
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|------------------------|
| IN RE: |) | Case No. 19-22312-RDD |
| |) | |
| |) | Chapter 11 |
| WINDSTREAM HOLDINGS, INC., <i>et. al.</i> |) | |
| Debtors, |) | (Jointly Administered) |
| |) | |
| |) | |

**RESPONSE OF OMAHA PUBLIC POWER DISTRICT TO
DEBTORS' THIRD NOTICE OF SATISFACTION OF CLAIMS**

Omaha Public Power District ("OPPD"), by and through its undersigned counsel, hereby responds to the Debtors' Third Notice of Satisfaction of Claims, which was filed on February 14, 2020, and received by OPPD on February 17, 2020. In support of its Response, OPPD respectfully states as follows:

1. OPPD is a public corporation and political subdivision of the state of Nebraska and a public power utility serving 846,000 people in 13 counties in Nebraska covering a 5,000 square-mile service territory.
2. Debtors, Windstream Network Services of the Midwest, Inc. and Windstream of the Midwest, Inc. and OPPD are parties to that certain Agreement dated February 5, 1999 (as amended, the "Agreement") pursuant to which OPPD grants Debtors a license to access certain OPPD facilities for purposes of providing telecommunication services.
3. As consideration for the licenses granted to debtors, debtors are required under the Agreement to pay OPPD an annual license fee in quarterly installments (the "License Fee").



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4. On February 25, 2019 (the "Petition Date"), the above-captioned debtors and debtors-in-possession (together, the "Debtors") filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

5. Following the failure of the debtors to pay the first quarter installment of the License Fee of Three Hundred Eighty-Four Thousand Three Hundred Eighty-Six Dollars and 87/100 (\$384,386.87) (the "Q1 License Fee") as required by the Agreement, on April 29, 2019, OPPD filed a proof of claim with the Court (Claim no. 1108). (See Exhibit A).

6. On July 1, 2019, debtors remitted payment to OPPD in the amount of One Hundred Thirty-Nine Thousand Seven Hundred Four Dollars and 47/100 (\$139,704.47) for the pro rata portion of the Q1 License Fee for the thirty-five (35) day period from the Petition Date to March 31, 2019 (the "Q1 Partial Payment"). (See Exhibit B).

7. Following the Q1 Partial Payment, the debtors still owe an amount equal to Two Hundred Forty-Four Thousand Six Hundred Eighty-Two Dollars and 40/100 (\$244,682.40) ("Q1 Balance").

8. On September 10, 2019, debtors made a payment to OPPD of Three Hundred Eighty-Four Thousand Three Hundred Eighty-Six Dollars and 87/100 (\$384,386.87) for the second quarter installment of the License Fee (the "Q2 License Fee"). (See Exhibit C).

9. Neither the payment of the Q1 Partial Payment or the Q2 License Fee satisfies debtors' obligations to pay the Q1 Partial Payment which remains due, payable and outstanding pursuant to the terms of the Agreement.

10. As OPPD is still owed Two Hundred Forty-Four Thousand Six Hundred Eighty-Two Dollars and 40/100 (\$244,682.40) for the Q1 Balance, OPPD's proof of claim (Claim no. 1108) remains valid and enforceable by this Court.

11. OPPD respectfully requests the Court reject Debtors' Third Notice of Satisfaction of Claims.

12. OPPD reserves all rights to supplement and/or amend this Response, raise further and other Responses to the Third Notice of Satisfaction of Claims. OPPD further reserves all of its rights, claims, causes of action and defenses relating in any way to the proposed Third Notice of Satisfaction of Claims.

Respectfully submitted,
FRASER STRYKER PC LLO

Dated: March 5, 2020

By: /s/ Stephen M. Bruckner
Stephen M. Bruckner
Mark O'Siochain
Steven R. Hogan II
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Shogan@fraserstryker.com

ATTORNEYS FOR OMAHA
PUBLIC POWER DISTRICT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Response and was electronically filed on March 5, 2020, with the Clerk of the United States Bankruptcy Court for the Southern District of New York using the CM/ECF System which sent notice to the following designated persons or entities:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Stephen E. Hessler, P.C., Trudy Smith, and Christopher Cersa

and

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attn.: Ross M. Kwasteniet, P.C., Brad Weiland, and John R. Luze
ATTORNEYS FOR DEBTORS

and via U.S. Mail, postage prepaid, to all other non CM/ECF participants or persons or entities on the Official Matrix, as follows or as required:

Morrison & Foerster LLP
250 West 55th Street
New York, New York, 10019
Attn: Lorenzo Marinuzzi, Todd M. Goren, Jennifer L. Marines, and Erica J. Richards
ATTORNEYS FOR THE COMMITTEE

Davis Polk & Wardell LLP
450 Lexington Avenue
New York, New York 10017
Attn: Timothy Graulich and Natasha Tsiouris
ATTORNEYS FOR THE DEBTOR IN POSSESSION AGENT

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Andrew N. Rosenberg, Brian S. Hermann, Samuel E. Lovett, and Michael S. Rudnick
ATTORNEYS FOR THE AD HOC GROUP OF TERM LENDERS

Office of The United States Trustee
U.S. Federal Office Building
201 Varick Street, Suite 1006

New York, New York 10014
Attn: Paul K. Schwartzberg and Serene Nakano.

| | |
|--|---|
| Fill in this information to identify the case: | |
| Debtor | <u>Windstream Holdings, Inc. et al.</u> |
| United States Bankruptcy Court for the: | <u>Southern District of New York</u> |
| Case number | <u>19-22312</u> |

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both, 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1 Identify the Claim

| | | |
|--|---|---|
| 1. Who is the current creditor? | <u>Omaha Public Power District</u> Name of the current creditor (the person or entity to be paid for this claim) | |
| | Other names the creditor used with the debtor: <u>OPPD</u> | |
| 2. Has this claim been acquired from someone else? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____ | |
| 3. Where should notices and payments to the creditor be sent? | Where should notices to the creditor be sent? | Where should payments to the creditor be sent? (if different) |
| Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) | <u>Fraser Stryker PC LLO</u> Name <u>409 S 17 Street</u> Number Street <u>Omaha</u> <u>NE</u> <u>68102</u> City State ZIP Code Contact phone <u>(402) 978-5375</u> Contact email <u>mosiochain@fraserstryker.com</u> | <u>Omaha Public Power District</u> Name <u>P.O. Box 3065</u> Number Street <u>Omaha</u> <u>NE</u> <u>68103</u> City State ZIP Code Contact phone _____ Contact email _____ |
| 4. Does this claim amend one already filed? | <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>625</u> | |
| 5. Do you know if anyone else has filed a proof of claim for this claim? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____ | |

COPY

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APR 2 9 2019

KURTZ/HAN CARSON CONSULTANTS

Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

Claim #

Initials

Filed on 04/05/2019

MM / DD / YYYY

Part 2: Give Information About the Claim as of the Date the Case Was Filed.

6. Do you have any number you use to identify the debtor? ☐ No
☒ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 1 1 6 9

7. How much is the claim? \$ 384,386.87 Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
License fees

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

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Amount necessary to cure any default as of the date of the petition: \$ _____

Annual interest rate (when case was filed) _____ %

☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition: \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? ☒ No
☐ Yes. Check one:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

| | |
|---|--------------------------------------|
| <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | Amount entitled to priority \$ _____ |
| <input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | \$ _____ |
| <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | \$ _____ |
| <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | \$ _____ |
| <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | \$ _____ |
| <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. | \$ _____ |

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/23/2019
MM / DD / YYYY

/s/ Mark R. O'Siochain
Signature

Print the name of the person who is completing and signing this claim:

Name: Mark R. O'Siochain
First name Middle name Last name

Title: Attorney

Company: Fraser Stryker PC LLO
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 409 S 17 Street
Number Street
Omaha NE 68102
City State ZIP Code

Contact phone: (402) 978-5375 Email: mosiochain@fraserstryker.com

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APR 29 2019

KURTZMAN CARSON CONSULTANTS

19-22312-rdd Claim 7-1 Part 2 Filed 04/05/19 Pg 1 of 1



OPPD INVOICE

AMOUNT DUE: 384,386.87 USD

Amount Remitted _____

Page: 1
Invoice No: NRV005587
Invoice Date: 01/30/2019
Customer Number: ARM01169
Payment Terms: Net 15
Due Date: 02/14/2019

Bill To:

WINDSTREAM COMMUNICATIONS C00028296
NETWORK LEASES
CORP.ACCOUNTS.PAYABLE@WINDSTREAM.COM
PO BOX 25410
LITTLE ROCK AR 72221-5410
United States

Please Remit To:

OMAHA PUBLIC POWER DISTRICT
P.O. Box 3065
Omaha NE 68103-0065
United States

For billing questions, please call 402-638-3003

| Line | Adj | Identifier | Description | Quantity | UOM | Unit Amt | Net Amount |
|--|-----|--------------|-------------|----------|-----|------------|------------|
| SCHEDULED COMMISSIONS PAYMENT per agreement dated March 28, 2005 | | | | | | | |
| 1 | | 1ST QTR 2019 | COMMISSIONS | 1.00 | LT | 359,240.07 | 359,240.07 |
| SUBTOTAL: | | | | | | | 359,240.07 |
| TOTAL TAXES: | | | | | | | 25,146.80 |
| TOTAL AMOUNT DUE: | | | | | | | 384,386.87 |

Please note that as of January 1, 2018
Nebraska Revenue Statute 77-2701.15(2)(b),(d) or (e) stipulates that gross
revenue received from installation, removal of property used in conjunction
with the connecting of any public utility services are subject to sales tax
as imposed. Therefore, sales tax is due on this invoice. Any questions
contact the Nebraska Dept of Revenue.

*****PAST DUE*****

LEAD SUN

Original





OPPD INVOICE

AMOUNT DUE:

145,212.82 USD

Amount Remitted

- 139,704.47 paid
7-8-19
\$ 5,508.35

Page:

1

Invoice No:

NRV005590

Invoice Date:

03/08/2019

Customer Number:

ARM01169

Payment Terms:

Net 30

Due Date:

04/07/2019

Bill To:

WINDSTREAM COMMUNICATIONS C00028296
NETWORK LEASES
CORP.ACCOUNTS.PAYABLE@WINDSTREAM.COM
PO BOX 25410
LITTLE ROCK AR 72221-5410
United States

Please Remit To:

OMAHA PUBLIC POWER DISTRICT
P.O. Box 3995
Omaha NE 68103-0995
United States

For billing questions, please call 402-636-3512

| Line | Adj | Identifier | Description | Quantity | UOM | Unit Amt | Net Amount |
|--|-----|--------------|---------------------------|----------|-----|------------|------------|
| SCHEDULED COMMISSIONS PAYMENT per agreement dated March 28, 2005 prorated Feb 25 - March 31, 2019 | | | | | | | |
| 1 | | 1ST QTR 2019 | COMMISSIONS FEB 26-Mar 31 | 1.00 | LT | 135,712.92 | 135,712.92 |
| SUBTOTAL: | | | | | | | 135,712.92 |
| TOTAL TAXES: | | | | | | | 9,499.90 |
| TOTAL AMOUNT DUE : | | | | | | | 145,212.82 |

LUMP SUM

Original



OPPD INVOICE

AMOUNT DUE: 384,386.87 USD Page: 1
359,240.07 pr 7-18-19 Invoice No: NRV005591
Amount Remitted 25,146.80 pr 9/19/19 Invoice Date: 04/01/2019
Customer Number: ARM01169
Payment Terms: Net 15
Due Date: 04/16/2019

Bill To:

WINDSTREAM COMMUNICATIONS C00028296
NETWORK LEASES
CORP.ACCOUNTS.PAYABLE@WINDSTREAM.COM
PO BOX 25410
LITTLE ROCK AR 72221-5410
United States

Please Remit To:

OMAHA PUBLIC POWER DISTRICT
P.O. Box 3065
Omaha NE 68103-0065
United States

For billing questions, please call 402-636-3214

| Line | Adj | Identifier | Description | Quantity | UOM | Unit Amt | Net Amount |
|--|-----|--------------|-------------|----------|-----|------------|------------|
| SCHEDULED COMMISSIONS PAYMENT per agreement dated March 28, 2005 | | | | | | | |
| 1 | | 2ND QTR 2019 | COMMISSIONS | 1.00 | LT | 359,240.07 | 359,240.07 |

SUBTOTAL:

359,240.07

TOTAL TAXES:

25,146.80

TOTAL AMOUNT DUE :

384,386.87

LUMP SUM

Original

EXHIBIT

C