

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

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In re:	)	Chapter 11
	)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 19-22312 (RDD)
	)	
Debtors.	)	(Jointly Administered)
_____	)	
WINDSTREAM HOLDINGS, INC. and	)	
WINDSTREAM SERVICES, LLC,	)	
	)	
Plaintiffs,	)	Adversary Proceeding
	)	
v.	)	Case No. 19-08279 (RDD)
	)	
UNITI GROUP, INC., <i>et al.</i>	)	
	)	
Defendants.	)	
_____	)	

**STIPULATION AND AGREED ORDER REGARDING  
BIFURCATION OF COUNTS III AND IV OF THE AMENDED COMPLAINT**

Windstream Holdings, Inc. (“Holdings”) and Windstream Services, LLC (“Services,” and together with Holdings, “Windstream”) and Uniti Group, Inc. and its defendant affiliates (“Uniti,” and, together with Windstream, the “Parties”) submit this proposed stipulation and agreed order (this “Stipulation”) pursuant to Federal Rule of Bankruptcy Procedure 7042 and Federal Rule of Civil Procedure 42(b).

**RECITALS**

**WHEREAS**, on February 25, 2019 (the “Petition Date”), Windstream and its debtor affiliates as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), with the United States Bankruptcy Court for the



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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, Windstream filed its Complaint in the above-captioned case, *Windstream Holdings, Inc. v. Uniti Group, Inc.* (the “Uniti Adversary”) [Adv. Proc. Docket No. 1]. As described further in the Complaint, Holdings and Uniti are parties to an agreement styled as a Master Lease (the “Master Lease”).

**WHEREAS**, on October 1, 2019, the Court entered the *Stipulated Scheduling Order* (the “Scheduling Order”). Under the Schedule Order, the Uniti Adversary has been set for trial on March 2 to 6, 2020.

**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**, on January 22, 2020, Windstream filed its Amended Complaint in the Uniti Adversary [Adv. Proc. Docket No. 71]. In the Amended Complaint, Windstream added new allegations with respect to its constructive fraudulent transfer and breach of contract causes of action, which are Counts III and IV of both the initial Complaint and the Amended Complaint. Windstream’s constructive fraudulent transfer cause of action in Count III of the Amended Complaint (or in any further amended complaint) and breach of contract cause of action in Count IV of the Amended Complaint (or in any further amended complaint) shall be referred to as the “Constructive Fraudulent Transfer and Breach of Contract Counts.” Windstream’s recharacterization cause of action in Count I of the Amended Complaint (or in any further amended complaint) shall be referred to as the “Recharacterization Count.”

**WHEREAS**, on January 16 and 23, 2020, the Court held conferences in the Uniti Adversary. During those status conferences, the Parties raised with the Court, among other issues, the existing Scheduling Order deadlines, including what additional discovery, if any, is required

based on the Amended Complaint and whether the Uniti Adversary should remain set for trial on March 2 to 6, 2020.

**WHEREAS**, the Parties have continued to meet and confer regarding the Scheduling Order deadlines, including prioritizing and streamlining the issues that should be tried on March 2 to 6, 2020 and using the Parties' and the Court's time and resources efficiently.

**WHEREAS**, on January 30, 2020, the Parties reached agreement regarding the bifurcation of the Constructive Fraudulent Transfer and Breach of Contract Counts as set forth herein. The Intervenor support this Stipulation.<sup>1</sup>

**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. Further litigation of the Constructive Fraudulent Transfer and Breach of Contract Counts, including any counterclaims thereto, is hereby stayed; provided, however, that Uniti's answer to the Amended Complaint shall include answers to allegations concerning the Constructive Fraudulent Transfer and Breach of Contract Counts and any counterclaims thereto. With respect to any other counterclaims, including any counterclaims regarding the Recharacterization Count, Windstream reserves all rights with respect to whether such counterclaims should be stayed pending an order by the Court resolving the Recharacterization Count.

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<sup>1</sup> The Intervenor are: the First Lien Ad Hoc Group, the Ad Hoc Committee of Second Lien Noteholders, the Official Committee of Unsecured Creditors, and UMB Bank, National Association and U.S. Bank National Association, solely in their capacities as indenture trustees).

3. Windstream shall have the right to resume prosecution of the Constructive Fraudulent Transfer and Breach of Contract Counts following entry of an order by the Court resolving the Recharacterization Count and upon reasonable notice to Uniti, with such notice to be given within 14 days of the entry of such order.

4. Upon the requisite notice being given pursuant to Section 3 of this Stipulation, the Parties will request a status conference before the Court to set a case schedule through trial for the Constructive Fraudulent Transfer and Breach of Contract Counts. The Parties reserve all rights with respect to what fact and expert discovery remains for the Constructive Fraudulent Transfer and Breach of Contract Counts, and will meet and confer in advance of the status conference to discuss a proposed scheduling order for the Constructive Fraudulent Transfer and Breach of Contract Counts.

5. The Parties' rights with respect to all other matters shall be reserved and preserved. For the avoidance of doubt, nothing in this Stipulation shall be deemed or construed as affecting any deadlines under Section 365(d)(4) of the Bankruptcy Code as to the Master Lease.

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

7. The Court shall have exclusive jurisdiction to resolve any and all disputes related to this Stipulation, including to modify this Stipulation upon request from either of the Parties and for good cause. 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.

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

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

**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 30, 2020  
New York, New York

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

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

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*Counsel to Uniti Group, Inc.*

**SO ORDERED** this 31st day of January, 2020

/s/ Robert D. Drain

THE HONORABLE ROBERT D. DRAIN

UNITED STATES BANKRUPTCY JUDGE