The 2019 KEIP was approved by the Court on May 12, 2019 and is effective through December 31, 2019.

4. In anticipation of the approaching expiration of the 2019 KEIP, the Debtors and their advisors again engaged in a review of the Debtors' compensation and incentive programs. As a result of this review, the Debtors and the Compensation Committee, in consultation with their advisors, concluded that putting in place a further incentive program for 2020 is necessary to continue to appropriately incentivize management. Thus, the Debtors and the Compensation Committee have determined to pursue implementation of a 2020 key employee incentive program (the "2020 KEIP") for the five insider employees, as discussed in this motion.

5. As described in the Smith declaration, achieving the 2020 KEIP performance targets in a highly competitive environment requires "stretch" by the 2020 KEIP participants and are largely consistent with the targets approved as part of the 2019 KEIP, which successfully helped to drive the Debtors' performance this year.

6. Moreover, as described in the Georgeson declaration, the 2020 KEIP is a reasonable, market-based program. Indeed, the 2020 KEIP participants' aggregate compensation

remains at or below market even where target performance is achieved. The 2020 KEIP, then, will appropriately incentivize the 2020 KEIP participants in compliance with section 503(c)(1) of the Bankruptcy Code and should be approved by the Court.

7. Accordingly, and for the reasons set forth below, the Debtors respectfully request that the Court approve the 2020 KEIP.

Relief Requested

8. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), approving the 2020 KEIP. In support of the motion, the Debtors submit the declaration of Drew Smith, the Debtors’ senior vice president of financial planning and assistant treasurer, and the declaration of Zachary P. Georgeson, senior consulting director at Willis Towers Watson, both filed contemporaneously with this motion.

Jurisdiction and Venue

9. 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 the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

11. The bases for the relief requested herein are sections 105(a), 363(c), and 503(c) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and Rule 6004 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Background

12. 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.

13. On February 25, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. 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 a creditors’ committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 136].

14. On May 15, 2019, the Court entered the *Order Approving the Debtors’ Key Employee Incentive Program* [Docket No. 531] approving the 2019 KEIP.

The 2020 Key Employee Incentive Program

15. Prior to the Petition Date, and in the ordinary course of business, the Debtors utilized a number of incentive- and retention-based programs to drive business performance from key executives. In particular, the Debtors employed an incentive program for the five proposed 2020 KEIP participants, whereby such personnel were eligible for annual cash and equity awards subject to the achievement of performance targets approved by the Compensation Committee. To replace these programs during the chapter 11 cases (and in compliance with the Bankruptcy Code’s requirements), the court approved the 2019 KEIP on May 15, 2019, and the 2019 KEIP was in

place for the remainder of 2019. The 2020 KEIP is substantially similar to the 2019 KEIP, which was itself similar to the performance incentive program utilized in the ordinary course prior to the Petition Date. Such performance programs are regularly used by similarly situated companies to incentivize performance from key personnel, such as the 2020 KEIP participants.

I. Overview of the 2020 KEIP Structure.

16. The Debtors' 2020 KEIP participants are the five individuals considered "insiders" under the Bankruptcy Code: (a) Tony Thomas, President and Chief Executive Officer; (b) Robert Gunderman, Chief Financial Officer and Treasurer; (c) Kristi Moody, Executive Vice President, General Counsel & Corporate Secretary; (d) Layne Levine, President – Enterprise; and (e) Jeffery Small, President – Kinetic. They are responsible for determining the Debtors' strategic direction and ensuring achievement of the Debtors' overall goals. In addition to their substantial day-to-day responsibilities, these individuals saw their workloads expand significantly as a result of the chapter 11 cases as, among other things, the Debtors transitioned their operations into chapter 11 and confronted the challenges of operating competitively while in chapter 11. Further, certain of these individuals have been active in the mediation and litigation proceedings crucial to the Debtors' successful restructuring and eventual emergence from chapter 11. While such responsibilities are inherent to the 2020 KEIP participants' duties as leaders of a debtor-in-possession, the additional challenge these responsibilities posed and continue to pose should be factored into consideration of the 2020 KEIP participants' ability to achieve targeted business performance.

17. To this end, the Debtors believe that appropriate, incentive-based compensation opportunities remain an important tool to drive performance. Thus, the Debtors again evaluated the executive compensation programs with the benefit of independent oversight and guidance from the Compensation Committee, Willis Towers Watson, and their other financial and legal advisors.

The proposed award opportunities reflect Willis Towers Watson's benchmarking analysis versus the Debtors' industry peers, the Debtors' performance relative to the targets in the 2019 KEIP, as well as a review of incentive-based compensation programs approved in other chapter 11 cases. The Debtors' proposed award opportunities (as well as performance targets) were also vetted by the Compensation Committee, as well as the Debtors' advisors. Notably, the 2020 KEIP was designed to include from the outset the modifications agreed among the Debtors and their creditor constituents for the 2019 KEIP.

18. The participants in the 2020 KEIP include the five senior-most officers generally responsible for the overall strategy and direction of the Debtors' business as a whole and have played, and will continue to play, a central role in the Debtors' chapter 11 cases. The 2020 KEIP contains the following primary design features:

- **2020 KEIP Awards.** Each 2020 KEIP award will be a cash amount provided (to the extent earned based on performance) upon the conclusion of each of the performance periods. Potential payments are based on achievement of specified performance metrics for each such performance period and subject to continued employment of the participant through each such time (except as provided below).
- **Performance Periods.** Periods are coextensive with each quarter of 2020. Achievement of performance for each period will be considered independently of performance for other periods.
- **Deferral Feature:** 50% of all payments for each quarterly performance period will be deferred until the earlier of emergence and March 1, 2021. This feature was agreed to by the Debtors and their creditor constituencies in connection with the 2019 KEIP.
- **Catch-up Feature.** In addition to the measurement of achievement of performance for each performance period, performance will be measured on a cumulative basis at the end of 2020 and a "catch-up" payment will be made to the extent the Debtors achieve or exceed the cumulative performance targets for the full year of 2020. The amount of the catch-up payment will be equal to the excess of (i) the 2020 KEIP payment payable for the full year of 2020 based on the achievement of the applicable cumulative performance targets for the full year of 2020, over (ii) the sum of the aggregate amount of the 2020 KEIP payments previously paid to the participant.

- **2020 KEIP Payments:** Payments will be made as soon as practical after the end of each performance period, but in any event by (i) May 31, 2020, for the first quarter of 2020; (ii) August 31, 2020, for the second quarter of 2020; (iii) November 30, 2020, for the third quarter of 2020; and (iv) February 28, 2021, for the fourth quarter of 2020 and, if applicable, any deferred payments will be paid by the earlier of the emergence date and March 1, 2021.
- **2020 KEIP Payout Ranges.** The 2020 KEIP will provide for potential payments representing a range from 50 percent of target payment for threshold performance; and, for the President and Chief Executive Officer, Chief Financial Officer and Treasurer, and General Counsel, up to 185 percent of target payment for maximum performance; and for the President - Enterprise and President - Kinetic, up to 200 percent of target payment for maximum performance. Linear interpolation of the 2020 KEIP payment will be applied for achievement of performance metrics between the values shown below.

Performance Level	Below Threshold	Threshold	Target	Maximum
Payout % of Target Award	0%	50 %	100%	185% or 200%

- **Performance Targets.** 2020 KEIP payouts will be based on three performance metrics, with metrics varying by function/business unit. For the President and Chief Executive Officer, Chief Financial Officer and Treasurer, and General Counsel, performance metrics consist of adjusted OIBDAR² weighted at 60%, Enterprise strategic revenues weighted at 20%, and Kinetic net broadband adds weighted at 20%. For the President-Enterprise, performance metrics consist of enterprise contribution margin weighted at 60%, Enterprise strategic revenue weighted at 20%, and enterprise service revenue weighted at 20%. For the President-Kinetic, performance metrics consist of kinetic contribution margin weighted at 60%, SMB revenue weighted at 20%, and net broadband adds weighted at 20%.
- **Termination of Employment.** If a participant's employment is terminated by the Debtors without "cause," by the participant for good reason, or upon death or disability, the participant will be entitled to: (i) payment of 100% of his or her deferred bonuses and (ii) a pro-rata portion of the 2020 KEIP payment that would otherwise have been earned for such performance period based on the percentage of the performance period the participant was engaged by the Debtors. If a participant's employment is terminated for any other reason (voluntary termination, termination by the Debtors for cause), any remaining unpaid portion of the 2020 KEIP payment will be forfeited.
- **Clawback.** If a participant's employment is terminated by the Debtors for cause or by the participant without good reason before December 31, 2020, the

² "OIBDAR" is operating income before depreciation, amortization, and the Debtors' annual payment to Uniti.

participant will be required to repay the after-tax value of any bonus amount in excess of the target bonus amount.³ Interim payments that have been paid would not be subject to a “clawback” to the extent any cumulative targets were not achieved.

- ***Program Treatment Upon Emergence.*** Prior to emergence, the Debtors may alter or terminate the 2020 KEIP, but not in a manner adverse to the participants in a performance period that has already commenced. Post-emergence, the new board may make changes to the 2020 KEIP, but not in a manner adverse to the participants. The 2020 KEIP will remain in effect for the entirety of 2020, regardless of whether the effective date of a chapter 11 plan of reorganization occurs mid-year. If the Debtors have not emerged from bankruptcy before December 31, 2020, the Debtors will develop and petition for a new KEIP for 2021.

19. If approved, the 2020 KEIP would provide aggregate (for all participants) threshold, target, and maximum opportunities of approximately \$5.0 million, \$10.0 million, and \$18.9 million, respectively, to be earned for performance through the end of 2020, summarized as follows:

Individual 2020 KEIP Values				
Participant’s Title	Below Threshold Award Opportunity	Threshold Award Opportunity	Target Award Opportunity	Maximum Award Opportunity
President and Chief Executive Officer	\$0	\$2,565,000	\$5,130,000	\$9,490,500
Chief Financial Officer and Treasurer	\$0	\$950,000	\$1,900,000	\$3,515,000
President-Enterprise	\$0	\$570,000	\$1,140,000	\$2,280,000
President-Kinetic	\$0	\$540,000	\$1,080,000	\$2,160,000
Executive Vice President-General Counsel & Corporate Secretary	\$0	\$390,625	\$781,250	\$1,445,313
Total Award Values	\$0	\$5,015,625	\$10,031,250	\$18,890,813

20. The Debtors respectfully submit that such award opportunities are a reasonable, market-based approach and are justified under the circumstances of these chapter 11 cases. The threshold, target, and maximum awards available in the 2020 KEIP are identical to the awards

³ “Excess Bonuses” means the sum of the bonus paid to the participant for each performance period in excess of the participant’s target bonus for that performance period. By way of example, if a participant’s target bonus for each performance period was \$100 and the participant was paid \$100 for Period 1, \$110 for Period 2, \$90 for Period 3, and \$125 for Period 4, the participants’ Excess Bonuses would be \$35 (\$0 for Period 1, \$10 for Period 2, \$0 for Period 3, and \$25 for Period 4).

available in the 2019 KEIP as approved by the Court. As set forth in the Georgeson declaration, the compensation opportunities will result in the 2020 KEIP participants receiving at or below market compensation, on average, assuming target payouts under the program. As further set forth in the Georgeson declaration, the program's target cost of \$10.0 million and maximum cost of \$18.9 million is also reasonable in absolute terms when compared to aggregate cost of key employee incentive programs approved in similarly-sized chapter 11 cases.

II. Overview of Performance Targets.

21. Under the 2020 KEIP, awards are payable only upon the Debtors' achievement of certain operational performance targets during 2020, all as set forth in the Smith declaration. Achievement of the performance targets will require substantial effort from the 2020 KEIP participants. The performance targets established by the Compensation Committee were developed carefully to ensure they are an appropriate "reach" to drive performance, on the one hand, but will not present unrealistic or unattainable goals, on the other hand—which would of course thwart the incentivizing nature of the program. Development of the performance targets was in consultation with the Debtors' restructuring advisors and coupled with an independent review of the total compensation award levels by Willis Towers Watson.

22. The Debtors face severe business pressures as a function of the highly competitive landscape for telecommunications providers generally, as well as the challenges inherent to operating any business in chapter 11. This process has required a proactive approach by the 2020 KEIP participants to engage with customers, vendors, and employees to ensure that such parties both understand and believe the "business as usual" message of this balance sheet restructuring. The Debtors have faced additional challenges resulting from media coverage of the nature and progress of the Debtors' litigation with Uniti and their ultimate reorganization. This challenge is compounded by the nature of the Debtors' industry itself—in certain instances the Debtors supply

critical communications and support services to end users such as hospitals, municipalities, and schools. Such end users, due to a lack of familiarity with the chapter 11 process, may continue to be cautious about engaging with the Debtors, despite the fact that the Debtors' ability to operate has been unimpaired by these chapter 11 cases.

23. To date, the 2020 KEIP participants have met these challenges and have directly engaged with vendors and services providers to maintain stability and seamless performance across the Debtors' businesses. The performance targets will require the 2020 KEIP participants to continue to "manage through" the Debtors' chapter 11 filings. The performance targets fall into the following categories:

- ***CEO, CFO, and General Counsel.*** Adjusted OIBDAR weighted at 60%, enterprise strategic revenues weighted at 20%, and Kinetic net broadband adds weighted at 20%.
- ***President - Enterprise.*** Enterprise contribution margin weighted at 60%, enterprise strategic revenues weighted at 20%, and enterprise service revenue weighted at 20%.
- ***President - Kinetic.*** Kinetic contribution margin weighted at 60%, SMB service revenue weighted at 20%, and Kinetic net broadband adds weighted at 20%.

The weighting of these targets is identical to the 2019 KEIP, except that for the President - Enterprise, the enterprise & wholesale contribution margin and enterprise & wholesale service revenue metrics in the 2019 KEIP were updated to enterprise contribution margin and enterprise service revenue in the 2020 KEIP.

24. As with the 2019 KEIP, the Debtors do not believe that 2020 KEIP participants can achieve the performance targets simply by "showing up." To the contrary, as outlined in the Smith declaration, achieving even a minimum award opportunity will mean that 2020 KEIP participants have performed well against these challenges for the benefit of these chapter 11 estates. While the

Debtors believe they can meet these challenges, the incentives created through their proposed 2020 KEIP are an important tool to achieve this result.

25. The 2020 metrics and performance targets are summarized below:

		FY20 Targets			Spread	
		Threshold: 50% Payout	Plan: 100% Payout	Maximum: 200% Payout	Threshold to Plan	Threshold to Max
Adjusted OIBDAR	FY20	\$ 1,469	\$ 1,632	\$ 1,795	\$ 163	\$ 326
	Q1	\$ 376	\$ 418	\$ 460	\$ 42	\$ 84
	Q2	\$ 372	\$ 414	\$ 455	\$ 41	\$ 83
	Q3	\$ 359	\$ 399	\$ 439	\$ 40	\$ 80
	Q4	\$ 361	\$ 401	\$ 441	\$ 40	\$ 80
Enterprise Strategic Revenue	FY20	\$ 302	\$ 335	\$ 369	\$ 34	\$ 67
	Q1	\$ 71	\$ 79	\$ 87	\$ 8	\$ 16
	Q2	\$ 73	\$ 81	\$ 90	\$ 8	\$ 16
	Q3	\$ 77	\$ 85	\$ 94	\$ 9	\$ 17
	Q4	\$ 81	\$ 90	\$ 99	\$ 9	\$ 18
Net Broadband Adds	FY20	20	40	60	20	40
	Q1	6	11	17	6	11
	Q2	4	7	11	4	7
	Q3	6	12	18	6	12
	Q4	5	9	14	5	9
Enterprise						
Enterprise Cont Margin	FY20	\$ 403	\$ 448	\$ 492	\$ 45	\$ 90
	Q1	\$ 104	\$ 115	\$ 127	\$ 12	\$ 23
	Q2	\$ 106	\$ 117	\$ 129	\$ 12	\$ 23
	Q3	\$ 99	\$ 110	\$ 121	\$ 11	\$ 22
	Q4	\$ 94	\$ 105	\$ 115	\$ 10	\$ 21
Enterprise Strategic Revenue	FY20	\$ 302	\$ 335	\$ 369	\$ 34	\$ 67
	Q1	\$ 71	\$ 79	\$ 87	\$ 8	\$ 16
	Q2	\$ 73	\$ 81	\$ 90	\$ 8	\$ 16
	Q3	\$ 77	\$ 85	\$ 94	\$ 9	\$ 17
	Q4	\$ 81	\$ 90	\$ 99	\$ 9	\$ 18
Enterprise Service Revenue	FY20	1,951	2,167	2,384	\$ 217	\$ 433
	Q1	511	568	624	\$ 57	\$ 114
	Q2	497	552	608	\$ 55	\$ 110
	Q3	480	533	587	\$ 53	\$ 107
	Q4	463	514	565	\$ 51	\$ 103

FY20 Targets			Spread	
Threshold: 50% Payout	Plan: 100% Payout	Maximum: 200% Payout	Threshold to Plan	Threshold to Max

Kinetic

Kinetic Cont Margin	FY20	\$ 1,047	\$ 1,163	\$ 1,279	\$ 116	\$ 233
	Q1	\$ 268	\$ 298	\$ 328	\$ 30	\$ 60
	Q2	\$ 262	\$ 291	\$ 321	\$ 29	\$ 58
	Q3	\$ 254	\$ 283	\$ 311	\$ 28	\$ 57
	Q4	\$ 262	\$ 291	\$ 320	\$ 29	\$ 58
SMB Revenue	FY20	\$ 273	\$ 304	\$ 334	\$ 30	\$ 61
	Q1	\$ 68	\$ 75	\$ 83	\$ 8	\$ 15
	Q2	\$ 68	\$ 76	\$ 83	\$ 8	\$ 15
	Q3	\$ 69	\$ 76	\$ 84	\$ 8	\$ 15
	Q4	\$ 69	\$ 76	\$ 84	\$ 8	\$ 15
Net Broadband Adds	FY20	20	40	60	20	40
	Q1	6	11	17	6	11
	Q2	4	7	11	4	7
	Q3	6	12	18	6	12
	Q4	5	9	14	5	9

Basis for Relief

I. The 2020 KEIP Is an Ordinary Course Transaction Under Section 363(c) of the Bankruptcy Code.

26. Pursuant to section 363(c)(1) of the Bankruptcy Code, a debtor in possession may “enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). Courts apply a two-part test to determine whether a transaction is in the ordinary course of a debtor’s business. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts analyze the transaction to determine whether the transaction is common to the debtor’s industry and whether the proposed transaction is consistent with the debtor’s prepetition practices. *See id.* at 618; *In re Dana Corp.*, 358 B.R. at 580; *Chaney v. Official Com. of Unsecured Creditors Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (S.D.N.Y. 1997) (same).

27. The 2020 KEIP satisfies both parts of this test. As the Georgeson declaration confirms, incentive programs such as the 2020 KEIP are customarily used by similarly-situated

companies to drive financial performance. The 2020 KEIP is also consistent with programs approved in recent chapter 11 cases of similar size and complexity. In addition, the 2020 KEIP is a continuation of the Debtors' prepetition incentive compensation practice of offering incentive-based awards to their leadership team based on the achievement of certain performance targets. The 2020 KEIP is also consistent with the Debtors' prepetition practice in amount, as the Debtors' proposed 2020 KEIP provides the same maximum awards at the target level as the Debtors' prepetition incentive program. The 2019 KEIP was also largely a continuation of prepetition award practices, and the primary distinctions between the 2019 KEIP and the 2020 KEIP is that the latter provides small changes to the award schedule, performance targets, and amount of award payments available. *See, e.g., In re Dana Corp.*, 358 B.R. at 581 (finding that a debtor's postpetition incentive program was a "refinement" of historical practices and therefore within the ordinary course of the debtor's business). Adjusting incentive award programs in response to the business' performance and needs is itself a continuation of the Debtors' historical practice.

28. The 2020 KEIP, therefore, is consistent with the Debtors' prepetition practice, industry practice for companies in and out of chapter 11, and the Debtors' 2019 KEIP approved by this Court. The Debtors therefore request that the Court approve the 2020 KEIP as an ordinary course transaction pursuant to section 363(c) of the Bankruptcy Code. *See In re Blitz U.S.A. Inc.*, 475 B.R. 209, 215 (Bankr. D. Del. 2012) (approving incentive bonus plans under section 363(c)(1) of the Bankruptcy Code where the debtor sought to continue prepetition plans and incentive-based bonus plans that were common in the industry).

II. In the Alternative, the 2020 KEIP Should be Approved Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code.

A. The 2020 KEIP Reflects a Sound Exercise of the Debtors' Business Judgment.

29. Section 363(b)(1) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To approve the use of estate property under section 363(b)(1) of the Bankruptcy Code, the Second Circuit requires a debtor to show that the decision to use the property outside of the ordinary course of business was based on the debtor’s sound business judgment. *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989). Once a debtor articulates a valid business justification in this regard, the strong presumption arises that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and quotations omitted), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). This rule applies with full force to questions of executive compensation, such as the 2020 KEIP. *See In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) (“Courts have held that the ‘facts and circumstances’ language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b).”).

30. The 2020 KEIP results from an independent analysis undertaken by the Debtors, with the assistance of both an independent compensation consultant and the Debtors’ restructuring advisors. The 2020 KEIP was further subject to review and approval by the Compensation Committee, none of whose members are current 2020 KEIP participants, prospective 2020 KEIP participants, or employees of the Debtors. The 2020 KEIP further addresses the Debtors’ business

need to properly incentivize performance from 2020 KEIP participants—the Debtors’ business performance remains a critically important factor in maximizing estate value, and the Debtors believe that creating proper incentives to achieve this goal is an essential means to this end. The 2020 KEIP participants possess the skills, knowledge, and experience that are critical to the Debtors’ ability to drive performance through improved operations and decreased costs. The 2020 KEIP is therefore structured to drive performance from these key parties, by providing incentives to surpass targeted performance at levels in a manner that will benefit all parties if the performance targets are achieved.

31. As discussed above, the 2020 KEIP sets a threshold award opportunity of approximately \$5.0 million, a target award opportunity of approximately \$10.0 million, and a maximum award opportunity of approximately \$18.9 million. As noted above, threshold, target, and maximum awards available in the 2020 KEIP are identical to the awards available in the 2019 KEIP as approved by the Court. The 2020 KEIP is the result of an independent process undertaken by the Debtors with market guidance from Willis Towers Watson and their restructuring professionals, and oversight from the Compensation Committee. The Debtors’ proposed metrics will drive performance at levels where all parties will benefit if achieved. Absent the relief requested here, the 2020 KEIP participants may be undercompensated and under-incentivized at a critical juncture in the Debtors’ business lifecycle. As set forth in the Georgeson declaration, practically all of the Debtors’ market peers provide such incentives to drive performance—presumably because such peer firms recognize that market-based incentives are an important tool for driving performance by key personnel. In sum, the 2020 KEIP is an appropriate and market-based tool to drive business performance, and implementation of the 2020 KEIP is an appropriate exercise of the Debtors’ business judgment.

B. The 2020 KEIP Satisfies Section 503(c) of the Bankruptcy Code.

1. The 2020 KEIP Is an Incentive Plan in Compliance with Section 503(c)(1) of the Bankruptcy Code.

32. Although section 503(c)(1) of the Bankruptcy Code imposes substantial limitations on retention-based insider compensation programs, section 503(c)(1) does not apply to performance-based incentive plans. *In re Hawker Beechcraft, Inc.*, 479 B.R. at 313. In determining whether an employee bonus plan is incentivizing, courts consider whether the plan is “designed to motivate insiders to rise to a challenge or merely report to work.” *Id.* This analysis further recognizes that all compensation, to some degree, has a retentive element. *In re Glob. Home Prod., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (“The fact . . . that all compensation has a retention element does not reduce the Court’s conviction that [the] Debtors’ primary goal [is] to create value by motivating performance.”); *In re Dana Corp.*, 358 B.R. at 584 (“However, as noted, this Court also opined that incentivizing plans with *some* components that arguably have a retentive effect do not necessarily violate section 503(c).”). Rather, the focus remains on whether the plan is, on the whole, incentivizing in nature by demanding a “stretch” or a “reach” before an award opportunity is achieved. *Dana Corp.*, 358 B.R. at 581.

33. The 2020 KEIP is an incentive-based compensation program. The 2020 KEIP does not contain retention-based components, as participants are not paid merely for maintaining their employment for a certain time period. Rather, the 2020 KEIP awards are available only if difficult-to-reach performance targets are achieved. As discussed in the Smith declaration, the Debtors’ performance targets, as set by the Compensation Committee in consultation with the Debtors’ advisors, are sufficiently difficult to reach to incentivize the 2020 KEIP participants, taking into account the increased difficulty of meeting performance targets due to disruptions or distractions such as (a) facilitating a multi-billion dollar in-court restructuring, (b) mediating and

litigating with Uniti, (c) addressing vendor and customer concerns, and (d) competitors' ongoing efforts to use these chapter 11 cases as a selling point to take business from the Debtors.⁴ Simply put, achieving the performance targets will require substantial outperformance.

34. The Debtors' threshold goals will be designed to require a similar, albeit less extensive, "stretch." In other words, the 2020 KEIP participants will not be eligible to obtain any award simply as a result of "showing up." *Cf. In re Hawker Beechcraft*, 479 B.R. at 315 (denying KEIP approval where lower threshold attainable was so long as debtor did not encounter "any 'whoopsies'"). Rather, the Debtors and, in particular, the 2020 KEIP participants, must perform in order for even a minimum award opportunity to be earned.

2. The 2020 KEIP Is Justified by the Facts and Circumstances of the Chapter 11 Cases Per Section 503(c)(3) of the Bankruptcy Code.

35. Under section 503(c)(3) of the Bankruptcy Code, courts consider several factors in determining whether a particular program is justified under the facts and circumstances of a particular case, including: (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor's assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent advice in performing due diligence, creating, and authorizing the plan. *See Global Home Prods.*, 369 B.R. at 786; *Dana Corp.*, 358 B.R. at 576–77. No single factor is dispositive, and the Court has discretion to weigh each of these factors based on the specific facts

⁴ *See Windstream Holdings, Inc. v. Charter Communications, Inc., et al.*, No. 19-08246 [Adv. Proc. Docket No. 1] (setting forth the Debtors' allegations that Charter Communications, Inc. took advantage of the Debtors' bankruptcy filing to target the Debtors' customers and lure them to switch to its services).

and circumstances before it. *See In re AMR Corp.*, 490 B.R. 158, 166 (Bankr. S.D.N.Y. 2013) (“[S]ection 503(c)(3) gives the court discretion as to bonus and incentive plans, which are not primarily motivated by retention or in the nature of severance.” (quoting *Dana Corp.*, 358 B.R. at 166)).

36. In this case, the Debtors respectfully submit that consideration of such factors supports approval of the relief requested:

- ***The 2020 KEIP Is Structured to Achieve the Desired Performance.*** The 2020 KEIP incentivizes the Debtors’ leadership team to achieve value-driving financial targets. As discussed above, achieving the performance targets will require substantial outperformance from the 2020 KEIP participants. The performance targets also require the 2020 KEIP participants to ensure stability and growth, notwithstanding their competitors’ aggressive efforts to steal market share as a direct result of these chapter 11 cases.
- ***The Debtors Developed the 2020 KEIP with Independent Advice and Oversight.*** The Debtors actively sought input from their legal and financial consultants during the 2020 KEIP development process. This process included Willis Towers Watson’s specific compensation-related expertise and the oversight and approval of the Debtors’ independent Compensation Committee. This advice is reflected in the 2020 KEIP itself, through which the Debtors are proposing target total award opportunities similar to prepetition award opportunities and to the 2019 KEIP.
- ***The Debtors Were Duly Diligent.*** The Debtors, with the assistance of Willis Towers Watson and their restructuring advisors, performed considerable diligence on their employees’ existing compensation levels (both with and without some form of incentive-based compensation) and market comparable. These efforts reflect similar diligence performed by the parties regarding the 2019 KEIP.
- ***The Cost of the 2020 KEIP Is Reasonable.*** The 2020 KEIP will cost a total of approximately \$5 million at threshold payout levels and \$18.9 million at maximum payout levels—in each case assuming targeted performance is actually achieved; by comparison, the Debtors’ prepetition balance sheet includes more than \$5.6 billion of funded debt. As noted above, the 2020 KEIP’s proposed cost if performance targets are met is equal to the award opportunities of the Debtors’ prepetition program and the 2019 KEIP. As set forth in the Georgeson declaration, the 2020 KEIP’s proposed cost is a reasonable, market-based approach that is consistent with award opportunities approved in comparable chapter 11 cases. As also set forth in the Georgeson

declaration, the 2020 KEIP participants' target total direct compensation will remain at or below compensation opportunities at peer firms.

37. Accordingly, the Debtors respectfully submit that section 503(c)(3) is satisfied and the 2020 KEIP should be approved as a sound exercise of the Debtors' business judgment.

Motion Practice

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

Waiver of Bankruptcy Rule 6004(h)

39. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that the Debtors have established cause to exclude the relief requested herein from the 14-day stay period provided under Bankruptcy Rule 6004(h).

Notice

40. The Debtors have provided notice of this motion 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) and (b) any person or entity with a particularized interest in the subject matter of this motion. The Debtors respectfully submit that no other or further notice is necessary.

No Prior Request

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

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

Dated: December 20, 2019
New York, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**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)
)

**ORDER APPROVING THE DEBTORS'
2020 KEY EMPLOYEE INCENTIVE PROGRAM**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), approving the 2020 key employee incentive program (the “2020 KEIP”) as set forth herein, all as more fully set forth in the Motion; and upon the Georgeson declaration and the Smith 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 December 1, 2016; and this Court having 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 Motion 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 Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors provided appropriate notice

¹ 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.

² Capitalized terms used in this Order not defined have the meanings given to them in the Motion.

of the Motion and the opportunity for a hearing under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors' 2020 KEIP is hereby approved.
3. The Debtors are authorized to take all actions necessary to implement the 2020 KEIP on the terms and conditions set forth in the Motion, including making any payments that become due pursuant to the terms of the 2020 KEIP.
4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.
6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

White Plains, New York
Dated: _____, 2020

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE