

Hearing Date: April 3, 2020 at 10:00 a.m. (prevailing Eastern Time)  
Objection Deadline: March 27, 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> , <sup>1</sup>	)	Case No. 19-22312 (RDD)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF DEBTORS' MOTION FOR  
ENTRY OF AN ORDER APPROVING THE  
SETTLEMENT BETWEEN THE DEBTORS AND  
UNITI GROUP INC., INCLUDING (I) THE SALE OF CERTAIN  
OF THE DEBTORS' ASSETS PURSUANT TO SECTION 363(B) AND  
(II) THE ASSUMPTION OF THE LEASES PURSUANT TO SECTION 365(A)**

**PLEASE TAKE NOTICE** that on March 6, 2020, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed *Debtors' Motion For Entry of an Order Approving the Settlement Between the Debtors and Uniti Group Inc., Including (I) The Sale of Certain of the Debtors' Assets Pursuant to Section 363(b) and (II) the Assumption of the Leases Pursuant to Section 365(a)*. A hearing on the motion will be held before the Honorable Robert D.

<sup>1</sup> 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' proposed 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.



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 **April 3, 2020, at 10:00 a.m. (prevailing Eastern Time)**).

**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 Bankruptcy Court; (c) be filed electronically with the Bankruptcy Court on the docket of *In re Windstream Holdings, Inc.*, Case 19-22312 (RDD) by registered users of the Bankruptcy Court’s electronic filing system and in accordance with the General Order M-399 (which is available on the Bankruptcy Court’s website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **March 27, 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 <http://www.kccllc.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 Bankruptcy Court an order substantially in the form annexed as Exhibit A to the motion, which order the Bankruptcy 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 Bankruptcy Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: March 6, 2020  
New York, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

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In re:	)	Chapter 11
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WINDSTREAM HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-22312 (RDD)
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Debtors.	)	(Jointly Administered)
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**DEBTORS' MOTION FOR ENTRY  
OF AN ORDER APPROVING (I) THE SETTLEMENT  
BETWEEN THE DEBTORS AND UNITI GROUP INC., INCLUDING (I) THE  
SALE OF CERTAIN OF THE DEBTORS' ASSETS PURSUANT TO SECTION 363(B)  
AND (II) THE ASSUMPTION OF THE LEASES PURSUANT TO SECTION 365(A)**

Windstream Holdings, Inc. ("Holdings") 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. As the Court is aware, resolution of the Debtors' relationship with Uniti Group Inc. and its subsidiaries (collectively, "Uniti") is foundational to the Debtors' ability to finalize these

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<sup>1</sup> 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.

chapter 11 cases and emerge from the restructuring process. This relationship is embodied in the document titled “Master Lease” (as amended), which is a part of the series of 2015 transactions referred to in these chapter 11 cases as the “Uniti Arrangement.” The precise character of the Uniti Arrangement has been hotly contested throughout the Debtors’ chapter 11 cases. On July 25, 2019, after an extensive, independent investigation by a special committee of Holdings’ board of directors, certain of the Debtors commenced an adversary proceeding (the “Uniti Adversary Proceeding”) against Uniti Group Inc. and certain of its subsidiaries (the “Uniti Defendants”) asserting, among other things, that the Uniti Arrangement should be recharacterized as a financing and that certain rent payments and tenant capital improvements made by the Debtors were constructive fraudulent transfers. Extensive litigation ensued after the commencement of the Uniti Adversary Proceeding, with the Uniti Defendants filing a partial motion to dismiss, a motion for summary judgment, and an answer that included seven counterclaims and third party claims, and with Holdings and Services filing an amended complaint and a partial motion to dismiss certain of the counterclaims and third party claims.

2. In light of the substantial economic impact of the Uniti Arrangement on the Debtors, the resolution of the claims and causes of action raised in the Uniti Adversary Proceeding is the gating item to the formulation of a chapter 11 plan of reorganization and the Debtors’ ultimate emergence from chapter 11. As described in greater detail below, the settlement encompassing the Uniti Transactions (as defined below) easily satisfies the controlling standards under Bankruptcy Rule 9019 and sections 363 and 365 of the Bankruptcy Code. Not only does the resolution described herein fall far above “the lowest point in the range of reasonableness,” it is a favorable outcome for the Debtors’ estates and paves the way for emergence from chapter 11.

3. After more than seven months of hard fought negotiations in mediation overseen by the Honorable Shelley C. Chapman (the “Mediation”), the Debtors and Uniti have reached an agreement resolving all of the claims and causes of action asserted or assertable against Uniti, including the claims and causes of action asserted in the Uniti Adversary Proceeding. Pursuant to this agreement, in a series of related transactions, including certain asset sales and transfers, cash payments, loan commitments in the ordinary course, investment commitments, and entry into two amended lease agreements (the “Leases,” and collectively, the “Uniti Transactions”), Uniti will provide the Debtors’ estates with a present value of more than \$1.2 billion in value in return for the release of all claims and causes of action that the Debtors may have against Uniti, including those asserted by the Debtors in the Uniti Adversary Proceeding, and Uniti will provide a release of any and all claims and causes of action that Uniti may have against the Debtors, including the counterclaims and third party claims asserted by Uniti in the Uniti Adversary Proceeding. The Uniti Transactions are a core component of the Debtors’ broader restructuring, the key terms of which are also the product of the Mediation and are set forth in that certain Chapter 11 Plan Support Agreement (the “PSA”), dated as of March 2, 2020, entered into between the Debtors, Uniti, Elliott Investment Management LP and its affiliated funds (“Elliott”), and an ad hoc group of the Debtors’ first lien lenders (the “First Lien Ad Hoc Group”).<sup>2</sup> Pursuant to the PSA, holders of more than 72% of the Debtors’ first lien debt, approximately 37% of the Debtors’ second lien debt, and more than 39% of the Debtors’ unsecured notes have agreed to support the Uniti Transactions, as well as a series of restructuring transactions to be embodied in the Debtors’ chapter 11 plan of reorganization that will substantially deleverage the Debtors’ capital structure and facilitate an

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<sup>2</sup> At the Court’s status conference on March 2, 2020, certain parties expressed an interest in discussing the settlement. The Debtors plan to hold meetings to discuss the settlement, and if any party in interest wishes to participate, it may contact counsel to the Debtors for more information.

efficient emergence from these chapter 11 cases. While the effectiveness of the Uniti settlement is not conditioned on the effectuation of the plan of reorganization described in the PSA, the plan of reorganization is conditioned on consummation of the Uniti Transactions.

4. The resolution of the Uniti Adversary Proceeding would be a substantial step forward in these chapter 11 cases. Consummation of the Uniti Transactions would avoid the significant expense and uncertainty related to a litigated outcome to the Uniti Adversary Proceeding and, in connection with the PSA, will pave the way for the Debtors' emergence from these chapter 11 cases, which have been pending for more than a year. Accordingly, for the reasons set forth below, the Debtors respectfully request that the Court approve this motion.

#### **Relief Requested**

5. The Debtors seek entry of an order (the "Order"), substantially in the form attached hereto as **Exhibit A**, approving the settlement among Holdings, Windstream Services, LLC ("Services"), the direct and indirect subsidiaries of Services, on the one hand, and Uniti on the other hand (together, the "Parties") embodied in the term sheet attached hereto as **Exhibit B** and attached to the Order as Exhibit 1 (the "Uniti Term Sheet")<sup>3</sup> and authorizing the Debtors to take all actions necessary to consummate the Uniti Transactions.

#### **Jurisdiction and Venue**

6. 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

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<sup>3</sup> Capitalized terms used but not defined herein shall have the meaning given to them in the Uniti Term Sheet. The Debtors will file a definitive settlement agreement (including the Leases and Asset Purchase Agreement) consistent with the terms in the Uniti Term Sheet prior to the hearing on this motion.

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.

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

8. The bases for the relief requested herein are sections 105(a), 363(b), and 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rule 9019, and Rule 9019-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Bankruptcy Rules”).

### **Background**

9. On June 28, 2019, UMB Bank, National Association and U.S. Bank National Association filed a motion alleging that the Master Lease is not a true lease and, on that basis, sought to strike the Master Lease from Holdings’ Schedule G and to modify the Cash Management Order to preclude intercompany transfers to fund payments under the Master Lease. On July 12, 2019, the official committee of unsecured creditors filed a motion seeking derivative standing to prosecute certain estate claims against Uniti, including claims to recharacterize the Master Lease as a financing, to recharacterize the 2015 sale of certain network assets to Uniti as a financing, and to avoid certain transfers as constructively fraudulent transfers.

10. On July 30, 2019, shortly after the commencement of the Uniti Adversary Proceeding, the Court entered an order (the “Mediation Order”) appointing the Honorable Shelley C. Chapman to oversee the mediation of the claims and causes of action asserted by the Debtors against Uniti. In light of the fact that the resolution of the Uniti Adversary Proceeding would be a core component of the Debtors’ ultimate restructuring, the Mediation Order provided that the



Debtors' key creditor constituencies would participate as mediation parties. Over the next seven months, under the supervision of Judge Chapman, the Debtors, Uniti, and certain of the Debtors' key creditor constituencies at the direction of Judge Chapman engaged in extensive, good faith, arm's-length negotiations, including numerous in-person meetings and telephonic conferences, as well as the exchange of a number of written proposals and term sheets, over the Uniti Adversary Proceeding and the Debtors' restructuring.

11. On November 12, 2019, over three months into the Mediation, the Debtors issued a cleansing disclosure indicating that the Mediation had been "suspended indefinitely" and attaching a joint proposal of the Debtors and the ad hoc group of second lien noteholders (the "Second Lien Ad Hoc Group"), as well as a Uniti proposal, both made in connection with the Mediation. Over the course of late 2019 and early 2020, the Debtors, Uniti, the First Lien Ad Hoc Group, and the Second Lien Ad Hoc Group reengaged in Mediation over the litigation and plan under the supervision of Judge Chapman. The negotiations continued to be hard fought, resulting in two further cleansing disclosures on February 13, 2020 and February 18, 2020, each attaching prior iterations of the Uniti Term Sheet and broader restructuring proposals made by each of the Debtors, the First Lien Ad Hoc Group, and the Second Lien Ad Hoc Group.

12. Ultimately, the Debtors, Uniti, the members of the First Lien Ad Hoc Group, and Elliott coalesced around the final terms of the settlement embodied in the Uniti Term Sheet, as well as the terms of the other restructuring transactions contemplated by the PSA. While the Debtors were prepared to commence the trial with respect to the Uniti Adversary Proceeding on March 3, 2020, the Debtors ultimately determined that the negotiated outcome set forth in the Uniti

Term Sheet provides the best outcome for their estates and their creditors. The key terms of the Uniti Term Sheet are summarized below:<sup>4</sup>

<b><i>Financial Terms</i></b>	
<b>Uniti GCI Commitment</b>	<p>Uniti commits to fund up to an aggregate of \$1.75 billion of Growth Capital Improvements (“GCI”) through December 2029 based on the following calendar year schedule:</p> <ul style="list-style-type: none"> <li>• Year 1: \$125 million</li> <li>• Years 2-5: \$225 million per year</li> <li>• Years 6-7: \$175 million per year</li> <li>• Years 8-10: \$125 million per year</li> </ul>
<b>Equipment Loan Program</b>	<p>During the GCI funding period (including January – April 2030), and in lieu of GCI commitments, Uniti will provide up to \$125 million in the aggregate in the form of loans for equipment purchases by Windstream that Windstream demonstrates in reasonable detail is related to network upgrades or customer premises equipment to be used in connection with the operation of assets subject to either Lease; <i>provided</i> that, and subject to footnote 2 of the Term Sheet, Uniti’s total funding commitment in any calendar year for both GCIs and equipment loans will not exceed \$250 million and the equipment loan commitment will not exceed \$25 million in any single year</p>
<b>Asset Purchase Terms</b>	<p>Uniti shall consummate a sale of common stock<sup>5</sup> yielding proceeds at least equal to, and Uniti shall pay to the subsidiary or subsidiaries of Windstream designated by the mutual agreement of the Debtors, the Required Consenting First Lien Creditors, and the Requisite Backstop Parties (as defined in the Backstop Commitment Agreement) \$244,549,865.10 in cash, which shall be funded through and conditioned upon the closing of a purchase of Uniti common stock yielding net cash proceeds to Uniti equal to or in excess of such amount</p> <p>Uniti will acquire Windstream dark fiber IRU contracts currently generating an estimated \$21 million of EBITDA; and reversion of rights to 1.8 million Uniti-owned Windstream-leased fiber strand miles</p> <p>Uniti will also acquire certain Windstream-owned assets and certain fiber IRU contracts currently generating \$8 million of annual EBITDA at a purchase price of \$40 million</p> <p>Windstream will retain 12 fiber strands beyond what Windstream is utilizing today</p>

<sup>4</sup> The following summary is for illustrative purposes only. To the extent of any conflict between the Uniti Term Sheet and the summary below, the Uniti Term Sheet controls.

<sup>5</sup> Elliott and the members of the First Lien Ad Hoc Group that will purchase Uniti stock at a price of \$6.33/share are creditors of the Debtors. Their purchase of the stock will aid in the funding of the settlement.

<b>Cash Transfer</b>	Uniti will pay to the subsidiary or subsidiaries of Windstream designated by the mutual agreement of the Debtors, the Required Consenting First Lien Creditors, and the Requisite Backstop Parties \$490,109,111 in 20 equal consecutive quarterly installments beginning on the 5th business day of the first month following the Effective Date
<b>Non-Financial Terms</b>	
<b>Parties</b>	Holdings and Services, the direct and indirect subsidiaries of Services, and their successors, assigns, transferees, and subtenants, as applicable (collectively, “ <u>Windstream</u> ”), and/or one or more entities formed to acquire all or a portion of the assets of any of the foregoing as tenants, subject to any regulatory limitations  Landlord(s) same as current Master Lease
<b>Effective Date</b>	Promptly upon entry of an order approving the agreements described in the Uniti Term Sheet and the satisfaction of all “true lease” and REIT compliance, but in no event later than Windstream’s emergence from Chapter 11
<b>Master Lease Structure/Terms</b>	<p>The Master Lease will be bifurcated into structurally similar but independent agreements governing the ILEC Facilities and the CLEC Facilities (the “<u>ILEC Lease</u>” and the “<u>CLEC Lease</u>,” and together, the “<u>Leases</u>”)</p> <p>All assignment, transfer, change of control, and similar provisions in the current Master Lease shall be amended and restated in each ILEC and CLEC Lease to provide that Windstream will be permitted to assign, sell, or otherwise transfer (whether in a standalone transaction, in connection with a sale of assets or equity interests, or otherwise) any of its interests in any or both of the ILEC Lease or the CLEC Lease subject to certain restrictions</p> <p>The ILEC Lease and CLEC Lease to be cross-defaulted and cross-guaranteed so long as the tenants under both Leases are affiliates of Windstream</p> <p>Windstream may request that Uniti sell non-core assets in ILEC territories, subject to an annual cap of \$10 million on proceeds, a portion of which will be remitted to Windstream in consideration of its leasehold interest in the sold assets and rent under the ILEC Lease not being reduced</p> <p>Windstream or any successor, assign, or subtenant will be permitted to sell Fiber IRUs or lease dark fiber services in ILEC and CLEC territories with term dates that extend beyond the then current term of the Lease subject to an annual cap of \$10 million and certain other restrictions</p> <p>Uniti will be prohibited from competing in Windstream ILEC territories</p>
<b>Windstream Financial Covenants</b>	<p><i>Exit Financing as of Emergence</i></p> <p>As of the date of emergence, on a pro forma basis giving effect to Windstream’s emergence (including the repayment, discharge, or extinguishment of any Indebtedness and the incurrence of any new Indebtedness), Windstream’s total leverage ratio will not exceed 3.00x. For the avoidance of doubt, for the foregoing test, amounts payable in cash on account of contract cures, lease cures, or administrative expenses, and/or amounts to be paid to holders of allowed general unsecured claims after emergence, in each case payable upon completion of the applicable claims resolution process before the Bankruptcy Court, shall not be considered Indebtedness.</p>

	<p><i>Lease Financial Covenants</i></p> <p>The ILEC Lease and the CLEC Lease will contain the following covenants:</p> <p>Windstream and its subsidiaries cannot incur any Indebtedness (other than (a) refinancing Indebtedness in a principal amount not exceeding the sum of (x) the principal amount of the Indebtedness refinanced, (y) the accrued and unpaid interest on such Indebtedness refinanced and any other amounts owing thereon, and (z) any customary costs, fees, or expenses incurred in connection with such refinancing or (b) drawings under its third party syndicated revolving credit facility, in an amount not to exceed \$750 million (the “<u>RCF Facility</u>”)), if its total leverage ratio, pro forma for the incurrence of such Indebtedness, would exceed 3.00x</p> <p>If at any time (a) Windstream’s total leverage ratio exceeds 3.50x (the “<u>Maintenance Leverage Covenant</u>”) and (b) Windstream or any of its subsidiaries takes any of the following actions, an event of default will have occurred:</p> <ul style="list-style-type: none"> <li>• incur any Indebtedness;</li> <li>• make any dividends on its capital stock or repurchase any stock, or prepay any unsecured debt;</li> <li>• make (a) any acquisitions or (b) investments, other than investments (1) in consolidated subsidiaries existing before the applicable date of Windstream’s non-compliance with the Maintenance Leverage Covenant and customary permitted investments, (2) in joint ventures in existence prior to the date of the applicable non-compliance with the Maintenance Leverage Covenant (and not created in contemplation thereof), or (3) with the consent of Uniti (not to be unreasonably withheld); or</li> <li>• enter into any transaction with any investor in Windstream who has one or more of its representatives on the Windstream Board of Directors, unless (i) Uniti consents to the entry into such transaction (such consent not to be unreasonably withheld) or (ii) such transaction is (x) in the ordinary course of business or (y) to continue or renew management, consultancy, or advisory services</li> </ul> <p>If (a) any bankruptcy event of default, or (b) any payment event of default or any other event of default under any Material Indebtedness (as defined in the Master Lease) has occurred, such event of default shall constitute an event of default under the Leases and Uniti will not be required to comply with its GCI commitment obligations following any such breach</p> <p>Notwithstanding anything to the contrary in the Uniti Term Sheet, the Leases shall provide that the Incurrence Leverage Covenant and the Maintenance Leverage Covenant shall not apply at any time that Windstream maintains a corporate family rating of not less than (i) “B2” (stable) by Moody’s and (ii) either “B” (stable) by S&amp;P or “B” (stable) by Fitch.</p>
<b>Stay of Pending Litigation</b>	<p>Upon announcement of an agreement in principle, all pending litigation will be stayed pending closing of the transactions contemplated in the Uniti Term Sheet, without prejudice to Windstream’s right to resume prosecution.</p>

13. Based on the analysis of the Debtors' financial advisors, consummation of the Uniti Transactions will result in transfer of more than \$1.2 billion in value to the Debtors' estates. The effectiveness of the Uniti Transactions, among other things, is expressly conditioned upon the Court's entry of an order approving the settlement, as requested herein, the negotiation and execution of the definitive documentation necessary to effectuate the Uniti Transactions, the issuance of true lease opinions (including completion of required appraisal processes) and a REIT opinion to Uniti.<sup>6</sup> The release of claims and causes of action will not be effective until the Uniti Transactions are fully consummated.

### **Basis for Relief**

#### **I. The Settlement Is a Sound Exercise of the Debtors' Business Judgment as It Is a Favorable Resolution of the Debtors' Claims Against Uniti.**

14. Bankruptcy Rule 9019(a) provides that, "after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). In determining whether to approve a settlement as fair and equitable under Bankruptcy Rule 9019, courts in the Second Circuit consider what are often referred to as the *Iridium* factors which include: (a) the balance between the litigation's possibility of success and the settlement's future benefits; (b) the likelihood of complex and protracted litigation, with its attendant expense, inconveniences, and delay; (c) the paramount interest of the creditors; (d) whether other parties in interest affirmatively support the proposed settlement; (e) the nature and breadth of releases to be obtained by officers and directors; (f) whether the competency and experience of counsel support the settlement; and (g) the extent to which the settlement is the product of arm's-length bargaining. *See In re Iridium Operating LLC*, 478 F.3d 452, 462 (2d Cir. 2007); *see also Drexel Burnham Lambert Grp., Inc.*,

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<sup>6</sup> The true lease opinions and REIT opinion are unlikely to be finalized before the hearing on this motion.

960 F.2d 285, 292 (2d Cir. 1992); *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 427 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994).

15. A settlement under Bankruptcy Rule 9019 need not result in the best possible outcome for the debtors, but must not “fall below the lowest point in the range of reasonableness.” *In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 493, 497 (Bankr. S.D.N.Y. 1991). In determining the range of reasonableness, the bankruptcy court need not decide the numerous issues of law and fact raised by the settlement. *See Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (citing *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). In other words, the court does not need to conduct a “mini-trial” of the underlying facts and merits; it needs only to evaluate those facts that are necessary to allow it to assess the settlement and to make an independent judgment about the settlement. *See In re Charter Commc’ns*, 419 B.R. 221, 252 (Bankr. S.D.N.Y. 2009) (“The standard does not require that the settlement be the best the debtor could have obtained nor does it require the court to conduct a mini-trial of the questions of law and fact.”).

16. Ultimately, the decision to accept or reject a compromise or settlement is within the sound discretion of the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) (“Although a judge must consider the fairness of the settlement to the estate and its creditors, the judge is not required to assess the minutia of each and every claim.”); *Drexel Burnham*, 134 B.R. at 505; *see also Abeles v. Infotechnology (In re Infotechnology)*, No. 95-5024, at \*4–5 (2d Cir. Nov. 9, 1995) (noting that in determining whether to approve a debtor’s motion to settle a controversy, a court does not substitute its judgment for that of the debtor).

17. A court should exercise its discretion in favor of a settlement wherever possible, as settlements are generally favored in bankruptcy. *In re Adelphia Commc’ns Corp.*, 368 B.R. 140,

226 (Bankr. S.D.N.Y. 2007) (“As a general matter, settlements or compromises are favored in bankruptcy and, in fact, encouraged.”); *see also In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998) (“The decision to grant or deny a settlement or compromise lies squarely within the discretion of the bankruptcy court [and such] discretion should be exercised in light of the general public policy favoring settlements.”) (citing *Nellis v. Shugrue*, 165 B.R. 115, 121 (S.D.N.Y. 1994); *In re Michael Milken & Assocs. Secs. Litig.*, 150 F.R.D. 46, 53 (S.D.N.Y. 1993) (noting the paramount public policy for settlements)).

18. The settlement embodied in the Uniti Term Sheet represents a fair and equitable compromise that is in the best interests of the Debtors estates, falls well within the range of reasonableness, and satisfies each of the *Iridium* factors.

**A. The Settlement Properly Balances the Parties’ Respective Litigation Positions in the Uniti Adversary Proceeding.**

19. *First*, the consideration package the Debtors will receive under the settlement was heavily negotiated, will result in a significant transfer of value to the Debtors’ estates, and properly balances each party’s respective litigation position. Success in the Uniti Adversary Proceeding is uncertain, especially in light of the fact-intensive nature of the claims asserted and unresolved questions of law. The core claim asserted in the Uniti Adversary Proceeding is that the Uniti Arrangement should be recharacterized as a financing. While the Debtors believe there is a basis for the Court to determine that recharacterization is appropriate, the evidence produced in preparation for trial also shows numerous instances in which the Debtors demonstrated an intent that the transaction be characterized and treated as a lease. The evidence also reflects substantial ambiguity as to whether Uniti would be left with material residual value at the end of the Master Lease. Further, the litigation would turn, in substantial part, on a battle of the experts, with a recent

analysis by Deloitte, and contemporaneous analyses by Ernst & Young and Skadden all supporting a true lease finding. Such cases can inherently be risky and difficult to predict.

20. Moreover, even if the Debtors were successful in recharacterizing the Uniti Arrangement as a financing and were successful in defeating Uniti's counterclaims, the remedy is disputed and would raise many issues of first impression (remedy issues are not often specifically addressed in the case law). The Court could fashion a remedy that is detrimental to the Debtors' reorganization. Even if the Court were to fashion a remedy that benefits the Debtors' estates, enforcing that remedy may be subject to a number of hurdles, including that a successful outcome to the Uniti Adversary Proceeding would likely force Uniti into its own insolvency proceeding, creating even more uncertainty and delaying the Debtors' restructuring. Given the risk of litigation and the significant value embodied in the Uniti Term Sheet, the Debtors believe that the settlement is appropriate and in the best interests of their estates.

**B. The Settlement Avoids the Costs and Risks Associated with Continued Prosecution of the Uniti Adversary Proceeding.**

21. *Second*, avoiding costly, protracted litigation that would consume significant estate resources at this critical juncture is in the best interests of the Debtors' estates. The Debtors have been in chapter 11 for more than a year and litigation in connection with the Uniti Adversary Proceeding has already drained significant estate resources. Continuing to litigate through trial and appeals would further strain the Debtors' liquidity. At a projected rate of approximately \$30 million per month in chapter 11-related costs, delaying the Debtors' exit from chapter 11 even further may reduce the likelihood of a successful restructuring.

22. If the Debtors were not successful in the Uniti Adversary Proceeding, the Debtors would have had the difficult task of choosing among the following paths forward:

- assume the Uniti Arrangement as-is, with its highly suboptimal terms;



- reject the Uniti Arrangement and force Uniti into a standoff over the Debtors' access to the leased assets, inviting scrutiny from regulators and customers; or
- continue to negotiate amendments to the Uniti Arrangement without the leverage created by the Uniti Adversary Proceeding.

23. Even if the Debtors were successful, the litigation would not have ended after the March trial. As noted above, there likely would have been significant disputes over the remedy and the Debtors would have continued to incur significant legal and administrative costs for many months. The Debtors may also have needed to litigate the remaining counts of the complaint in the Uniti Adversary Proceeding after the recharacterization trial concluded. Even if the Debtors were successful in obtaining several favorable rulings, appeals following a final judgment could have extended the time in litigation for years.

24. Continuing to saddle the Debtors with the cost of litigation and the general administration of these chapter 11 cases for the foreseeable future would have a deteriorative effect on the Debtors' businesses. Additionally, resolution of the Uniti Adversary Proceeding is a gating item to the Debtors' broader restructuring and emergence from chapter 11. Consummation of the Uniti Transaction avoids these costs and, together with the other restructuring transactions embodied in the PSA, will facilitate the Debtors' emergence from chapter 11.

**C. The Settlement Is in the Best Interests of the Estates and Many of the Debtors' Stakeholders Support the Settlement.**

25. *Third*, the Uniti Term Sheet has been extensively negotiated through multiple sessions overseen by Judge Chapman over the course of more than seven months. Iterations of the Uniti Term Sheet were made public through cleansing disclosures at various times throughout the Mediation. The Uniti Term Sheet reflects substantial input on heavily negotiated terms from the Debtors' secured creditor constituencies and is supported by the members of the First Lien Ad Hoc Group and Elliott pursuant to the PSA, who collectively purport to hold over \$3.18 billion of

the Debtors' first lien, second lien, and unsecured debt. The Debtors' in-the-money stakeholder groups favor prompt resolution of the Uniti Adversary Proceeding and the benefits the Uniti Term Sheet provides to the Debtors' estates. The Debtors also engaged with numerous other parties throughout the Mediation process. Any party in interest was welcome to (and is still welcome to) make its own offers and proposals, and had seven long months to come forward, including as it relates to the Debtors' broader restructuring. Ultimately, after protracted negotiations, the Uniti Term Sheet and other restructuring transactions contemplated by the PSA represent the Debtors' only consensual path forward and only path to a near-term exit from chapter 11.

**D. The Releases in the Settlement Are Customary and a Crucial Part of the Settlement.**

26. *Fourth*, the mutual releases contained in the settlement are standard and customary, and advantageous to the Debtors, as they add finality, are being given in exchange for substantial value, and are necessary and appropriate parts of the resolution set forth in the Uniti Term Sheet. Moreover, the releases are not effective until the effective date of the settlement, which will not occur until the following conditions are satisfied:

- entry of an order approving the settlement;
- execution of the definitive settlement agreement (including the Leases and Asset Purchase Agreement);
- receipt of the True Lease Opinions;
- receipt of the REIT Opinion; and
- receipt of all regulatory approvals.

**E. The Settlement Is the Result of Extensive Negotiations and Is the Best Possible Consensual Resolution of Claims Between the Debtors and Uniti.**

27. *Fifth*, the Debtors and Uniti were represented by competent and experienced counsel and various financial advisors, who negotiated at arm's-length over the course of many

months under the supervision of Judge Chapman. Through multiple rounds of compromise and discussion, the parties worked in good faith towards a consensual resolution of all disputed issues. Not only were parties represented by competent counsel, but each party's principals and/or board members were directly engaged in the negotiations at the request of Judge Chapman.

28. The settlement reflects the best possible consensual resolution of the Debtors' claims and causes of action against Uniti. The Debtors, Uniti, their professionals, and other parties in interest worked tirelessly to develop the best possible terms for the Debtors. The alternative to a consensual resolution is a potentially worse outcome for the Debtors than a settlement on the terms embodied in the Uniti Term Sheet. Even a victory in the Uniti Adversary Proceeding could prove costly in light of the issues surrounding fashioning an appropriate remedy and the effect any such remedy could have on Uniti (including the harm to the Debtors of a potential Uniti insolvency proceeding). Each day that Mediation and the Uniti Adversary Proceeding continue would cause a significant drain on estate resources. The Debtors are confident that the parties have reached the best possible terms and negotiations can conclude so that the Debtors can pivot to confirming a plan of reorganization and setting a course to emergence from bankruptcy.

## **II. The Sale of Stock of Non-Debtor Uniti, Which Will Fund a Portion of the Settlement, Is Proper.**

29. Certain of the Debtors' creditors have alleged that Uniti's agreement to sell Uniti stock to certain creditors of these estates is improper.<sup>7</sup> This is incorrect for several reasons. First,

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<sup>7</sup> These allegation include impermissible vote manipulation. Challenging the propriety of the voting process is inappropriate in the context of approval of the Uniti settlement, and is more properly an issue for plan confirmation. The Debtors have not yet solicited votes or even filed a disclosure statement. Even if this Court were to find that the Uniti stock sale was entered into to obtain support for the Plan, courts in this district have found that the mere fact that a group of creditors, in exchange for agreeing to vote in favor of a proposed chapter 11 plan, may have obtained special consideration that other members of the same class did not obtain, did not merit vote designation. *See In re Adelpia Commc'ns Corp.*, 359 B.R. 54, 63 (Bankr. S.D.N.Y. 2006) (declining to designate creditors' votes merely because they received additional consideration in exchange for agreeing to vote in favor of the plan); *see also In re Indianapolis Downs, LLC*, 486 B.R. 286, 296 (Bankr. D. Del. 2013) ("In situations where creditors have acted with the apparent goal of furthering their own self-interest and maximizing

Uniti, as a non-Debtor, has a right to sell its stock to whomever it chooses. Second, the settlement consideration under the Uniti Term Sheet is cash, not Uniti stock. While certain other Windstream creditors might prefer that Uniti sell its stock to them, neither Windstream nor its creditors can compel Uniti to do so. The only question before this court is whether the settlement, including the roughly \$245 million in cash generated by the stock sale, is sufficient under Bankruptcy Rule 9019 to justify the releases and other consideration granted to Uniti. Third, Uniti's stock, or the right to purchase it, never was, is not now, and never will be, property of the estates. Uniti has agreed of its own accord to sell its stock to fund the settlement, and negotiated terms of that sale for Uniti's own business reasons. This Court is not being asked, nor does it have jurisdiction to approve the Uniti stock sale.

**III. The Sale of Certain of the Debtors' Assets Pursuant to Section 363(b) Is a Valid Exercise of the Debtors' Business Judgment.**

30. Section 363(b) 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). Section 363(b) is a broad provision, vesting significant discretion in the bankruptcy court. The Second Circuit has adopted a flexible approach to the application of section 363(b). *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983) ("To further the purposes of Chapter 11 reorganization, a bankruptcy judge must have substantial freedom to tailor his orders to meet differing circumstances. This is exactly the result a liberal reading of § 363(b) will achieve.").

31. The Second Circuit standard is well-established by case law: a debtor's decision to sell or use assets outside the ordinary course of business must be based upon sound business

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their recoveries, courts have been extremely reluctant to penalize such parties."); *Insinger Mach. Co. v. Fed. Support Co.*, 859 F.2d 17, 19 (4th Cir. 1988) ("good faith in casting a vote does not require of the creditor a selfless disinterest").

judgment. *See, e.g., Licensing By Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997); *Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141 (2d Cir. 1992); *In re MF Glob. Inc.*, 535 B.R. 596, 605 (Bankr. S.D.N.Y. 2015); *In re Genco Shipping & Trading, Ltd.*, 509 B.R. 455, 464 (Bankr. S.D.N.Y. 2014) (“[s]tandard used for judicial approval of use of estate property outside the ordinary course of business is business judgment of debtor”); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 742–43 (Bankr. S.D.N.Y. 2003) (approving a 363(b) transaction where “the Board made the relevant business decision after considering its options on an informed basis, with due care, in good faith, and in the honest belief that the action it proposed to take was in the best interests of the company.”); *In re Lionel Corp.*, 722 F.2d at 1070; *Off. Comm. of Subordinated Bondholders v. Integrated Resources Inc. (In re Integrated Resources Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (law vests the debtor’s decision to use property out of the ordinary course of business with a strong “presumption 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 taken was in the best interests of the company”).

32. Section 105(a) of the Bankruptcy Code further provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Pursuant to § 105(a), the bankruptcy courts have broad equitable powers. *In re Prudential Lines Inc.*, 928 F.2d 565 (2d Cir.), *cert. denied*, 502 U.S. 821, 112 S.Ct. 82, 116 L. Ed. 2d 55 (1991). *See, e.g., Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) (“[i]t is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.”).

33. In *Lionel*, the Court of Appeals for the Second Circuit set forth several non-exclusive factors bankruptcy courts in this district may consider in conducting a section 363(b) analysis, including, whether: (a) a “sound business purpose” exists; (b) adequate and reasonable notice has been provided to interested parties; (c) the value obtained is fair and reasonable; and (d) the debtor acted in good faith. See *Glob. Crossing*, 295 B.R. at 744 (citing *Lionel*, 722 F.2d at 1071).

34. The Debtors believe that their sound business judgment justifies the asset sale contemplated by the Uniti Term Sheet. **First**, the asset sale is justified by a sound business purpose: settling claims and avoiding litigation with Uniti. **Second**, parties have been provided adequate notice of the asset sale. The interested parties have been involved in Mediation since August 2019 and lengthy litigation concerning the Debtors’ relationship with Uniti has been conducted publicly since that time, culminating in, among other things, the asset sale contemplated by the Uniti Term Sheet. Further, the First Lien Ad Hoc Group and Elliott support the entry into the transactions. **Third**, the value of the asset sale is fair and reasonable: the Debtors and their advisors have concluded that the value provided by the asset sale, as a part of the overall Uniti settlement, is fair and reasonable. **Fourth**, the Debtors have acted in good faith and the asset sale is part of good faith, arm’s length settlement negotiations.

35. The asset sale is a crucial component of the overall settlement with Uniti, which, as discussed herein, is supported by the Debtors’ business judgment and is the best possible consensual resolution of claims between the Debtors and Uniti. A marketing process for these assets is unnecessary because Uniti is the highest utility purchaser, and the consideration the Debtors will receive for these assets is part of an overall settlement that will deliver significant

value to the Debtors' estates. Accordingly, the Debtors respectfully submit that the Court should approve the asset sales as contemplated by the Uniti Term Sheet.

**IV. The Assumption of the Leases Pursuant to Section 365(a) Is a Valid Exercise of the Debtors' Business Judgement.**

36. The Debtors seek authority, under section 365 of the Bankruptcy Code, to assume the Leases. Section 365 of the Bankruptcy Code provides, in relevant part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521-22 (1984) ("This language by its terms includes all executory contracts except those expressly exempted."). It is well established that a debtor's decision to assume or reject an unexpired lease of real property under section 365(a) of the Bankruptcy Code is a matter within the "business judgment" of the debtor. *See In re Orion Pictures Corp.*, 4 F.3d 1095, 1099 (2d Cir. 1993); *In re Minges*, 602 F.2d 38, 43 (2d Cir. 1979); *In re Sabine Oil & Gas Corp.*, 547 B.R. 66 (Bankr. S.D.N.Y. 2016), *aff'd* 567 B.R. 869 (S.D.N.Y. 2017). Under the business judgment standard, a debtor's business decision should be approved unless that decision "derives from bad faith, whim or caprice." *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (quoting *In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 183 (Bankr. D. N.J. 2002) (internal quotations omitted)). Indeed, when applying the "business judgment" standard, courts show great deference to the debtor's decision-making. *See In re Riodizio, Inc.*, 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) ("[A] court will ordinarily defer to the business judgment of the debtor's management").

37. The Debtors believe that their sound business judgment justifies the assumption of the Leases contemplated by the Uniti Term Sheet. **First**, the assumption of the Leases is justified by a sound business purpose: settling claims and avoiding litigation with Uniti. **Second**, parties have been provided adequate notice of such assumption. The interested parties have been involved

in Mediation since August 2019 and lengthy litigation concerning the Debtors' relationship with Uniti has been conducted publicly since that time, culminating in, among other things, the assumption of the Leases contemplated by the Uniti Term Sheet. Further, the First Lien Ad Hoc Group and Elliott support the assumption. **Third**, the value of the Leases are fair and reasonable: the Debtors and their advisors have concluded that the value provided by the Leases, as a part of the overall Uniti settlement, is fair and reasonable. **Fourth**, the Debtors have acted in good faith and the Debtors' assumption of the Leases is part of good faith, arm's length settlement negotiations.

38. The Leases are a crucial component of the overall settlement with Uniti, which, as discussed herein, is supported by the Debtors' business judgment and is the best possible consensual resolution of claims between the Debtors and Uniti. A marketing process for these Leases is unnecessary because Uniti is the highest utility purchaser, and the consideration the Debtors will receive for the Leases is part of an overall settlement that will deliver significant value to the Debtors' estates. Accordingly, the Debtors respectfully submit that the Court should approve the assumption of the Leases as contemplated by the Uniti Term Sheet.

#### **Reservation of Rights**

39. The Debtors expressly reserve the right to withdraw this motion at any time through and including a hearing on the motion. Nothing in this motion is intended to be, nor shall it be deemed or construed as an admission or finding with respect to the Uniti Arrangement or issues subject to the Uniti Adversary Proceeding (including, but not limited to, whether the Master Lease is a "true lease" under applicable nonbankruptcy law or whether the Master Lease is an unexpired lease of nonresidential real property within the meaning of section 365(d) of the Bankruptcy Code).



**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](http://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.

*[Remainder of page intentionally left blank]*

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: March 6, 2020  
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.*

Debtors.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

**ORDER APPROVING THE SETTLEMENT BETWEEN THE  
DEBTORS AND UNITI INCLUDING (I) THE SALE OF CERTAIN  
OF THE DEBTORS' ASSETS PURSUANT TO SECTION 363(B) AND  
(II) THE ASSUMPTION OF THE LEASE PURSUANT TO SECTION 365(A)**

Upon the motion (the “Motion”) of Windstream Holdings, Inc. (“Holdings”), Windstream Services, LLC (“Services”), and their affiliates that are debtors and debtors in possession (each, a “Debtor” or “Windstream Entity” and, collectively, the “Debtors” or “Windstream”) in the above-captioned cases (the “Chapter 11 Cases”) for entry of an order, pursuant to sections 105, 363, 364, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), (i) approving and authorizing (a) the Debtors to enter into and perform under the Settlement Agreement,<sup>1</sup> the CLEC Lease, the ILEC Lease, the APA, and any and all related Definitive Documentation, including, without limitation, mortgages, deeds, memoranda, financing statements, guaranties, certificates, and any other documentation that may be reasonably necessary or desirable to implement the transactions contemplated by the Settlement Agreement, the CLEC Lease, the ILEC Lease, and the APA, in each case as amended, restated, supplemented, or otherwise modified from time to time consistent with the terms hereof and thereof (collectively,

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<sup>1</sup> The Settlement Agreement is attached hereto as **Exhibit A**. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the Settlement Agreement, as applicable.

the “Settlement Documents” and the transactions contemplated thereby, the “Settlement Transactions”), (b) the assumption and assignment of certain executory contracts to Uniti, and (c) the transfer of certain assets to Uniti, (ii) granting protective liens on all of the CLEC Leased Property and ILEC Leased Property to Uniti, and (iii) granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and held a hearing to consider the relief requested in the Motion on April 3, 2020 (the “Hearing”); and the record of the Hearing; and after due deliberation the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish good and sufficient cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates, creditors and all parties in interest; now, therefore,

**IT IS HEREBY FOUND AND CONCLUDED THAT:<sup>2</sup>**

A. *Final Order.* This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Federal Rule of Civil Procedure 54(b), as

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<sup>2</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

made applicable by Bankruptcy Rule 7054, there is no just reason for delay in the implementation of this Order or entry of judgment is directed as set forth herein.

B. *Debtors' Stipulations.* Effective as of the Settlement Effective Date (it being understood that if the Settlement Effective Date does not occur, the Debtors' stipulations contained in this paragraph B shall not be binding on the Debtors and shall not be admissible for any purpose in any judicial or administrative proceeding), the Debtors, on behalf of themselves, their estates, and any of their respective past, present and future predecessors, successors in interest and assigns, and any party acting or purporting to act on behalf of the foregoing, admit, stipulate and agree that:

(i) *CLEC Lease.* The CLEC Lease is a "true lease" and is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, or any other economic arrangement other than a true lease. The economic realities of the CLEC Lease are those of a true lease. The tenants under the CLEC Lease have only the temporary right of possession and use of the CLEC Leased Property upon the terms and conditions of the CLEC Lease. The business relationship created by the CLEC Lease and any related documents is and at all times was that of landlord and tenant. None of the agreements contained in the CLEC Lease create a partnership between any Windstream Entity and any Uniti Entity, makes them joint venturers, makes any Windstream Entity an affiliate, agent, legal representative, partner, subsidiary or employee of any Uniti Entity, or makes any Uniti Entity in any way responsible for the debts, obligations or losses of any Windstream Entity. The CLEC Leased Property does not constitute property of any of the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The tenants under the CLEC Lease have no interest in the CLEC Leased Property of any kind beyond that of a tenant. Ownership of the CLEC Leased Property is presently vested in the Uniti Entities.

(ii) *ILEC Lease.* The ILEC Lease is a “true lease” and is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, or any other economic arrangement other than a true lease. The economic realities of the ILEC Lease are those of a true lease. The tenants under the ILEC Lease have only the temporary right of possession and use of the ILEC Leased Property upon the terms and conditions of the ILEC Lease. The business relationship created by the ILEC Lease and any related documents is and at all times was that of landlord and tenant. None of the agreements contained in the ILEC Lease create a partnership between any Windstream Entity and any Uniti Entity, makes them joint venturers, makes any Windstream Entity an affiliate, agent, legal representative, partner, subsidiary or employee of any Uniti Entity, or makes any Uniti Entity in any way responsible for the debts, obligations or losses of any Windstream Entity. The ILEC Leased Property does not constitute property of any of the Debtors’ estates within the meaning of section 541(a) of the Bankruptcy Code. The tenants under the ILEC Lease have no interest in the ILEC Leased Property of any kind beyond that of a tenant. Ownership of the ILEC Leased Property is presently vested in the Uniti Entities.

(iii) *Protective Liens.* The Protective Liens on the CLEC Leased Property and ILEC Leased Property are valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, Uniti for fair consideration and reasonably equivalent value.

*C. Findings Regarding the Settlement Documents.*

(i) Each Debtor’s board of directors, managing members, or other governing body, as applicable, has authorized the execution and delivery of the Settlement Documents. The Debtors and their affiliates (a) have full corporate power and authority to execute

and deliver the Settlement Documents, (b) have all of the power and authority necessary to consummate the Settlement Transactions, and (c) have taken all action necessary to authorize and approve the Settlement Documents and to consummate the Settlement Transactions, and no further consents or approvals are required for the Debtors to consummate the Settlement Transactions except as otherwise set forth in the Settlement Documents.

(ii) The Settlement Documents were negotiated, proposed, and entered into by the Debtors, Uniti, and each of their respective boards of directors, members, officers, directors, employees, agents, attorneys, advisors, and representatives at arm's length, in good faith, and without collusion or fraud. The terms and conditions set forth in the Settlement Documents are fair and reasonable under the circumstances and are not being entered into for the purpose of, nor do they have the effect of, hindering, delaying, or defrauding any of the Debtors or any of their creditors under any applicable laws.

(iii) The consideration to be paid by Uniti under the Settlement Documents was negotiated at arm's length, in good faith, and without collusion or fraud and constitutes (a) fair and reasonable consideration and (b) reasonably equivalent value and fair and adequate consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, and under the laws of the United States and each state, territory, and, possession, and the District of Columbia.

(iv) The Settlement Documents and the Settlement Transactions contemplated thereby, including the Releases (as defined below), the Bar Order (as defined below), and the other injunctive provisions contained herein barring certain claims against Uniti and certain related persons, (a) meet the standards applied by bankruptcy courts for the approval of a compromise and settlement pursuant to Rule 9019, (b) are reasonable, fair and equitable and



supported by adequate consideration, and (c) are in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. Entry into the Settlement Documents and consummation of the Settlement Transactions represents the reasonable exercise of sound and prudent business judgment by the Debtors.

(v) The Settlement Transactions (subject to the conditions thereof including the sale of common stock under agreements with certain third parties) and the rights, interests, and obligations of each party to the Settlement Documents are mutually dependent and are all part of a single, integrated transaction which is not severable in any respect or circumstance.

(vi) Each of the Settlement Documents and the Settlement Transactions contemplated thereby is integral to the compromise and settlement of the Released Claims. The entry of this Order, including the Releases, the Bar Order, and the other injunctive provisions contained herein barring certain claims against Uniti and certain related persons, is a condition precedent to the effectiveness of the Settlement Documents and the receipt by the Debtors of the benefits conferred in the Settlement Documents.

D. *Findings Regarding the Released Claims.* The Released Claims are property of the Debtors' estates and the Debtors have the sole and exclusive authority to commence and prosecute the Released Claims and any other matter arising out of the Released Claims, including without limitation any claims seeking to characterize the Master Lease as anything other than a true lease. The Debtors have the exclusive right and authority to negotiate, settle, and release the Released Claims, including without limitation any claims seeking to characterize the Master Lease as anything other than a true lease, and, upon the effectiveness of the Releases, neither the Debtors nor any other person shall have standing, direct or derivative, to commence or prosecute any Released Claim. All parties acting or purporting to act on behalf of the Debtors or their estates

shall be bound by the releases, stipulations and other agreements contained in this order upon their effectiveness and no such party shall assert any Released Claim.

E. *Findings Regarding the Purchased Assets.*

(i) The Motion and the Assumption and Assignment Notice (as defined below) are reasonably calculated to provide counterparties to the IRU Contracts (as defined below) with proper notice of the intended assumption and assignment of their executory contracts, any Cure Amount (as defined below), and the Assumption and Assignment Procedures (as defined below).

(ii) The IRU Contracts and the other Windstream-owned assets to be assigned or transferred to Uniti pursuant to the Settlement Documents, including the APA (collectively, the “Purchased Assets” and, the assignment and transfer of the Purchased Assets, the “Sale”) currently constitute property of the Debtors’ estates within the meaning of section 541(a) of the Bankruptcy Code and title thereto is presently vested in the Debtors’ estates.

(iii) Consummation of the Sale outside of a plan of reorganization neither impermissibly restructures the rights of the Debtors’ creditors nor impermissibly dictates the terms of a plan of reorganization or liquidation for the Debtors.

(iv) Uniti is a “good faith purchaser” of the Purchased Assets within the meaning of section 363(m) of the Bankruptcy Code, and, as such, is entitled to all the protections afforded thereby.

(v) Uniti is not a continuation of the Debtors or their respective estates and Uniti is not holding itself out to the public as a continuation of the Debtors or their respective estates, and neither the Sale nor any other transaction contemplated by the Settlement Documents amounts to a consolidation, merger, or de facto merger of Uniti and the Debtors.

(vi) The Sale satisfies the applicable provisions of section 363(f) of the Bankruptcy Code such that Uniti will acquire the Purchased Assets free and clear of any and all liens, claims, interests, and encumbrances, and will not subject Uniti to any liability for any liens, claims, interests, and encumbrances whatsoever (including, without limitation, under any theory of equitable law, antitrust, or successor or transferee liability. All holders of liens, claims, interests, and encumbrances are adequately protected—thus satisfying section 363(e) of the Bankruptcy Code—by having their liens, claims, interests, and encumbrances, if any, attach to the proceeds of the Sale ultimately attributable to the property against or in which they assert liens, claims, interests, and encumbrances, or other specifically dedicated funds, in the same order of priority and with the same validity, force, and effect that such holder had prior to the Sale, subject to any rights, claims, and defenses of the Debtors or their estates, as applicable.

F. *Relief Is Warranted.* The legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The relief requested in the Motion is hereby granted as set forth herein. Any and all objections to the Motion not previously withdrawn, waived or settled, and all reservation of rights included therein, are hereby overruled.

2. The Debtors are authorized and directed to enter into the Settlement Documents pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

3. The Debtors are authorized and directed to fully perform their obligations under the Settlement Documents and to execute and deliver any and all such other instruments, documents, and agreements, and take any and all actions, necessary or appropriate to perform their obligations under the Settlement Documents.

### **Settlement Agreement**

4. The settlements and compromises contained within the Settlement Agreement, including, without limitation, the releases set forth therein (the “Releases”), are approved in their entirety pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019. All of the terms of the Settlement Agreement, including, without limitation, the Releases, are incorporated herein by reference as if fully set forth herein (and the failure to specifically describe or include herein any particular term or provision of the Settlement Agreement shall not diminish or impair the effectiveness of any such term or provision).

5. The Debtors are authorized to indemnify and hold harmless each of the Uniti Entities on the terms and conditions set forth in the Settlement Documents, without notice, hearing, or further order of this Court as, when, and to the extent such obligation becomes due and payable under the terms of the Settlement Documents. Such indemnities shall not be discharged, modified, or otherwise affected by any chapter 11 plan of the Debtors or related confirmation order, dismissal of these Chapter 11 Cases, or conversion of these Chapter 11 Cases to chapter 7 cases, nor shall any of such amounts be required to be disgorged.

### **Bar Order**

6. Any party who is not a signatory to the Settlement Agreement, and each of these parties’ direct and indirect parent companies, subsidiaries, affiliates, members, partners and joint ventures, each of their respective predecessors, successors, and assigns, and all of each of their respective past and present employees, general partners, officers, directors and managers, in each case to the extent not released under the Settlement Agreement (each, a “Non-Settling Party” and, collectively, the “Non-Settling Parties”) is hereby permanently barred, enjoined and restrained from commencing, prosecuting, or asserting in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or

elsewhere any claim for non-contractual indemnity or contribution against any Released Party arising out of or reasonably flowing from any of the Released Claims (including any non-contractual claim against such Released Party, whether or not brought for contribution or indemnity, where the injury to the Non-Settling Party is the liability of the Non-Settling Party to a Plaintiff (as defined below) on account of any Released Claims), whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims (collectively, the “Barred Claims”). If a court or tribunal determines that Barred Claims exist that would have given rise to liability of any such Released Party to a Non-Settling Party but for this Order, the Non-Settling Party will also be entitled to the Judgment Reduction (as defined below) provisions set forth herein. This Order (the “Bar Order”) is without prejudice to the position of any party as to the existence, in the absence of this Bar Order, of any Barred Claim

7. In the event any person acting on behalf of the Debtors’ estates, including any successor to the Debtors (including any chapter 7 trustee or litigation trustee), any committee appointed in the bankruptcy cases or any estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (any of the above, a “Plaintiff”) asserts a claim against any Non-Settling Party with respect to one or more causes of action based upon, arising from, or related to the facts, allegations, or transactions underlying any of the Released Claims (the “Action”), then, as soon as practicable but in any event prior to entry of any judgment or arbitration award (“Judgment”) in the Action, the Plaintiff shall provide notice of this Bar Order to the court or tribunal hearing the Action if the Action is reasonably related to the Barred Claims. Such court or tribunal shall determine whether the Action gives rise to Barred Claims on which any Released Party would have been liable to the Non-Settling Party in the absence of this Bar Order. If the court or tribunal so determines, it shall reduce any Judgment against such Non-Settling Party in an

amount equal to (a) the amount of the Judgment against any such Non-Settling Party times (b) the aggregate proportionate share of fault (expressed as a percentage) of the Released Party that would have been liable on a Barred Claim in the absence of this Bar Order expressed as a percentage of the aggregate fault of (i) the Non-Settling Party, (ii) such Released Party or Parties, and (iii) all other Persons determined by such court or tribunal to be liable to the Plaintiff in connection with the Action, whether or not such Persons are sued in such Action (“Judgment Reduction”). Nothing herein shall prejudice or operate to preclude the right of any defendant in such Action to (x) provide notice of this Bar Order to the court or tribunal hearing the Action at any point, or (y) raise any issues, claims or defenses regarding judgment reduction or proportionate share of fault in the court or tribunal hearing the Action at any point in accordance with this Bar Order.

8. Nothing in this Bar Order shall prejudice or operate to preclude the rights of any Non-Settling Party to assert any claims or causes of action (including, without limitation, any direct or personal claims or causes of action), other than Barred Claims against any of the Parties as set forth above.

9. If any Plaintiff enters into a settlement with any Person with respect to one or more causes of action based upon, arising from, or related to the Released Claims or any transaction underlying any of the Released Claims, then such Plaintiff shall use reasonable efforts to cause to be included, and, in all events, the settlement shall be deemed to include, a dismissal, release and waiver of any Barred Claims with respect to such settlement.

10. Each Plaintiff is hereby enjoined and restrained from seeking relief or collecting judgments against any Non-Settling Party in any manner that fails to conform to the terms of this Bar Order, including, without limitation, the proportionate judgment reduction provision set forth herein.

**Protective Liens**

11. In order to protect Uniti if, notwithstanding (a) the form and substance of the CLEC Lease and ILEC Lease as true leases of all of the CLEC Leased Property and ILEC Leased Property, (b) the intent of the parties thereto for the CLEC Lease and ILEC Lease to be true leases of all of the CLEC Leased Property and ILEC Leased Property, and (c) the findings of fact contained herein providing, among other things, that the CLEC Lease and ILEC Lease each create a true lease of all of the CLEC Leased Property and ILEC Leased Property, the CLEC Lease and/or ILEC Lease is ever treated in any context as a financing arrangement or otherwise not a true lease, as security for obligations owed to Uniti under the Master Lease, effective and perfected upon the execution of the CLEC Lease and ILEC Lease and without the necessity of the execution, recordation or filing by Uniti of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, Uniti is hereby granted as of the Settlement Effective Date a valid, binding, continuing, enforceable, fully-perfected first priority senior secured interest in and lien upon all of the CLEC Leased Property and ILEC Leased Property (the “Protective Liens”) pursuant to section 364 of the Bankruptcy Code securing any and all claims Uniti asserts or may assert under or related in any way to the CLEC Lease and/or ILEC Lease. Such Protective Liens shall (i) be senior in all respects to any and all other liens on such property and (ii) not be discharged, modified, or otherwise affected by any chapter 11 plan of the Debtors or related confirmation order, dismissal of these Chapter 11 Cases, conversion of these Chapter 11 Cases to chapter 7 cases, or any other event other than payment in full in cash of any claims that Uniti asserts under or relating in any way to the CLEC Lease and/or ILEC Lease.

12. Uniti is hereby authorized, but not required, to file or record (and to execute in the name of Uniti, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, mortgages, notices of lien or similar instruments in

any jurisdiction, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not Uniti shall, in its sole discretion, choose to file such financing statements, mortgages, notices of lien or similar instruments, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Order.

13. A certified copy of this Order may, in the discretion of Uniti, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Order for filing and/or recording, as applicable.

14. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any obligations under the Settlement Documents incurred prior to the actual receipt of written notice by Uniti of the effective date of such reversal, modification, vacation or stay; or (ii) the validity, priority or enforceability of the Protective Liens. Notwithstanding any such reversal, modification, vacation or stay of any Protection Liens incurred by the Debtors to Uniti, prior to the actual receipt of written notice by Uniti of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Order, and Uniti shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Order and the Settlement Documents with respect to all obligations under the Settlement Documents.

#### **Assumption of Leases**

15. The Debtors are authorized and directed to assume the Master Lease and amend the Master Lease such that the Master Lease will be divided into the ILEC Lease and CLEC Lease



pursuant to sections 105(a), 363(b), and 365(a) of the Bankruptcy Code, in all events consistent with the Term Sheet. The Debtors' assumption and amendment of the Master Lease is an exercise of their sound business judgment and is in the best interest of their estate and creditors.

### **Assumption and Assignment**

16. The Debtors are authorized and directed to assume and assign the IRU Contracts to Uniti pursuant to sections 105(a) and 365 of the Bankruptcy Code and Bankruptcy Rule 6006, subject to the Assumption and Assignment Procedures and the terms of the APA.

17. The procedures set forth below regarding the assumption and assignment of the executory contracts proposed to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to Uniti pursuant to section 365(f) of the Bankruptcy Code (the "Assumption and Assignment Procedures") are hereby approved to the extent set forth herein. The Assumption and Assignment Procedures shall govern the assumption and assignment of any and all executory contracts of the Debtors to be assumed and assigned to Uniti in connection with the Settlement Agreement (each, an "IRU Contract," and, collectively, the "IRU Contracts").

(a) *Assumption and Assignment Notice.* No later than [three] business days after entry of this Order (the "Assumption and Assignment Service Deadline"), the Debtors shall file and serve via overnight delivery on each counterparty to an IRU Contract a notice of assumption and assignment (the "Assumption and Assignment Notice"). The Assumption and Assignment Notice shall inform each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the IRU Contract, (ii) the name of the counterparty to the IRU Contract, (iii) the Debtors' good faith estimate of the amount necessary to cure any default arising under the IRU Contract (the "Cure Amount"), (iv) the identity of the assignee, and (v) the Assumption and Assignment Objection Deadline (as defined below); *provided, however*, that service of an Assumption and Assignment Notice does not constitute an

admission that the agreement described therein is an executory contract or that the estimated Cure Amount constitutes a claim or right against the Debtors or any Uniti Entity, and the Debtors and Uniti expressly reserve their rights with respect thereto. Inclusion of an IRU Contract on the Assumption Notice is not a guarantee that such IRU Contract will ultimately be assumed and/or assigned.

(b) *Cure Payments.* The payment of the Cure Amount by the Debtors to the counterparty to any IRU Contract shall be deemed to (i) effect a cure of any and all defaults existing in such IRU Contract, (ii) compensate such counterparty for any actual pecuniary loss to the counterparty resulting from such default, and (iii) together with the assumption of the IRU Contracts by the Debtors and the assignment of the IRU Contracts to Uniti, constitute adequate assurance of future performance under such IRU Contract. After the payment of the Cure Amount, neither the Debtors nor Uniti shall have any further liabilities to the counterparties to the IRU Contracts, other than Uniti's obligations under the IRU Contracts that accrue and become due and payable on or after the date that such IRU Contracts are assumed and assigned.

(c) *Additions.* Although the Debtors and Uniti intend to make a good faith effort to identify all IRU Contracts to be assumed and assigned, the Debtors and/or Uniti may discover certain executory contracts inadvertently omitted from the list of IRU Contracts to be assumed and assigned. Accordingly, the Debtors and Uniti reserve the right, at any time after the Assumption and Assignment Service Deadline and before the Settlement Effective Date, to (i) supplement the list of IRU Contracts with previously omitted executory contracts, (ii) remove executory contracts from the list of IRU Contracts, and/or (iii) modify the previously stated Cure Amount associated with any IRU Contract. If the Debtors and/or Uniti exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of assumption and

assignment (a “Supplemental Assumption and Assignment Notice”) on each of the counterparties to such IRU Contracts and their counsel of record, if any. Each Supplemental Assumption and Assignment Notice will include the same information as was included in the Assumption and Assignment Notice.

(d) *Eliminations.* The Debtors and Uniti may agree to remove any executory contract to be assumed by the Debtors and assigned to Uniti at any time prior to the Settlement Effective Date. Upon the removal of any executory contract, the Debtors shall serve a notice on each of the impacted counterparties and their counsel of record, if any, indicating that the Debtors no longer intend to assume and assign the counterparty’s contract to Uniti and such contract shall thereafter not constitute an IRU Contract.

(e) *Objections.* Objections, if any, to the proposed assumption and assignment or the Cure Amount must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, the Local Rules, and the Case Management Order, (iii) state with specificity the nature of the objection and, if the objection pertains to the estimated Cure Amount, the Cure Amount alleged by the objecting counterparty to be the correct Cure Amount, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served upon, so as to be actually received by, (w) counsel to the Debtors, (x) counsel to Uniti, and (y) any other party that has filed a notice of appearance in the Chapter 11 Cases, on or prior to [•], 2020 (the “Assumption and Assignment Objection Deadline”) or any later deadline set forth in a Supplemental Assumption and Assignment Notice.

(f) *Dispute Resolution.* In the event that the Debtors and the contract counterparty cannot resolve any objection to the Debtors’ estimated Cure Amount, the Debtors shall segregate the disputed amount pending a resolution of the dispute by the Court or mutual

agreement by the parties. Any objection that remains unresolved as of the [April 21, 2020] Omnibus Hearing shall be heard at such Omnibus Hearing (or at a later date fixed by the Court).

(g) *Contract Assumption.* No IRU Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the Settlement Effective Date and (ii) the date on which all objections to the Cure Amount and/or to the proposed assumption and assignment of the IRU Contracts have been resolved and the Cure Amounts have been paid by the Debtors.

(h) *Failure to Object.* Any counterparty failing to timely file an objection to the Cure Amount or the proposed assumption and assignment of an IRU Contract listed on the Assumption and Assignment Notice is deemed to have consented to (a) such Cure Amount, (b) the assumption and assignment of such IRU Contract, and (c) the related relief requested in the Motion. Such party shall be forever barred and estopped from objecting to the Cure Amount, the assumption and assignment of the IRU Contract, adequate assurance of future performance, the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, Uniti for purposes of section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other amounts against the Debtors and any Uniti Entity, as applicable, with respect to such party's IRU Contract.

18. Upon the assumption and assignment of the IRU Contracts, the IRU Contracts shall be deemed valid and binding and in full force and effect in accordance with their respective terms, notwithstanding any provision in any such IRU Contract or applicable non-bankruptcy law (including of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer, or requires any counterparty to consent to assignment.

19. Pursuant to section 365(f) of the Bankruptcy Code, the assumption and assignment of the IRU Contracts to Uniti shall not be a default thereunder. After the payment of the relevant Cure Amount as provided for herein, neither the Debtors nor Uniti shall have any further liabilities to the contract counterparties to the Assumed Contracts, other than Uniti's obligations under the Assumed Contracts that accrue and become due and payable on or after the date that such Assumed Contracts are assumed.

20. Any provision in any IRU Contract that prohibits or conditions the assignment of such IRU Contract or allows the party to such IRU Contract terminate, recapture, impose any penalty or condition on renewal or extension, purport to require the consent of any counterparty, or modify any term or condition upon the assignment of such IRU Contract constitute unenforceable anti-assignment provisions that are void and of no force and effect.

21. All counterparties to the IRU Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of Uniti, and shall not charge Uniti for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale.

#### **Transfer of the Purchased Assets**

22. The Debtors are authorized to (a) take any and all actions necessary or appropriate to perform, consummate, implement, and close the Sale in accordance with the terms and conditions set forth in the Settlement Documents and this Order and (b) take all further actions and execute and deliver the Settlement Documents and any and all additional instruments and documents that may be necessary or appropriate to implement the Settlement Documents and consummate the Sale in accordance with the terms thereof, all without further order of the Court.

23. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtors to transfer the Purchased Assets to Uniti in accordance with the Settlement Documents and this Order.

24. Pursuant to sections 105 and 363 of the Bankruptcy Code, each of the Debtors is hereby authorized and directed to perform its obligations under the Settlement Documents, comply with the terms of the APA, and implement and consummate the Sale in accordance with the Settlement Documents and this Order.

25. On the Settlement Effective Date, all of the Debtors' right, title, and interest in and to, and possession of, the Purchased Assets shall be immediately vested in Uniti pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code. Such transfer shall constitute a legal, valid, binding, and effective transfer of the Purchased Assets. All persons or entities, presently or on or after the Settlement Effective Date, in possession of some or all of the Purchased Assets, are directed to surrender possession of any and all portions of the Purchased Assets to Uniti or its respective designees on the Settlement Effective Date or at such time thereafter as Uniti may request.

26. This Order (a) shall be effective as a determination that, as of the Settlement Effective Date, (i) no claims will be assertable against any of the Uniti Entities with respect to the Purchased Assets or against the Purchased Assets, (ii) the Purchased Assets shall have been transferred to Uniti free and clear of all liens, claims, interests, and encumbrances, and (iii) the conveyances described herein have been effected, and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative

agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Settlement Documents. The Purchased Assets are sold free and clear of any reclamation rights. All liens, claims, interests, and encumbrances on the Purchased Assets shall attach to the proceeds of the Sale ultimately attributable to the property against which such liens, claims, interests, and encumbrances applied or other specifically dedicated funds, in the same order of priority and with the same validity, force, and effect that such liens, claims, interests, and encumbrances applied prior to the Sale, subject to any rights, claims, and defenses of the Debtors or their estates, as applicable, or as otherwise provided herein.

27. Except as otherwise provided in the Settlement Documents, all persons and entities (and their respective successors and assigns), including, but not limited to, all debt security holders, equity security holders, affiliates, governmental, tax, and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants, and other creditors holding or asserting claims arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, and the ownership, Sale, or operation of the Purchased Assets prior to the Settlement Effective Date or the transfer of the Purchased Assets to Uniti, are hereby forever barred, estopped, and permanently enjoined from asserting such claims against Uniti, its property, or the Purchased Assets. Following the Settlement Effective Date, no holder of any claim or interest shall interfere with Uniti's title to or use and enjoyment of the Purchased Assets based on

or related to any such claim or interest, or based on any action the Debtor may take in the Chapter 11 Cases.

28. If any person or entity that has filed financing statements, mortgages, mechanic's claims, *lis pendens*, or other documents or agreements evidencing claims against or in the Debtors or the Purchased Assets shall not have delivered to the Debtors prior to the Settlement Effective Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all claims that the person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then only with regard to the Purchased Assets that are purchased by Uniti pursuant to the Settlement Documents and this Order, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Purchased Assets, (b) Uniti is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, interests, and encumbrances against Uniti and the Purchased Assets, and (c) upon consummation of the Sale, Uniti may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction, and releases of all claims and liens that are extinguished or otherwise released pursuant to this Order under section 363 of the Bankruptcy Code, and any other provisions of the Bankruptcy Code, with respect to the Purchased Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Order authorizing the Sale and assignment of the Purchased Assets free and clear of claims and liens shall be self-executing and neither the Debtors nor Uniti shall be required to execute or file releases,



termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order.

**No Successor or Transferee Liability**

29. Neither Uniti nor any of its affiliates, members, officers, directors, shareholders, or any of their respective successors and assigns (each such entity individually and taken together, the “Uniti Buyer Group”) shall be deemed, as a result of any action taken in connection with the Settlement Documents, the consummation of the Sale contemplated by the Settlement Documents, or the transfer, operation, or use of the Purchased Assets to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for Uniti, with respect to any obligations as an assignee under the IRU Contracts arising after the Settlement Effective Date), (b) have, *de facto* or otherwise, merged with or into the Debtors, or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors including, without limitation, within the meaning of any foreign, federal, state, or local revenue law, pension law, ERISA, tax law, labor law, products liability law, employment law, environmental law, or other law, rule, or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors’ liability under such law, rule, or regulation.

30. Uniti shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Purchased Assets other than as expressly set forth in the Settlement Documents or (b) any claims against the Debtors or any of their predecessors or affiliates. Except as expressly provided in the Settlement Documents with respect to Uniti, Uniti shall have no liability whatsoever with respect to the Debtors’ (or their predecessors’ or affiliates’) respective businesses or operations or any of the Debtors’ (or their predecessors’ or affiliates’) obligations (as defined herein, “Successor or Transferee Liability”) based, in whole or part, directly or

indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor, or transferee liability, de facto merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Settlement Effective Date, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the Purchased Assets prior to the Settlement Effective Date. Uniti shall have no liability or obligation under (a) the WARN Act (29 U.S.C. §§ 2101 *et seq.*), (b) the Comprehensive Environmental Response Compensation and Liability Act, (c) the Age Discrimination and Employment Act of 1967 (as amended), (d) the Federal Rehabilitation Act of 1973 (as amended), (e) the National Labor Relations Act (29 U.S.C. §§ 151 *et seq.*), or (f) any foreign, federal, state, or local labor, employment (including any rights under any pension, multiemployer plan (as such term is defined in section 3(37) or 4001(a)(3) of the Employee Retirement Income Security Act of 1974, health or welfare, compensation or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plans of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability)) or environmental law, by virtue of Uniti's purchase of the Purchased Assets. Without limiting the foregoing, the Uniti Buyer Group shall have no liability or obligation with respect to any environmental liabilities of the Debtors or any environmental liabilities associated with the Purchased Assets. Uniti shall have no liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the Purchased Assets prior to the Settlement Effective Date.

31. Effective upon the Settlement Effective Date, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against Uniti or its assets (including the Purchased Assets), with respect to any (a) claim or (b) Successor or Transferee Liability including, without limitation, the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance; (iv) asserting any setoff, right of subrogation, or recoupment of any kind; (v) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof; or (vi) revoking, terminating, failing, or refusing to renew any license, permit, or authorization to operate any business in connection with the Purchased Assets or conduct any of the businesses operated with respect to such assets.

**Good Faith Purchaser**

32. The Sale contemplated by the Settlement Documents is undertaken by Uniti without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and consummation of such Sale are duly and properly stayed pending such appeal.

33. Neither the Debtors nor Uniti have engaged in any action or inaction that would cause or permit the Sale to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. The consideration provided by Uniti for the Purchased Assets under the

Settlement Documents is fair and reasonable and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

### **Licenses**

34. To the maximum extent permitted by applicable law, and in accordance with the Settlement Documents, Uniti shall be authorized, as of the Settlement Effective Date, to operate under any license, permit, registration, and governmental authorization or approval (collectively, the “Licenses”) of the Debtors with respect to the Purchased Assets. To the extent Uniti cannot operate under any Licenses in accordance with the previous sentence, such Licenses shall be in effect while Uniti, with assistance from the Debtors, works promptly and diligently to apply for and secure all necessary government approvals for new issuance of Licenses to Uniti. The Debtors shall maintain the Licenses in good standing to the fullest extent allowed by applicable law for Uniti’s benefit until equivalent new Licenses are issued to Uniti.

35. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or License relating to the Purchased Assets sold, transferred, or conveyed to Uniti on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale contemplated by the Settlement Documents.

### **Settlement Binding**

36. Effective as of the Settlement Effective Date, the Debtors’ stipulations, admissions, agreements, and releases contained in this Order and in the Settlement Documents, including, without limitation, in paragraph B of this Order, shall be binding upon the Debtors and any and all other parties in interest, including, without limitation, any party or entity which has intervened in the Adversary Proceeding, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases (including the official committee of unsecured creditors) and any other person or entity acting or seeking to act on behalf of the Debtors’ estates, including any chapter 7 or

chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes.

37. Uniti shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Settlement Documents. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence, *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

38. The terms and provisions of the Settlement Documents and this Order shall be binding in all respects upon the Debtors, their affiliates, their estates, all creditors of (whether known or unknown) and holders of equity interests in any Debtor and any other stakeholder of any Debtor, any holders of claims against or on all or any portion of the Purchased Assets, all counterparties to the IRU Contracts, Uniti, and all of their respective successors and assigns including, but not limited to, any subsequent trustee(s), examiner(s), or receiver(s) appointed in any of the Chapter 11 Cases or upon conversion to Chapter 7 under the Bankruptcy Code, as to which trustee(s), examiner(s), or receiver(s) such terms and provisions likewise shall be binding. The Settlement Documents shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, their shareholders, or any trustee(s), examiner(s), or receiver(s). For the avoidance of doubt, the provisions and effect of this Order, and any actions taken pursuant to this Order or the Settlement Documents and the Parties' respective rights, obligations, remedies and protections provided for herein and in the Settlement Agreement shall survive the conversion, dismissal or closing of the Chapter 11 Cases, appointment of a trustee therein, confirmation of a plan or plans of reorganization or liquidation, or the substantive consolidation of these Chapter 11

Cases with any other case or cases, and the terms and provision of this Order and the Settlement Documents shall continue in full force and effect notwithstanding the entry of any such order.

39. Each and every federal, state, and local governmental agency, department, or official is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Settlement Documents.

40. The Settlement Documents and the Sale contemplated thereunder shall not be subject to any bulk sales laws or any similar law of any state or jurisdiction.

41. The Settlement Documents may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not, based on the Debtors' business judgment, have a material or an adverse effect on the Debtors' estates or their creditors. The Debtors shall provide counsel to the Consenting Creditors (as defined in the PSA) with prior notice of any such modification, amendment, or supplement of the Settlement Documents.

42. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Order.

43. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

44. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014 or any other Bankruptcy Rule, the terms and conditions of this Order shall be effective immediately upon entry and the Debtors and Uniti are authorized to consummate the transactions contemplated in the Settlement Documents immediately upon entry of this Order.

45. To the extent there is any conflict between the terms of this Order and the Settlement Documents, the terms of this Order shall control. Nothing contained in any plan of

reorganization or liquidation hereinafter confirmed in these Chapter 11 Cases or any order confirming such plan, or any other order of the Court, shall conflict with or derogate from the terms of the Settlement Documents or this Order.

46. The requirements set forth in Local Bankruptcy Rule 9013-1 are satisfied by the contents of the Motion.

47. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

48. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: White Plains, New York  
\_\_\_\_\_, 2020

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THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Uniti Term Sheet**



**UNITI TERM SHEET<sup>1</sup>**

*Financial Terms*

<b>Uniti GCI Commitment</b>	<ul style="list-style-type: none"> <li>• Uniti commits to fund up to an aggregate of \$1.75 billion of Growth Capital Improvements (“<u>GCI</u>”) through December 2029 based on the following calendar year schedule: <ul style="list-style-type: none"> <li>○ Year 1: \$125 million<sup>2</sup></li> <li>○ Years 2-5: \$225 million per year</li> <li>○ Years 6-7: \$175 million per year</li> <li>○ Years 8-10: \$125 million per year</li> </ul> </li> <li>• “GCI” means long-term, value-accretive fiber and related assets (including buildings, conduit, poles, easements, right of ways, permits and fixed wireless towers) in ILEC and CLEC territories owned by Uniti and leased by Windstream consistent with the historical categorization of fiber and other TCI Replacements in the current Master Lease; <i>provided</i> that, for the avoidance of doubt, GCIs shall not include copper Tenant Capital Improvements as defined in the Master Lease or maintenance and repair capex or opex and shall not include CLEC fiber to CLEC fiber replacements in excess of \$70 million in the aggregate from the Effective Date to April 30, 2030<sup>3</sup> and shall only include capital improvements that qualify as “real property” for purposes of section 856 of the Internal Revenue Code, which shall include any capital improvements specifically listed as “real property” in the IRS private letter ruling received by Windstream in connection with the original spin-off of Uniti and such assets included on a schedule to the definitive lease agreements</li> <li>• Windstream may credit any cumulative GCI expenditures in excess of the foregoing annual amounts towards the reimbursable amount in a subsequent period, or roll unspent annual GCI into the following annual funding period (including the period from January 1, 2030 – April 30, 2030) but not into any renewal term, <i>provided</i> that in no calendar year will Uniti’s funding commitment exceed \$250 million, subject to payment terms for Year 1 as set forth in footnote 2</li> <li>• With respect to each installment of funds constituting GCI funding by Uniti (each such installment, a “<u>Funded Amount</u>”), beginning on the date that is 12 months following each such funding disbursement by Uniti (the “<u>In Service Date</u>”) and ending on April 30, 2030, rent on such Funded Amount (the “<u>GCI Rent</u>”) will accrue at the Annualized Capitalization Rate (as defined below):</li> </ul>
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<sup>1</sup> Unless otherwise noted, capitalized terms used and not immediately defined herein shall have the meanings ascribed to them at a later point in this Term Sheet, the current Master Lease between Holdings and Uniti, or the agreement to which this Term Sheet is attached.

<sup>2</sup> For avoidance of doubt, Year 1 means calendar year 2020 and if Windstream emerges from bankruptcy after September 30, 2020, GCI expenditures incurred by Windstream prior to emergence will be reimbursed by Uniti within 12 months post emergence, starting in the month following the date of emergence and in equal monthly installments in accordance with the payment terms herein. If Windstream emerges prior to September 30, 2020, Uniti shall reimburse all GCI expenditures incurred by Windstream prior to emergence at emergence.

<sup>3</sup> The Parties acknowledge and agree that expenditures incurred before the Effective Date in connection with CLEC to CLEC fiber replacements are eligible for reimbursement as GCIs, subject to the \$70 million aggregate limit set forth herein

	<ul style="list-style-type: none"> <li>○ The Annualized Capitalization Rate for any given Funded Amount will be 8.0% payable beginning one year following the In Service Date of such Funded Amount</li> <li>○ For any given Funded Amount, the Annualized Capitalization Rate will be 100.5% of the Annualized Capitalization Rate for such Funded Amount as of the same month during the preceding year<sup>4</sup></li> <li>• GCI commitments will be subject to GCI Review Standards and Windstream maintaining ongoing lease compliance</li> <li>• For GCI fiber deployments in CLEC territories that have previously been identified to Uniti in Windstream's GCI forecast only, Uniti will have the option to require that such deployment be engaged in jointly, with both Windstream and Uniti deploying the new fiber. In these instances, Uniti agrees to fund 50% of the total cost to deploy the CLEC fiber, with any strands in excess of the original count contemplated by Windstream to be owned and operated by Uniti. An initial payment will be made by Uniti at the beginning of the construction project based on costs agreed upon by the Parties and Uniti will bear 50% of the total cost of any overage therefrom, which will be paid by Uniti upon completion of the project. For the remaining 50% of costs related to these GCI fiber deployments, such costs and expenditures will be included in the GCI program described above. The Parties agree that any fiber strands paid for by Uniti, and owned and operated by Uniti, will be excluded from the Renewal Rent.</li> </ul>
<b>Equipment Loan Program</b>	<ul style="list-style-type: none"> <li>• During the GCI funding period (including January – April 2030), and in lieu of GCI commitments, Uniti will provide up to \$125 million in the aggregate in the form of loans for equipment purchases by Windstream that Windstream demonstrates in reasonable detail is related to network upgrades or customer premises equipment to be used in connection with the operation of assets subject to either Lease; <i>provided</i> that, and subject to footnote 2, Uniti's total funding commitment in any calendar year for both GCIs and equipment loans will not exceed \$250 million and the equipment loan commitment will not exceed \$25 million in any single year</li> <li>• Uniti will have a first lien on the equipment purchased via this program and financing documents will contain other customary terms and other conditions</li> <li>• Interest shall accrue at 8%</li> <li>• Windstream will repay the amounts outstanding on equipment loans without incurring any early prepayment penalties and otherwise on customary terms and conditions for similar financing transactions; <i>provided</i> that the Parties agree to use commercially reasonable efforts to enter into terms that provide for repayment of the equipment loans at a date that is the earlier of: (i) the expiration or earlier termination of the ILEC Lease or the CLEC Lease, as applicable; (ii) the later of (a) extinguishment of the useful life of the assets or (b) the retirement of such assets from in-service; or (iii) April 30, 2030</li> <li>• All equipment loans will be cross-defaulted with the ILEC Lease and/or the CLEC Lease,</li> </ul>

<sup>4</sup> For the avoidance of doubt, the Annualized Capitalization Rate for any given Funded Amount will be: 8.0000%, 8.0400%, 8.0802%, 8.1206%, 8.1612%, 8.2020%, 8.2430%, 8.2842%, 8.3257%, and 8.3673% for months 1-12, 13-24, 25-36, 37-48, 49-60, 61-72, 73-84, 85-96, 97-108, and 109-120, respectively, following the In Service Date of such Funded Amount, but in no event will any GCI Rent accrue beyond April 30, 2030.

	as applicable, so long as Windstream is the tenant under the ILEC Lease and/or the CLEC Lease
<b>GCI Payment Terms</b>	<ul style="list-style-type: none"> <li>On the 15th calendar day of each month, Windstream will provide Uniti a GCI report for the ILEC and CLEC Leases for the prior month and the amount of reimbursement Windstream seeks (“<u>Requested Funding Amount</u>”). For purposes of clarification, GCI funding shall be a reimbursement of actual costs incurred by Windstream</li> <li>Within 30 days after Windstream submits the Requested Funding Amount and the required supporting documentation<sup>5</sup> to Uniti, Uniti will pay to Windstream the Requested Funding Amount for the prior month</li> <li>The Annualized Capitalization Rate will be payable by Windstream to Uniti on the 5th Business Day of each month following the first anniversary In Service Date for such Funded Amount</li> <li>Title to any assets funded pursuant to the Uniti GCI commitment will be owned by Uniti upon such funding</li> </ul>
<b>Asset Purchase Terms</b>	<ul style="list-style-type: none"> <li>Uniti shall consummate a sale of common stock yielding proceeds at least equal to, and Uniti shall pay to the subsidiary or subsidiaries of Windstream designated by the mutual agreement of the Debtors, the Required Consenting First Lien Creditors, and the Requisite Backstop Parties (as defined in the Backstop Commitment Agreement) \$244,549,865.10 in cash (the “<u>Purchase Amount</u>”), which shall be funded through and conditioned upon the closing of a purchase of Uniti common stock yielding net cash proceeds to Uniti equal to or in excess of such amount (the “<u>Uniti Stock Sale</u>”)</li> <li>Uniti will acquire the following: <ul style="list-style-type: none"> <li>Windstream dark fiber IRU contracts currently generating an estimated \$21 million of EBITDA; and reversion of rights to 1.8 million Uniti-owned Windstream-leased (“<u>UOWL</u>”) fiber strand miles <ul style="list-style-type: none"> <li>1.8 million UOWL fiber strand miles consists of 1.4 million unutilized fiber strand miles and 0.4 million fiber strand miles associated with dark fiber IRU contracts transferred from Windstream to Uniti</li> </ul> </li> <li>Uniti will pay to Windstream operating &amp; maintenance (“<u>O&amp;M</u>”) equal to \$350 per route mile on any additional route miles sold above and beyond the route miles currently utilized by dark fiber IRU contracts</li> <li>Uniti will report new sales, including fiber strand metrics, on a monthly basis to Windstream by the 15<sup>th</sup> day of each month for the prior month’s results</li> </ul> </li> <li>Uniti will also acquire (the “<u>Fiber IRU Acquisition</u>”): <ul style="list-style-type: none"> <li>Certain Windstream-owned assets (the “<u>Acquired Assets</u>”) and certain fiber IRU contracts currently generating \$8 million of annual EBITDA at a purchase price of \$40 million in cash paid up front at the Effective Date to the subsidiary or subsidiaries of Windstream designated by the mutual agreement of the Debtors, the Required Consenting First Lien Creditors, and the Requisite Backstop Parties</li> </ul> </li> </ul>

<sup>5</sup> Forms of supporting documentation to be agreed in connection with definitive documentation.

	<ul style="list-style-type: none"> <li>○ The Acquired Assets consist of 0.4 million Windstream-owned fiber strand miles covering 4,100 route miles, subject to a grant of an IRU to Windstream described below on currently utilized Windstream strands and incremental retained strands: <ul style="list-style-type: none"> <li>▪ Consists of 0.3 million unutilized fiber strand miles and 0.1 million fiber strand miles associated with dark fiber IRU contracts</li> <li>▪ Uniti to pay Windstream O&amp;M equal to \$350 per route mile on any route miles sold after the Effective Date, <i>provided</i> that Uniti will not pay O&amp;M associated with the dark fiber IRU contracts transferred to Uniti</li> <li>▪ Uniti will report new sales, including fiber strand metrics, monthly to Windstream by the 15th day of each month for the prior month's results</li> </ul> </li> <li>● In connection with the foregoing acquisitions by Uniti: <ul style="list-style-type: none"> <li>○ Windstream will retain 12 fiber strands beyond what Windstream is utilizing today; <i>provided</i>, that if there are less than 24 unused fiber strands in a particular segment, Windstream and Uniti will split such fiber strands in accordance with <b><u>Schedule A</u></b></li> <li>○ The Renewal Rent during each Renewal Period will exclude the 1.4 million fiber strand miles and the 0.4 million fiber strand miles associated with UOWL dark fiber IRU contracts</li> <li>○ In the event that the Fiber IRU Acquisition is consummated, for the Acquired Assets only, Uniti will grant Windstream a 20-year, zero cost, IRU for the strands currently utilized plus incremental retained strands</li> </ul> </li> </ul>
<b>Cash Transfer</b>	<ul style="list-style-type: none"> <li>● Uniti will pay to the subsidiary or subsidiaries of Windstream designated by the mutual agreement of the Debtors, the Required Consenting First Lien Creditors, and the Requisite Backstop Parties \$490,109,111 in 20 equal consecutive quarterly installments beginning on the 5th business day of the first month following the Effective Date (the "<b><u>Cash Payments</u></b>")</li> <li>● At Uniti's option, any of the Cash Payments falling due on or after one year following the Effective Date may be prepaid. Prepayments will be discounted at a 9% rate consistent with <b><u>Schedule B</u></b></li> </ul>

*Non-Financial Terms*

<b>Parties</b>	<ul style="list-style-type: none"> <li>• Windstream Holdings, Inc. (“<u>Holdings</u>”), Windstream Services, LLC (“<u>Services</u>”), the direct and indirect subsidiaries of Services, and their successors, assigns, transferees, and subtenants, as applicable (collectively, “<u>Windstream</u>”), and/or one or more entities formed to acquire all or a portion of the assets of any of the foregoing as tenants, subject to any regulatory limitations</li> <li>• Landlord(s) same as current Master Lease</li> </ul>
<b>Effective Date</b>	<ul style="list-style-type: none"> <li>• Promptly upon entry of an order approving the agreements described herein (the “<u>Agreement</u>”) and the satisfaction of all “true lease” and REIT compliance (the “<u>Effective Date</u>”), but in no event later than Windstream’s emergence from Chapter 11</li> </ul>
<b>Master Lease Structure/Terms</b>	<ul style="list-style-type: none"> <li>• Current Master Lease to be bifurcated into structurally similar but independent agreements governing the ILEC Facilities and the CLEC Facilities (the “<u>ILEC Lease</u>” and the “<u>CLEC Lease</u>,” respectively, and, together the “<u>Leases</u>,” and, each individually, a “<u>Lease</u>”) <ul style="list-style-type: none"> <li>○ Certain CLEC copper assets will be included in the ILEC Lease<sup>6</sup></li> <li>○ Leases shall not contain any change of control<sup>7</sup> restrictions (other than as provided herein)</li> <li>○ Cross-default or cross-acceleration provisions relating to Windstream’s indebtedness will fall away upon assignment, transfer, or change of control</li> </ul> </li> <li>• All assignment, transfer, change of control, and similar provisions in the current Master Lease shall be amended and restated in each ILEC and CLEC Lease to provide that Windstream will be permitted to assign, sell, or otherwise transfer (whether in a standalone transaction, in connection with a sale of assets or equity interests, or otherwise) any of its interests in any or both of the ILEC Lease or the CLEC Lease to any entity (or any direct or indirect subsidiary or subsidiaries of such entity) that, at the time of notification of such assignment, sale, or transfer, (a) if such entity has a corporate family rating, has a corporate family rating of not less than the rating required such that the Incurrence Leverage Covenant and Maintenance Leverage Covenant do not apply to Windstream hereunder, or if such entity does not have a corporate family rating, has a total leverage ratio in compliance with the Incurrence Leverage Covenant, (b) has a net worth (exclusive of the Leased Property under such transferred Lease(s)), as calculated in accordance with GAAP, on a pro forma basis, of no less than \$600 million, or (c) has an equity market capitalization, on a pro forma basis, of no less than \$300 million (the “<u>Amended Transfer Restrictions</u>”); <i>provided</i> that any transfer, sale or conveyance must also satisfy REIT requirements and receive regulatory approvals, if any</li> <li>• The ILEC Lease and CLEC Lease to be cross-defaulted and cross-guaranteed so long as the tenants under both Leases are affiliates of Windstream, which provisions shall automatically terminate upon any sale, conveyance, or other transfer in accordance with the Amended Transfer Restrictions; <i>provided</i> that if both Leases are transferred to the same assignee(s), the Leases will be cross-defaulted and cross-guaranteed</li> </ul>

<sup>6</sup> Representing approximately \$29 million of allocated annual payments under the current Master Lease per current data.

<sup>7</sup> For purposes of this Term Sheet, the term “change of control” shall include the “Change In Control” provisions under the current Master Lease.

- Aggregate rent of ILEC Lease and CLEC Lease to be equivalent to the rent payments under the current Master Lease through the initial term as set forth on Schedule C, it being understood that the Parties will negotiate in good faith such modifications to Schedule C as may be necessary in order to permit the True Lease Opinions to be given as described in "Tax Matters" below
- Windstream may request that Uniti (such request not to be unreasonably withheld) sell non-core assets in ILEC territories, subject to an annual cap of \$10 million on proceeds, a portion of which will be remitted to Windstream in consideration of its leasehold interest in the sold assets and rent under the ILEC Lease not being reduced; *provided* that the portion remitted to Windstream will be calculated as the net present value of the remaining rent in the initial term of the ILEC Lease for the asset sold, with said rent calculated by multiplying a total capitalization rate of 8.7% by the sale price for the asset; the Parties will agree on a rate if the ILEC Lease is renewed, if necessary
- Windstream or any successor, assign, or subtenant will be permitted to sell Fiber IRUs or lease dark fiber services in ILEC and CLEC territories with term dates that extend beyond the then current term of the Lease, subject to (i) an annual cap on all such sales or leases of \$10 million in gross proceeds or revenue (no more than \$5 million of which may be in CLEC territories), (ii) the requirement that any Windstream successor, assign, or subtenant, reimburse Uniti at termination of the ILEC Lease or CLEC Lease the proportionate amount of IRU proceeds received relative to remaining term of the IRU at lease termination, and (iii) the requirement that such IRU or sublease does not result in a deemed sale of the assets underlying such IRU or sublease for U.S. federal income tax purposes; *provided*, that Windstream shall be permitted to enter into Fiber IRUs under the ILEC Lease in excess of the annual caps specified in the immediately preceding clause (i) and, for such IRUs, the current subletting provisions of the Master Lease shall apply and, further, Windstream agrees to remit to Uniti the proportionate amount of the proceeds relative to the remaining terms of the ILEC Lease and the agreement within 30 days of receipt of the proceeds by Windstream
- Requirement to maintain Leased Property and Tenant's Property under Section 9.1 of current Master Lease will be terminated for (i) any asset Tenant has retired and replaced with a TCI Replacement; and (ii) all other retired assets with an aggregate valuation not to exceed \$15 million per year or as otherwise consented to by Uniti; *provided* that, at Landlord's written request, Tenant shall continue to maintain any such asset at Landlord's sole cost and expense; *provided, further*, that Tenant shall be responsible for any liability resulting from the failure to maintain such retired copper asset; and *provided, further*, that all regulatory obligations have been satisfied by Tenant
- Uniti will be prohibited from competing in Windstream ILEC territories (for purposes of clarification, selling dark fiber or lit transport and building long haul routes with no laterals or extensions in a Windstream ILEC territory shall not be deemed competitive, but selling services originating or terminating traffic in said territories shall be deemed competitive), and, for avoidance of doubt, "Uniti" refers to Landlord and its affiliates, including Uniti Group Inc., and all existing, acquired, or newly-formed direct or indirect subsidiaries of Uniti Group Inc., any entities in common control with any such entity, and their respective successors and assigns, during the initial Term and all renewal terms of the ILEC Lease
- Uniti and its affiliates shall cease pursuing franchises in Windstream's ILEC territories,

	and shall include a schedule of all franchises currently held by Uniti and its affiliates in Windstream's ILEC territories
<b>Windstream Financial Covenants</b>	<p><i>Exit Financing as of Emergence</i></p> <p>As of the date of emergence, on a pro forma basis giving effect to Windstream's emergence (including the repayment, discharge, or extinguishment of any Indebtedness<sup>8</sup> and the incurrence of any new Indebtedness), Windstream's total leverage ratio<sup>9</sup> will not exceed 3.00x. For the avoidance of doubt, for the foregoing test, amounts payable in cash on account of contract cures, lease cures, or administrative expenses, and/or amounts to be paid to holders of allowed general unsecured claims after emergence, in each case payable upon completion of the applicable claims resolution process before the Bankruptcy Court, shall not be considered Indebtedness.</p> <p><i>Lease Financial Covenants</i></p> <p>The ILEC Lease and the CLEC Lease will contain the following covenants:</p> <p>Windstream and its subsidiaries cannot incur any Indebtedness<sup>10</sup> (other than (a) refinancing Indebtedness in a principal amount not exceeding the sum of (x) the principal amount of the Indebtedness refinanced, (y) the accrued and unpaid interest on such Indebtedness refinanced and any other amounts owing thereon, and (z) any customary costs, fees, or expenses incurred in connection with such refinancing or (b) drawings under its third party syndicated revolving credit facility, in an amount not to exceed \$750 million (the "<u>RCF Facility</u>")), if its total leverage ratio, pro forma for the incurrence of such Indebtedness, would exceed 3.00x (such covenant, the "<u>Incurrence Leverage Covenant</u>" and, such ratio, the "<u>Incurrence Leverage Ratio</u>"). Failure to comply with the Incurrence Leverage Covenant will constitute an event of default and Uniti will not be required to comply with its GCI commitment obligations following any such breach</p> <p>If at any time (a) Windstream's total leverage ratio exceeds 3.50x (the "<u>Maintenance Leverage Covenant</u>") and (b) Windstream or any of its subsidiaries takes any of the following actions, an event of default will have occurred and Uniti will not be required to comply with its GCI commitment obligations following any such breach:</p> <ul style="list-style-type: none"> <li>• incur any Indebtedness<sup>11</sup> (other than refinancing Indebtedness in a principal amount not exceeding the sum of (x) the principal amount of the Indebtedness refinanced, (y) the accrued and unpaid interest on such Indebtedness refinanced and any other amounts owing thereon, and (z) any customary costs, fees, or expenses incurred in connection with such refinancing);</li> </ul>

<sup>8</sup> For purposes of the financial covenants, except where otherwise specified, "Indebtedness" will be defined to consist of (i) indebtedness for borrowed money, (ii) indebtedness evidenced by notes, bonds, debentures or similar obligations, (iii) unpaid reimbursement obligations in respect of any drawn letter of credit and (iv) lease liability under finance leases on Windstream's consolidated balance sheet prepared in accordance with GAAP (excluding right of use liabilities pursuant to GAAP in accordance with ASU No. 2018-11, Topic 842). If at any time any change in GAAP would affect the computation of any leverage ratio or requirement contained herein, and either Windstream or Uniti shall so request, Windstream and Uniti shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP, provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein.

<sup>9</sup> When used in this Term Sheet, "total leverage ratio" will be calculated as the ratio of (i) Indebtedness (net of cash and cash equivalents to the extent that such cash and cash equivalents exceed \$75 million at such time) to (ii) LTM EBITDA (with customary adjustments).

<sup>10</sup> To include (x) Indebtedness as defined in footnote 8 and (y) any guarantee of indebtedness incurred by third parties.

<sup>11</sup> To include (x) Indebtedness as defined in footnote 8 and (y) any guarantee of indebtedness incurred by third parties.

	<ul style="list-style-type: none"> <li>• make any dividends on its capital stock or repurchase any stock (other than dividends by subsidiaries of Windstream), or prepay any unsecured debt;</li> <li>• make (a) any acquisitions or (b) investments, other than investments (1) in consolidated subsidiaries existing before the applicable date of Windstream's non-compliance with the Maintenance Leverage Covenant and customary permitted investments, (2) in joint ventures in existence prior to the date of the applicable non-compliance with the Maintenance Leverage Covenant (and not created in contemplation thereof), or (3) with the consent of Uniti (not to be unreasonably withheld); <i>provided</i> that Windstream may make any acquisition if, on a pro forma basis (including customary pro forma cash cost savings adjustments as long as such adjustments are factually supportable, expected to be realized within fifteen months and do not exceed, in the aggregate, 17.5% of EBITDA (calculated before giving effect to such adjustments)), its total leverage ratio would be lower than immediately prior to such acquisition; or</li> <li>• enter into any transaction with any investor in Windstream (or any entity controlled by any such investor) who has one or more of its representatives on the Windstream Board of Directors, unless (i) Uniti consents to the entry into such transaction (such consent not to be unreasonably withheld) or (ii) such transaction is (x) in the ordinary course of business or (y) to continue or renew management, consultancy, or advisory services pursuant to any engagement entered into before the applicable date of Windstream's non-compliance with the Maintenance Leverage Covenant on the same terms as before the applicable date of such non-compliance (it being understood that, solely with respect to clause (y), any such agreements, whether entered into before or after the applicable date of such non-compliance, shall be on terms consistent with those that would be obtained at arms'-length and shall be approved by disinterested directors)</li> </ul> <p>If (a) any bankruptcy event of default (which, in the event of an involuntary bankruptcy, shall occur only upon issuance of an order for relief or on the 60th day following commencement of the case if the case shall not have been dismissed at such time), or (b) any payment event of default or any other event of default under any Material Indebtedness (as defined in the Master Lease) has occurred and, in the case of clause (b), such event of default has not been waived or cured, such event of default shall constitute an event of default under the Leases and Uniti will not be required to comply with its GCI commitment obligations following any such breach</p> <p>Notwithstanding anything to the contrary herein, the Leases shall provide that the Incurrence Leverage Covenant and the Maintenance Leverage Covenant shall not apply at any time that Windstream maintains a corporate family rating of not less than (i) "B2" (stable) by Moody's and (ii) either "B" (stable) by S&amp;P or "B" (stable) by Fitch. Windstream must provide to Uniti (i) periodic certifications with respect to the foregoing covenants and (ii) copies of all information and certifications required to be provided to Windstream's lenders under the RCF Facility (both subject to confidentiality provisions consistent with those governing the sharing of information with lenders under such facility)</p>
<b>Rent Offset</b>	<ul style="list-style-type: none"> <li>• In the event Uniti defaults on or otherwise fails to timely satisfy the required funding of any GCI project, the equipment loan program, the Cash Payments, or any other payment obligation agreed to as part of the transactions contemplated hereby and Windstream is in compliance with the terms of the ILEC Lease and CLEC Lease, then any amounts remaining unfunded after 30 days shall be automatically deducted from the subsequent</li> </ul>



	<p>rent payment or payments (as necessary) otherwise owed by Windstream (<i>provided</i> that Windstream shall, to the extent not stayed or prohibited by applicable law, provide notice to Uniti of any default or failure triggering an offset right within the 30 days prior to the occurrence of the resulting offset)</p> <ul style="list-style-type: none"> <li>Any GCI for which Windstream offsets rent payments shall become assets owned by Uniti and shall be constructed and otherwise comply with all terms and conditions of the applicable Lease as if such GCI was funded by Uniti</li> </ul>
<b>Transfer Rights / Uniti Securitization Rights</b>	<ul style="list-style-type: none"> <li>ILEC Lease and CLEC Lease will permit each of Uniti and Windstream to transfer its respective rights and obligations under the applicable Lease (including future GCI funding that will not exceed the “pro rata portion” – as such phrase will be more particularly defined in the Leases – of GCI funding in connection with either Lease), and will allow Uniti to otherwise monetize or encumber the applicable Lease, except that Uniti will not be permitted to transfer its interest in either Lease to a Windstream Competitor</li> <li>Windstream and Uniti to cooperate regarding any contemplated (i) assignments, transfers, or sales or (ii) securitization, participation, or other monetization of Lease rents, and the Leases will include customary provisions to affect such transactions</li> </ul>
<b>Credit Rating Reports / Preview Reports</b>	<ul style="list-style-type: none"> <li>Windstream and Uniti will use reasonable efforts to assist the other in its credit rating agency process, including providing information as requested</li> </ul>
<b>General</b>	<ul style="list-style-type: none"> <li>The Parties agree to mutual releases from any and all liability related to all legal claims and causes of action</li> <li>Thresholds and other relevant provisions of the Master Lease will be conformed to the bifurcation of the Master Lease into the ILEC Lease and the CLEC Lease and other terms herein</li> <li>The Parties agree that Uniti has no consent rights over Windstream’s business plan, including Windstream’s network deployment strategies, except for compliance with GCI Review Standards for GCI funding where IRR<sup>12</sup> is below 9%, <i>provided</i> that Windstream can make investments of up to \$60mm (the “<u>Sub-Hurdle Allocation</u>”) per year through 2029 toward projects with an IRR below 9% without Uniti’s consent, <i>provided, further</i>, that RDOF and any similar federal or state broadband subsidies are deemed subsidies in calculating project IRR</li> <li>The Parties will agree that neither they nor any of the members of their respective management or boards of directors will directly (or indirectly on their express instruction) make, publish or issue (or cause to be made, published or issued) any statement or communication (whether written, oral or otherwise) in any form of media that (i) in the case of Uniti, disparages Windstream or members of Windstream’s management or board of directors and (ii) in the case of Windstream, disparages Uniti or members of Uniti’s management or board of directors</li> <li>Statements or communications (whether written, oral or otherwise) made, published or issued in any form of media in any of the following circumstances will not be considered</li> </ul>

<sup>12</sup> “IRR” means unlevered IRR as calculated using a model approved and certified annually by the Windstream Board of Directors, a live copy of which is delivered to Uniti.

	<p>disparaging:</p> <ul style="list-style-type: none"> <li>○ providing truthful and complete required legal testimony;</li> <li>○ responding truthfully and completely to formal requests for information; or</li> <li>○ making truthful and complete disclosures,</li> </ul> <p>so far as necessary or advisable to enable either Party to comply with applicable law, regulation or statute in connection with or arising out of a court, arbitral, administrative or regulatory investigation or proceeding of competition jurisdiction</p> <p>Uniti agrees to keep confidential any information provided by Windstream regarding GCI expenditures for the following year or any projections for multi-year periods and any information regarding compliance with financial covenants, until Windstream publicly discloses such information in accordance with applicable law; <i>provided</i> that (i) Uniti may use such information in preparing its own projections and guidance that it shares with rating agencies, financing sources, and the public market and (ii) Uniti may share such information with its accountants, attorneys and other advisors who are subject to confidentiality arrangements</p>
<b>Tax Matters</b>	<ul style="list-style-type: none"> <li>• <b><i>Certain Representations and Covenants</i></b> <ul style="list-style-type: none"> <li>○ In connection with the entry into definitive agreements regarding the transactions contemplated in this Term Sheet, Uniti and Windstream each will represent to the other that, to its knowledge after reasonable diligence and consultation with its professional advisors, it is not then aware of any fact or circumstance that would prevent the True Lease Opinions or the REIT Opinion (each, as defined below) from being rendered in connection with the consummation of the Agreement, subject to enumerated conditions, assumptions, or exceptions to be resolved as promptly as practicable after entry into a definitive agreement regarding the transactions contemplated in this Term Sheet</li> <li>○ Each of Uniti and Windstream shall make available, and shall use its reasonable best efforts to cause its professional advisors, including its counsel and its appraisers, to make available to the other party and its professional advisors on a reasonable basis such information, including underlying diligence materials, regarding the status and substance of the first party's professional advisors' analysis of true lease and REIT issues, including the analysis performed by the appraiser, as the other party may reasonably request; <i>provided</i> that to the extent any relevant information is determined by Uniti in its sole discretion to be commercially sensitive, advisors to Uniti and Windstream shall determine whether such materials should be shared on an "advisors only" basis; <i>provided, further</i>, that Uniti will not be required to share materials subject to attorney-client privilege or a confidentiality obligation owed to a third party</li> </ul> </li> <li>• <b><i>True Lease Opinion</i></b> <ul style="list-style-type: none"> <li>○ As a condition precedent to the effectiveness (but not the approval) of the Agreement, <i>either</i>: <ul style="list-style-type: none"> <li>▪ Uniti must receive an opinion to the effect that each of the CLEC Lease and the ILEC Lease "should" be a "true lease" for U.S. federal income tax purposes from a nationally recognized accounting or law firm of</li> </ul> </li> </ul> </li> </ul>

Uniti's choice (the "True Lease Opinions") and such accounting or law firm the "Uniti Tax Advisor"); or

- If the Uniti Tax Advisor determine that it cannot deliver the True Lease Opinions, and Windstream, after consultation with its advisors, believes that the True Lease Opinions should be able to be delivered, the issue shall be submitted for consideration by a nationally recognized law firm or accounting firm that is mutually acceptable to both Uniti and Windstream (the "Alternative Tax Advisor") and, if such Alternative Tax Advisor agrees to issue U.S. federal income tax opinions to the effect that each of the CLEC Lease and the ILEC Lease "should" constitute a "true lease," such opinions shall be treated as the True Lease Opinions satisfying this condition
- Uniti and Windstream agree that each of them, and their officers and employees, will use best efforts to cause the True Lease Opinions to be issued promptly; *provided* that Uniti promptly will engage a nationally recognized accounting or valuation firm (the "Appraiser") to undertake valuation, appraisal and other analysis incidental thereto in order to facilitate the issuance of the True Lease Opinions; *provided, further*, that Uniti will reasonably request of the Appraiser that the terms of the Appraiser's engagement shall allow Windstream to rely upon any of the Appraiser's reports for its own analysis of the status of each of the ILEC Lease and the CLEC Lease as a "true lease"; *provided, further*, that the Appraiser's refusal to grant or grant without conditions such reasonable request shall not preclude Uniti from engaging such Appraiser
- ***Uniti Go-Forward REIT Status***
  - As a condition precedent to the effectiveness (but not the approval) of the Agreement, either
    - Uniti must receive an opinion from a nationally-recognized accounting or law firm of its choice (the "Uniti REIT Advisor") to the effect that Uniti will, after the effectiveness of all of the transactions herein, continue to meet the requirements for qualification and taxation as a REIT for the year in which the Agreement becomes effective, and that Uniti's then current method of operation, including the future effect of the transactions herein, will enable it to continue to meet the requirements for qualification and taxation as a REIT (a "REIT Opinion"); or
    - If the Uniti REIT Advisor determines that it cannot deliver the REIT Opinion, and Windstream, after consultation with its advisors, believes that the REIT Opinion should be able to be delivered, the issue shall be submitted for consideration by a nationally recognized law firm that is mutually acceptable to both Uniti and Windstream and that has agreed to act prospectively as Uniti's advisor on REIT qualification matters (the "Alternative REIT Advisor") and, if such Alternative REIT Advisor agrees to issue an opinion to the effect that Uniti will, after the effectiveness of all of the transactions herein, continue to meet the requirements for qualification and taxation as a REIT for the year in

	<p>which the Agreement becomes effective, and that Uniti's then current method of operation, including the future effect of the transactions herein, will enable it to continue to meet the requirements for qualification and taxation as a REIT, such opinion shall be treated as the REIT Opinion satisfying this condition</p> <ul style="list-style-type: none"> <li>○ Uniti and Windstream agree that each of them, and their officers and employees will use best efforts to cause the REIT Opinion to be issued</li> </ul>
<b>Implementation</b>	<ul style="list-style-type: none"> <li>• Agreement in principle between the Parties will be announced publicly no later than March 2, 2020</li> <li>• Upon announcement of an agreement in principle, all pending litigation will be stayed pending closing of the transactions contemplated hereby, without prejudice to Windstream's right to resume prosecution</li> <li>• Windstream will file a motion no later than March 12, 2020 seeking Bankruptcy Court approval of the transactions contemplated hereby by no later than April 6, 2020, subject to the Bankruptcy Court's availability and final documentation if necessary</li> </ul>
<b>GCI Review Standards</b>	<ul style="list-style-type: none"> <li>• The Parties will establish a committee consisting of 3 Uniti representatives and 3 Windstream representatives to review Windstream plans for GCI expenditures for the upcoming year, with reviews occurring on mutually convenient dates in 4Q, and to include a monthly GCI forecast and funding schedule for the upcoming year, along with a 3-year annual forecast, with focus on the states targeted for 1 GIG expansion opportunities in the near term, and with responsible detail on how and where the GCI expenditures will be invested and the associated returns, including return models, target market analyses, if applicable, and types of investment (FTTN, FTTH, long haul, towers, etc.)</li> <li>• The Parties shall meet quarterly for the first 3 years, then semi-annually thereafter</li> <li>• Windstream agrees to provide Uniti Windstream's actual 2020 GCI plans, consistent with the level of detail as required above and agrees to include in such plans, or to otherwise present to Uniti for reimbursement under this arrangement, only those expenditures it determines in good faith meet the definition of GCI set forth herein</li> <li>• In connection with GCI expenditures, Windstream also agrees to provide items (ii) and (v) below annually and items (i), (iii), and (iv) quarterly: <ul style="list-style-type: none"> <li>(i) any certificates, licenses, new Permits or Pole Agreements or documents reasonably requested by Uniti necessary and obtainable to confirm Windstream's use of the fiber and related assets associated with the GCI expenditures;</li> <li>(ii) an Officer's Certificate setting forth in reasonable detail the projected GCI expenditures for the following year after the conclusion of the 4Q reviews and actual GCI expenditures for each year in 1Q of the following year;</li> <li>(iii) any agreements conveying title or beneficial interest to Uniti to any land, easements, or rights of way acquired for construction projects associated with the GCI free and clear of any Encumbrances except those approved by Uniti, and accompanied by an ALTA survey thereof satisfactory to Uniti;</li> </ul> </li> </ul>

	<p>(iv) if appropriate, endorsements to any outstanding policy of title insurance covering the assets associated with the GCI expenditures reasonably satisfactory in form and substance to Uniti; and</p> <p>(v) Windstream shall deliver to Uniti “as built” drawings of the fiber and/or related assets constructed during the year, certified as accurate by the architect or engineer that supervised the work, during the 4Q planning meeting</p> <ul style="list-style-type: none"><li>• The Parties agree that GCI expenditures for 2020 are approved in light of Uniti’s review of the Altman report and Windstream projections for 2020</li><li>• Beginning 2021, annual and rollover GCI amounts will not require Uniti approval; nonetheless the Committee will discuss proposed GCI projects in good faith; provided that Uniti shall have the unilateral right to object to \$25 million of proposed GCI expenditures annually (without such \$25 million being subject to the dispute resolution described below) that Uniti determines in good faith do not comply with the GCI definition (a “<u>Disputed GCI Expenditure</u>”) after providing the Windstream members of the Committee an opportunity to present supporting documentation demonstrating compliance (the “<u>Challenge Right</u>”); <i>provided, further</i>, that this provision shall not apply to the \$60 million Sub-Hurdle Allocation</li><li>• In the event that the Parties disagree as to whether any GCI investment above the \$25 million of proposed GCI expenditures that Uniti may challenge through the Challenge Right for the applicable year is eligible for reimbursement by Uniti as a GCI (other than on the basis that such investment does not qualify as real property), the disagreement will be brought to Altman Vilandrie or another independent third-party professional reasonably acceptable to both Parties (the costs of which shall be borne solely by Uniti), which independent third-party professional will have 10 days to make a determination with respect to such disagreement, with such determination being final and binding on the Parties. If such independent third-party professional determines that any proposed GCI investment does not comply with the definition of GCI, then Windstream may replace such project with a replacement project or projects of equal or lesser cost.</li></ul>
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**Schedule A**

Unused Strands	WIN Retain	UNIT Receive
0	0	0
1	1	0
2	2	0
3	3	0
4	4	0
5	4	1
6	4	2
7	4	3
8	4	4
9	5	4
10	5	5
11	6	5
12	6	6
13	7	6
14	7	7
15	8	7
16	8	8
17	9	8
18	9	9
19	10	9
20	10	10
21	11	10
22	11	11
23	12	11
24	12	12

**Schedule B**

Discount Rate		9.0%
<b>PV of Payments</b>		<b>400,000,000</b>
1	\$	24,505,456
2	\$	24,505,456
3	\$	24,505,456
4	\$	24,505,456
5	\$	24,505,456
6	\$	24,505,456
7	\$	24,505,456
8	\$	24,505,456
9	\$	24,505,456
10	\$	24,505,456
11	\$	24,505,456
12	\$	24,505,456
13	\$	24,505,456
14	\$	24,505,456
15	\$	24,505,456
16	\$	24,505,456
17	\$	24,505,456
18	\$	24,505,456
19	\$	24,505,456
20	\$	24,505,456
<b>Sum of Payments</b>		<b>\$ 490,109,111</b>

**Schedule C**

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>Current Payments:</b>											
ILEC	\$ 476	\$ 478	\$ 480	\$ 483	\$ 485	\$ 488	\$ 490	\$ 492	\$ 495	\$ 497	\$ 157
CLEC	183	184	185	186	187	188	189	190	191	192	60
<b>Base Payment</b>	<b>\$ 659</b>	<b>\$ 662</b>	<b>\$ 665</b>	<b>\$ 669</b>	<b>\$ 672</b>	<b>\$ 675</b>	<b>\$ 679</b>	<b>\$ 682</b>	<b>\$ 686</b>	<b>\$ 689</b>	<b>\$ 217</b>
Uniti Funded Improvements (2015)	4	4	4	4	4	4	4	4	4	4	1
<b>Total Payment</b>	<b>\$ 662</b>	<b>\$ 666</b>	<b>\$ 669</b>	<b>\$ 672</b>	<b>\$ 676</b>	<b>\$ 679</b>	<b>\$ 682</b>	<b>\$ 686</b>	<b>\$ 689</b>	<b>\$ 693</b>	<b>\$ 219</b>
<b>CLEC Copper Payment</b>	<b>\$ 29</b>	<b>\$ 29</b>	<b>\$ 29</b>	<b>\$ 30</b>	<b>\$ 30</b>	<b>\$ 30</b>	<b>\$ 30</b>	<b>\$ 30</b>	<b>\$ 30</b>	<b>\$ 30</b>	<b>\$ 10</b>

<b>Pro Forma Payments:</b>											
ILEC Payment <sup>(1)</sup>	\$ 508	\$ 511	\$ 513	\$ 516	\$ 518	\$ 521	\$ 524	\$ 526	\$ 529	\$ 531	\$ 168
CLEC Payment	154	155	156	156	157	158	159	160	160	161	51
<b>Total Payment</b>	<b>\$ 662</b>	<b>\$ 666</b>	<b>\$ 669</b>	<b>\$ 672</b>	<b>\$ 676</b>	<b>\$ 679</b>	<b>\$ 682</b>	<b>\$ 686</b>	<b>\$ 689</b>	<b>\$ 693</b>	<b>\$ 219</b>

(1) Pro forma ILEC agreement includes CLEC Copper payment of ~\$29mm and ~\$4mm payment for 2015 Uniti funded capital improvements.