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Conflicts 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> , ¹)	Case No. 19-22312 (RDD)
)	
Debtors.)	(Jointly Administered)
)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	Adv. Pro. No. 19-08246
)	
v.)	
)	
CHARTER COMMUNICATIONS, INC. and)	
CHARTER COMMUNICATIONS OPERATING, LLC,)	
)	
Defendants.)	
)	

**DECLARATION OF GRACE A. THOMPSON IN SUPPORT OF THE DEBTORS'
OBJECTION TO DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE THE TRIAL
DECLARATION OF JEFFREY AUMAN**

¹ The last four digits of Debtor Windstream Holdings, Inc.'s tax identification number are 7717. Due to the large number of debtor entities 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.



I, Grace A. Thompson, declare as follows:

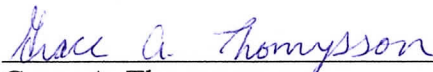
1. I am an attorney duly admitted to practice before the State of New York. I am an Associate with Katten Muchin Rosenman LLP, conflicts counsel for Windstream Holdings, Inc. and its debtor affiliates as debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the “Debtors” or “Windstream”). If called as a witness, I could and would competently testify to all the facts within my personal knowledge.

2. As a part of my work in connection with these Chapter 11 cases, I maintain a file on all deposition transcripts.

3. Attached hereto as **Exhibit A** is a true and correct copy of relevant excerpts from the deposition of Jeffrey Auman, as Windstream’s Rule 30(b)(6) designee, taken on September 24, 2019.

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

Executed: April 24, 2020



Grace A. Thompson

CERTIFICATE OF SERVICE

I hereby certify that, on April 24, 2020, I caused a true and correct copy of the *Declaration Of Grace A. Thompson in Support of the Debtors' Objection to Defendants' Motion In Limine to Preclude the Trial Declaration of Jeffrey Auman* to be filed electronically using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record in this lawsuit.

/s/ Terence P. Ross
Terence P. Ross

EXHIBIT A

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

3 IN RE
4 WINDSTREAM HOLDINGS, INC., et al.,
Debtors,

5 -----
Chapter 11
6 Case No. 19-22312 (RDD)

7 -----
WINDSTREAM HOLDINGS, INC., et al.,
Plaintiffs,

8 vs. Adv. Proc. No. 19-08246
9 (RDD)

10 CHARTER COMMUNICATIONS, INC.
and CHARTER COMMUNICATIONS
OPERATING, LLC
11 Defendants.

12
13
14
15
16 VIDEO DEPOSITION OF JEFFREY AUMAN
17 Taken on behalf of the Defendants
18 September 24, 2019
19
20
21
22
23
24
25

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QUESTIONS BY:

Mr. Kingston

7

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

3 IN RE
4 WINDSTREAM HOLDINGS, INC., et al.,
Debtors,

5 -----
Chapter 11
6 Case No. 19-22312 (RDD)

7 -----
WINDSTREAM HOLDINGS, INC., et al.,
8 Plaintiffs,

9 vs. Adv. Proc. No. 19-08246
(RDD)

10 CHARTER COMMUNICATIONS, INC.
and CHARTER COMMUNICATIONS
OPERATING, LLC
11 Defendants.

12
13
14 THE VIDEO DEPOSITION OF WITNESS, JEFFREY
15 AUMAN, produced, sworn and examined on September
16 24, 2019, between the hours of 8:00 in the forenoon
17 and 5:00 in the afternoon of that day at the
18 offices of Thompson Coburn, One US Bank Plaza, St.
19 Louis, MO 63101, before Suzanne Benoist, a
20 Certified Court Reporter and Notary Public within
21 and for the States of Missouri, Kansas and
22 Illinois, in a certain cause now pending In The
23 United States Bankruptcy Court For The Southern
24 District of New York.
25

1 APPEARANCES

2
3
4 FOR THE DEBTORS/PLAINTIFFS:

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8 Also Present: Mr. T. Kent Smith

9
10
11 FOR THE DEFENDANTS:

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25 (314) 230-7260

26

1 -oOo-

2 VIDEOGRAPHER: Good morning. We're
3 going on the record at 9:03 a.m. on Wednesday,
4 September 25th, 2019. Please note that the
5 microphones are sensitive and may pick up
6 whispering, private conversations and cellular
7 interference. Please turn off all cell phones or
8 place them away from the microphones, as they can
9 interfere with the deposition audio. Audio and
10 video recording will continue to take place unless
11 all parties agree to go off the record.

12 This is media unit one of the
13 video-recorded deposition of the corporate
14 representative of Windstream Holdings Incorporated,
15 Jeffery Auman, taken by counsel for the defendant
16 in the matter of Windstream Holdings Incorporated,
17 et al. versus Charter Communications Incorporated,
18 et al., filed in the United States Bankruptcy Court
19 for the Southern District of New York, Case Number
20 19-08246.

21 This deposition is being held at
22 Thompson Coburn located at 500 North 7th Street in
23 St. Louis, Missouri.

24 My name is Kimberlee Lauer from the
25 firm Veritext Legal Solutions and I'm the

1 videographer, and our court reporter is Sue
2 Benoist, also from Veritext.

3 I am not authorized to administer an
4 oath, I am not related to any party in this action
5 nor am I financially interested in the outcome.

6 Counsel and all present in the room
7 will state their appearance beginning please with
8 the noticing attorney.

9 MR. KINGSTON: John Kingston on
10 behalf of defendants, and with me is Nino Przulj.

11 MR. ROSS: Terrence Ross with the law
12 firm Katten Muchin Rosenman representing the
13 deponent and conflict counsel for the debtor and
14 debtors in possession.

15 MR. SMITH: Kent Smith with
16 Windstream.

17 MS. GREER: Jocelyn Greer of Morrison
18 & Foerster on behalf of the official committee of
19 unsecured creditors.

20 VIDEOGRAPHER: Thank you.

21 And then if our reporter would please
22 swear in the witness.

23 JEFFREY AUMAN,
24 of lawful age, being produced, sworn and examined
25 on the part of the Defendant testified as follows:

1 A. Yes.

2 Q. And I guess the question is do you
3 have any personal knowledge about folks at
4 Windstream talking to somebody other than other
5 people at Windstream or lawyers representing
6 Windstream related to the claims Windstream has
7 asserted in this proceeding?

8 MR. ROSS: I'll just object, it's
9 stilll vague. Does that include the court, does
10 that include opposing counsel in this room?

11 MR. KINGSTON: Sure.

12 Q. (BY MR. KINGSTON) Responding to Mr.
13 Ross's objection do you have any personal knowledge
14 about Windstream communicating with anybody other
15 than the court, the lawyers on the other side, its
16 own lawyers or the fellow employees at Windstream
17 related to Windstream's allegations in this
18 lawsuit?

19 A. No.

20 MR. ROSS: You need to articulate
21 your answer.

22 A. No. No, no personal knowledge.

23 Q. (BY MR. KINGSTON) Take a look at
24 number 15. Do you see that, sir?

25 A. Yes.

1 Q. Do you have personal knowledge
2 related to Windstream's harm allegedly resulting
3 from Charter's alleged actions in this proceeding?

4 A. I believe that there's been
5 irreparable harm to our brand because of the false
6 and misleading advertising put in the marketplace.
7 That's based on my role in marketing and personal
8 experience.

9 Q. So your view Mr. Auman is that you do
10 have personal knowledge related to Windstream's
11 harm resulting from Charter's alleged actions in
12 this adversary proceeding, is that right?

13 A. That's certainly my belief, that
14 there's brand damage created. Goodwill lost and
15 customer confusion as a result of the analysis and
16 misleading advertising.

17 Does that help answer the question?

18 Q. Well, I think you've answered a
19 question as to your beliefs, sir, and I guess what
20 I'm just trying to understand is whether that
21 belief is based on your personal knowledge or based
22 on talking to other people and looking at pieces of
23 paper. Does that make sense?

24 MR. ROSS: Can you read that question
25 back please?

1 (Whereupon, the reporter read from the record)

2 MR. ROSS: I guess I'll object as
3 vague, but if you understand it go ahead and answer
4 it.

5 A. I don't understand the question.

6 Q. (BY MR. KINGSTON) In forming your
7 belief that Windstream was harmed did you talk to
8 people?

9 A. Yes. People in my organization on my
10 team that are responsible for marketing.

11 Q. In forming your belief that
12 Windstream was harmed did you look at documents?

13 A. Yes.

14 Q. Were there any other sources of
15 information beyond people and documents that you
16 relied upon in forming your belief that Windstream
17 was harmed?

18 A. Yes.

19 Q. What?

20 A. Experience.

21 Q. Anything else?

22 A. Disconnect reports.

23 Q. Would the disconnect reports be among
24 the documents that you reviewed in forming your
25 belief that Windstream was harmed?

1 lawyers present?

2 A. No.

3 Q. Tell me everything you can remember
4 about your conversation with Mr. Brannon then.

5 A. I asked Brad Brannon to validate what
6 I believed to be true, that over the course between
7 April and end of July in the markets that we
8 compete head to head with Spectrum that we had a
9 significant or material spike in customer
10 disconnects during that timeframe. That that
11 proved to be a material change from our previous,
12 trajectory for the previous year. And that would
13 have been the timeframe beginning a few weeks after
14 the false or misleading advertising was sent out by
15 Charter.

16 Q. So Mr. Brannon told you that there
17 was a spike in disconnects in that kind of April to
18 July time period.

19 A. Yes. He validated it. I knew that
20 to be the case but I wanted to double check with
21 Brad. He's the one who as we talked about before
22 distributes the reports on customer disconnects.

23 Q. And you knew that to be the case
24 based on your review of the reports that Brad
25 distributes on a monthly basis?

1 Do you mind if I take another run at
2 that?

3 A. Yes.

4 Q. In your belief regarding the spike in
5 disconnects in the April to July time period was
6 based on your review of the reports circulated by
7 Mr. Brannon's group that we've discussed earlier.

8 A. Yes.

9 Q. And then Mr. Brannon told you that
10 that belief was correct when you talked to him.

11 A. Yes.

12 Q. When you spoke --

13 A. And that the same impact on the other
14 markets was true, that we did not see a spike in
15 disconnects like we did in the Spectrum markets.

16 Q. That's what Mr. Brannon told you?

17 A. Yes. We also discussed pricing,
18 Charter pricing, and that's all I recall.

19 Oh, our current promotion costs that
20 we're running right now, we're in the end of
21 September timeframe.

22 Q. Mr. Brannon told you things about
23 pricing and promotion costs as well?

24 A. Yes.

25 Q. What did he tell you about pricing?

1 A. We just reviewed our current go to
2 market pricing by and large for Internet only
3 customers, for business customers. And the costs
4 associated with the current promotion. That's the
5 validation behind it, I wanted to validate our cost
6 estimate for what that promotion's costing us.

7 Q. Explain that to me. You want to
8 validate your cost estimate for what your current
9 promotion was costing you?

10 A. Yes.

11 Q. How does the pricing information
12 enable you to validate that cost estimate?

13 A. The current promotion involves three
14 months free for the customers. So there's a cost
15 associated with that and that promotion is based on
16 the fact that we had a spike in disconnects during
17 the April to July timeframe in Spectrum markets and
18 we wanted to maintain our commitment to achieving
19 our growth plan. So we took action as a management
20 team to introduce new pricing promotions into the
21 marketplace as a result and there's a cost
22 associated with that that we estimate to be 8
23 million.

24 Q. So the three months free, the cost of
25 offering that three months free promotion you

1 estimate to be \$8 million.

2 A. Yes.

3 Q. And that's based on your discussion
4 with Mr. Brannon?

5 A. It was a foundation discussion. I
6 knew that as my normal course of business.

7 Q. Did you look at in forming your
8 belief that the cost of the promotion was \$8
9 million, did you look at documents?

10 A. No.

11 Q. That's all you know off the top of
12 your head?

13 A. Yes.

14 Q. Walk me through the formula that you
15 went through -- walk me through the formula that
16 you employed to determine that the cost of that
17 three month promotion was \$8 million off the top of
18 your head.

19 A. My finance director told me. I don't
20 have the formula.

21 Q. So your belief that the cost of the
22 three month promotion that you've been referencing
23 was \$8 million is the result of your finance
24 director telling you that the cost of that
25 promotion was \$8 million?

1 A. Yes, sir.

2 Q. And who's your finance director?

3 A. Leena Lee. L-E-E-N-A. And Ben Bruce
4 is the finance VP. So it would have been with that
5 group.

6 Q. Bruce did you say?

7 A. Ben Bruce, B -E-N, I don't think I
8 said his name before. B-E-N, Bruce, B-R-U-C-E.

9 Q. So your belief that the three month
10 promotion that you referenced earlier cost
11 Windstream \$8 million is based on the fact that Ms.
12 Lee and Mr. Bruce told you?

13 A. Yes. I'm sure there's input from
14 Brad as well. Brad manages pricing. Brad is over,
15 he's VP over finance.

16 Q. When did Ms. Lee and Mr. Bruce tell
17 you about this clause?

18 A. It would have been some time in
19 August.

20 Q. Mid August, early August, late
21 August?

22 A. I can't recall. Probably middle
23 August. We introduced it beginning of September.
24 To some markets.

25 Q. How did you identify the markets

REPORTER CERTIFICATE

I, SUZANNE BENOIST, Certified Shorthand Reporter, do hereby certify that there came before me at the law firm of Thompson Coburn, One US Bank Plaza, St. Louis, MO 63101, the above-referenced parties, that the proceeding was translated and proofread using computer-aided transcription, and the above transcript of proceedings is a true and accurate transcript of my notes as taken at the time of said event.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this examination is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

Dated this 4th day of October, 2019.



Ms. Suzanne Benoist, RPR, CCR-MO,
CCR-KS, CSR-IL

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 3561325

Windstream Holdings, Inc. v. Charter Communications, Inc.

DATE OF DEPOSITION: 9/25/2019

WITNESS' NAME: Jeffrey Auman

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

11/1/2019
Date

[Signature]
Jeffrey Auman

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn Statement; and

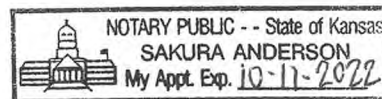
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this 1st day of November, 2019.

[Signature]
Notary Public

10-11-2022
Commission Expiration Date



DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 3561325

Windstream Holdings, Inc. v. Charter Communications, Inc.

DATE OF DEPOSITION: 9/25/2019

WITNESS' NAME: Jeffrey Auman

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

11/1/2019
Date

Jeffrey Auman
Jeffrey Auman

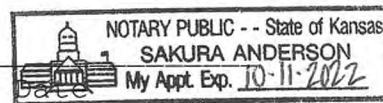
Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this 1st day of November, 2019.

Notary Public

10-11-2022
Commission Expiration Date



Page 172

ERRATA SHEET

VERITEXT LEGAL SOLUTIONS MIDWEST

ASSIGNMENT NO: 3561325

PAGE/LINE(S) / CHANGE /REASON

11/1/2019

Date



Jeffrey Auman

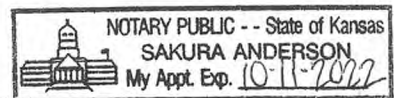
SUBSCRIBED AND SWORN TO BEFORE ME THIS 1st

DAY OF November, 2019.



Notary Public

10-11-2022



Commission Expiration Date

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