

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

In re:

WINDSTREAM HOLDINGS, INC., *et al.*,¹

Debtors.

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Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

**STIPULATION AND ORDER EXTENDING THE TIME TO ASSUME CERTAIN
UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY**

Windstream Holdings, Inc. and its debtor affiliates as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) and Georgia Power Company (“GPC”), Southern Telecom, Inc. (“STI”), and Southern Company Services, Inc. (“SCS” and, collectively with the Debtors, the “Parties”) respectfully submit this proposed stipulation and agreed order (“Stipulation and Order”).

RECITALS

WHEREAS, on February 25, 2019 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), and such cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure [Docket No. 56] (collectively, the “Chapter 11 Cases”).

¹ 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.



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WHEREAS, on September 27, 2019, the Court entered an order (a) authorizing the Debtors to, among other things, assume certain unexpired leases of non-residential real property, (b) extending the Debtors' deadline to assume or reject any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable, with the consent of GPC, STI, and SCS, to December 1, 2019, and (c) extending the deadline for GPC, STI, and SCS to object to the Debtors' proposed assumption or rejection of any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable and to which GPC, STI, or SCS is a party, to December 15, 2019 [Docket No. 1106] (the "Order").²

WHEREAS, on November 27, 2019, the Court entered an order (a) extending the Debtors' deadline to assume or reject any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable, with the consent of GPC, STI, and SCS, to January 17, 2020, and (b) extending the deadline for GPC, STI, and SCS to object to the Debtors' proposed assumption or rejection of any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable and to which GPC, STI, or SCS is a party, to January 31, 2020 [Docket No. 1267].

WHEREAS, on January 28, 2020, the Court entered an order (a) extending the Debtors' deadline to assume or reject any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable, with the consent of GPC, STI, and SCS, to March 2, 2020, and (b) extending the deadline for GPC, STI, and SCS to object to the Debtors' proposed assumption or rejection of any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable and to which GPC, STI, or SCS is a party, to March 16, 2020 [Docket No. 1456].

² Capitalized terms used but not defined herein have the same meaning ascribed in the Order.

WHEREAS, on March 2, 2020, the Court entered an order (a) extending the Debtors' deadline to assume or reject any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable, with the consent of GPC, STI, and SCS to March 27, 2020 and (b) extending the deadline for GPC, STI and SCS to object to the Debtors' proposed assumption or rejection of any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable, and to which GPC, STI or SCS is a party, to April 13, 2020 [Docket 1534].

WHEREAS, by this Stipulation and Order, the Parties hereby agree to extend the Debtors' deadline to assume or reject any non-residential real property lease on the terms set forth herein.

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

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

2. The Debtors' deadline to assume or reject any non-residential real property lease under section 365(d)(4) of the Bankruptcy Code, to the extent applicable and to which GPC, STI, or SCS is a party, is extended to June 1, 2020.

3. The appropriate Debtor or Debtors shall file either a notice of assumption or motion seeking the assumption of the following lease agreements (collectively, the "GPC Leases") (all other agreements between GPC, STI, and/or SCS on one side and one or more of the Debtors on the other side shall be referred to, collectively, as the "Other Agreements"):

(a) Lease Agreement dated November 10, 2000, between Southern Company Services, Inc., on its own behalf and as agent of Georgia Power Company, and Interstate

FiberNet, Inc. (also known as Earthlink Carrier, LLC and now known as Windstream Fibernet, Inc.) as amended from time to time, including without limitation, a First Amendment to Lease Agreement between Georgia Power Company and Interstate Fibernet Inc. dated March 24, 2005 and a Second Amendment to Lease Agreement between Georgia Power Company and Earthlink Carrier, LLC dated December 1, 2017, which is listed on Earthlink Carrier, LLC's Amended Schedule G as bearing number L222-GA-1444.

(b) Lease Agreement dated January 1, 2012, between Georgia Power Company and Windstream Communications, Inc., now known as Windstream Communications, LLC, which is listed on Windstream Communications, LLC's Amended Schedule G as bearing number L950-GA-002.

(c) Lease Agreement dated January 13, 2012, between Georgia Power Company and Windstream Georgia, LLC relating to Land Lot 223, of the 12th District of Stephens County, Georgia, which is listed on Windstream Georgia, LLC's Amended Schedule G as bearing number L041-GA-1084.

(d) Lease Agreement dated January 13, 2012, between Georgia Power Company and Windstream Georgia, LLC relating to Land Lot 148, of the 13th District of Rabun County, Georgia, which is listed on Windstream Georgia, LLC's Amended Schedule G as bearing number L041-GA-1085.

Such notice of assumption or assumption motion shall list proposed cure amounts for the GPC Leases (the "Cure Amounts") and shall be filed in sufficient time to accomplish effective assumptions of the GPC Leases (pursuant to an order or otherwise, as applicable) on or before June 1, 2020. GPC, STI, and SCS reserve and preserve all rights under Bankruptcy Code section 365 to object to the Cure Amounts.

4. The Parties stipulate and agree that, to the extent of their knowledge, none of the Other Agreements are subject to the provisions of section 365(d)(4) of the Bankruptcy Code.

5. Each of GPC, STI, SCS, and the Debtors reserves all of its rights, claims, and defenses with respect to any executory contract or unexpired lease to which any of GPC, STI, or SCS and any of the Debtors are parties, including without limitation with respect to the issue of whether any agreement is or is not an executory contract or unexpired lease subject to the provisions of section 365. In the case of GPC, STI and SCS, such reservation of rights, claims, and defenses shall include, without limitation, the right to challenge any cure amount that the Debtors may propose in connection with assumption of the executory contract or unexpired lease, the right to pursue any claims with respect to any such executory contract or unexpired lease now existing or hereafter arising, and the right to file a motion requesting that this Court approve an order requiring the applicable Debtor to assume or reject any executory contract or unexpired lease within a specified period of time. In the case of the Debtors, such reservation of rights, claims, and defenses shall include, without limitation, the right to object to any of the actions taken by GPC, STI, or SCS which are identified in the immediately preceding sentence.

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

7. Neither this Stipulation and Order nor any right or interest hereunder may be assigned in whole or in part by any of the Parties without the prior consent of the other Parties.

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

9. Nothing in this Stipulation and Order, whether express or implied, shall be construed to give to any person or entity other than the Parties any legal or equitable right, remedy, interest, or claim under or in respect of this Stipulation and Order.

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

11. This Stipulation and Order shall be effective and enforceable immediately upon entry.

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

Dated: March 27, 2020
New York, New York

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

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

- and -

James H.M. Sprayregen, P.C.

Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)

Brad Weiland (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle Street

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

Dated: March 27, 2020
New York, New York

/s/ Hollace Cohen

Hollace Cohen
Thomas Walker
FISHERBROYLES, LLP
445 Park Avenue, 9th Floor
New York, New York 10022
Telephone: (917) 365-4871
Facsimile: (212) 423-0618

*Counsel for Georgia Power Company, Southern Telecom,
Inc., and Southern Company Services, Inc.*

SO ORDERED THIS 30th DAY OF MARCH, 2020

/s/Robert D. Drain

UNITED STATES BANKRUPTCY JUDGE