

Code”), with the United States Bankruptcy Court for the Southern District of New York (the “Court”), and such cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 56];

WHEREAS, on July 25, 2019, the Debtors filed a complaint (the “Complaint”) in the adversary proceeding *Windstream Holdings, Inc., et al. v. Uniti Group, Inc., et al.* [Adv. Proc. Docket No. 1]. As described further in the Complaint, in March 2015, Windstream Holdings, Inc. (“Holdings”) and Uniti are parties to an agreement styled as a Master Lease (the “Master Lease”). On July 25, 2019, the Debtors also filed *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 “Stay Motion”).

WHEREAS, on July 30, 2019, the Court entered the *Order Appointing a Mediator* [Docket No. 874] appointing the Honorable Shelley C. Chapman to serve as mediator and to conduct nonbinding mediation among certain parties in interest. Following a mediation session on August 1, 2019, the Parties reached agreement on the terms of a consensual extension of the deadline under section 365(d)(4) as to the Master Lease to December 6, 2019.

WHEREAS, on August 20, 2019, the Court entered the *Stipulation and Agreed Order to Extend the Deadline Under Section 365(d)(4) of the Bankruptcy Code as to the Uniti Master Lease* [Docket No. 965].

WHEREAS, on August 8, 2019, Uniti filed an objection to the Stay Motion [Docket No. 912], and on November 23, 2019, Uniti filed a further response with respect to the Stay Motion [Docket No. 1244].

WHEREAS, on November 22, 2019, the Parties reached agreement on the terms of a second consensual extension of the deadline under section 365(d)(4) as to the Master Lease

through and including 30 calendar days following entry of an order by the Court resolving count I (recharacterization) and count II (personal property) of the Complaint.

WHEREAS, on November 27, 2019, the Court entered the *Second Stipulation and Agreed Order to Extend the Deadline Under Section 365(d)(4) of the Bankruptcy Code as to the Uniti Master Lease* [Docket No. 1265] (the “Second 365(d)(4) Stipulation”).

WHEREAS, on December 12, 2019, the Court held a hearing on the *Defendants’ Partial Motion to Dismiss the Complaint* [Adv. Proc. Docket No. 33].

WHEREAS, following the hearing, Holdings and Windstream Services, LLC (“Services”) intend to request leave to file an amended complaint (the “Amended Complaint”) that reasserts counts I (recharacterization) and II (personal property), re-pleads counts III (constructive fraudulent transfer) and IV (breach of contract), and omits count V (breach of the implied covenant of good faith and fair dealing). The numbering of counts I to IV shall not change from the Complaint to the proposed Amended Complaint; and, for ease of reference, (a) Holdings’ and Services’ recharacterization cause of action in count I of the Complaint and the proposed Amended Complaint (or in any further amended complaint) shall be referred to as the “Recharacterization Count,” and (b) Holdings’ and Services’ personal property cause of action in count II of the Complaint and the proposed Amended Complaint (or in any further amended complaint) shall be referred to as the “Personal Property Count.”

WHEREAS, on January 10, 2020, the Parties reached agreement regarding the Personal Property Count as set forth herein.

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

1. The foregoing recitals are incorporated herein by reference as if set forth at length herein.

2. With the consent of Uniti, paragraph 2 of the Second 365(d)(4) Stipulation is amended and restated to read in its entirety as follows: “The deadline under section 365(d)(4) of the Bankruptcy Code will be extended for the Master Lease with the consent of Uniti through and including 90 calendar days following entry of an order by the Court resolving count I (recharacterization) of the Complaint (the “Extension Period”).

3. With the exception of the terms in paragraph 2 of the Second 365(d)(4) Stipulation, the terms of the Second 365(d)(4) Stipulation shall remain in full force and effect and are not amended by this Stipulation.

4. Further litigation of the Personal Property Count is hereby stayed, without prejudice to the Debtors’ right to resume prosecution of the Personal Property Count upon reasonable notice to Uniti.

5. If the Debtors resume prosecution of the Personal Property Count, the Parties will attempt to schedule a trial date within 60 days of an order by the Court resolving the Recharacterization Count or at the Court’s earliest convenience thereafter.

6. The Parties’ rights with respect to all other matters (including, without limitation, the claims set forth in the Complaint or any amended complaint, including any remedies therefor, any rights under section 549 of the Bankruptcy Code, any request to cease payment under the Master Lease, and any request to evict the Debtors) shall be reserved and preserved.

7. Nothing in the Stay Motion or this Stipulation shall be deemed or construed as (a) an assumption or rejection of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (b) an admission or finding with respect to (i) whether the Master Lease is a “true lease” under applicable nonbankruptcy law or (ii) whether the Master Lease is an unexpired lease of nonresidential real property within the meaning of section 365(d) of the Bankruptcy Code, (c) waiving or curtailing any of the Debtors’ rights under (i) section 365 of the Bankruptcy Code or (ii) section 549 of the Bankruptcy Code to avoid or recover any payments under the Master Lease (including without limitation any payments contemplated by the Second 365(d)(4) Stipulation) or insulating Uniti from any such claims, or (d) an admission or finding that section 365(d)(3) of the Bankruptcy Code is applicable to the Master Lease.

8. This Stipulation shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and permitted assigns.

9. The Court shall have exclusive jurisdiction to resolve any and all disputes related to this Stipulation. Each of the Parties irrevocably consents for all purposes of this Stipulation to the jurisdiction of the Court and agrees that venue is proper in the Court.

10. This Stipulation represents the Parties’ mutual understandings and supersedes all prior agreements whether in oral or written form.

11. This Stipulation shall be effective and enforceable immediately upon approval by the Bankruptcy Court.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, and in agreement herewith, the Parties have executed and delivered this Stipulation as of the date first set forth below.

Dated: January 10, 2020
New York, New York

/s/ Stephen E. Hessler

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 -

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

Counsel to the Debtors and Debtors in Possession

/s/ Eli J. Vonnegut

Eli J. Vonnegut

Elliot Moskowitz

DAVIS POLK & WARDWELL LLP

450 Lexington Avenue

New York, New York 10017

Telephone: (212) 450-4000

Facsimile: (212) 701-5800

Counsel to Uniti Group, Inc.

SO ORDERED this ____ day of ____, 2020

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE