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

In re:

WINDSTREAM HOLDINGS, INC., *et al.*,<sup>1</sup>  
Debtors.

WINDSTREAM HOLDINGS, INC., and  
WINDSTREAM SERVICES, LLC,  
Plaintiffs,

vs.

UNITI GROUP INC., *et al.*,  
Defendants.

UNITI GROUP INC., *et al.*,  
Third-Party Plaintiffs,

vs.

CAVALIER TELEPHONE, LLC, *et al.*,  
Third-Party Defendants.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

Adv. Pro. No. 19-08279 (RDD)

**DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE  
CERTAIN TESTIMONY OF JEFFERY SMALL**

<sup>1</sup> 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.



Defendants (collectively, “Uniti”), by and through their counsel, respectfully submit this motion *in limine* to strike [REDACTED] of the Affidavit of Jeffery Small, dated February 26, 2020. *See* Dkt. 100. The deadline for the submission of trial affidavits was only three hours prior to the deadline for the submission of motions *in limine*. Uniti submits this Motion based on the review of the Affidavit and any related discovery materials it has been able to conduct during that time. Uniti reserves the right to amend this Motion to incorporate additional facts or case law upon a further review of the Affidavit and any related discovery materials.

1. Mr. Small is one of Windstream’s two fact witnesses testifying live at the upcoming trial. [REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]<sup>3</sup>

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<sup>2</sup> [REDACTED]

<sup>3</sup> [REDACTED]



■ See Fed. R. Evid. 701(c); *United States v. Haynes*, 729 F.3d 178, 195 (2d Cir. 2013); *Fed. Hous. Fin. Agency v. Nomura Holding Am., Inc.*, 2015 WL 685159, at \*3 (S.D.N.Y. Feb. 18, 2015) (“The distinctions drawn between Rules 701 and 702 prevent[] a party from conflating expert and lay opinion testimony thereby conferring an aura of expertise on a witness without satisfying the reliability standard for expert testimony set forth in Rule 702 and the pre-trial disclosure requirements set forth in the Rules.” (internal quotations and citations omitted)).

5. Accordingly, Uniti respectfully requests that the Court strike [REDACTED]  
[REDACTED] of the Affidavit of Jeffery Small.

Dated: New York, New York  
February 26, 2020

DAVIS POLK & WARDWELL LLP

By: /s/ Elliot Moskowitz  
Elliot Moskowitz

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