

Hearing Date: June 24, 2020 at 10:00 AM
Objection Deadline: June 17, 2020 at 4:00 PM

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

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

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF NG-KIH DESIGN
BUILD LLC, AS AGENT, TO DEBTORS' ASSUMED EXECUTORY CONTRACT AND
UNEXPIRED LEASE LIST FILED AS EXHIBIT A TO THE PLAN SUPPLEMENT
[DOC. NO. 1973]**

NG-KIH Design Build, LLC, as agent for the Commonwealth of Kentucky, Kentucky Communications Network Authority and the Finance and Administration Cabinet, ("NKDB"), by and through its undersigned counsel, files this limited objection and reservation of rights ("Limited Objection") to the *Debtors' Assumed Executory Contract and Unexpired Lease List* (the "Assumed Contracts List") filed as Exhibit A to the Plan Supplement [Doc. No. 1973], on the following bases: (1) the agreements between the Debtors and NKDB are not listed, and (2)



there is no Cure Amount stated for the agreements between the Debtors and NKDB. In support of its Limited Objection, NKDB states as follows:

BACKGROUND

1. On February 25, 2019 (the “Petition Date”), the Debtors each commenced a case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. On May 14, 2020, the Debtors filed their *First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et. al. Pursuant to Chapter 11 of the Bankruptcy Code* [Doc. No. 1812] (“the Plan”).

3. The Debtors filed the Assumed Contracts List as a Supplement to the Plan on June 3, 2020 [Doc. No. 1973]. In connection with each contract on the Assumed Contracts List, the Debtors included all amounts due and owing with respect to each listed contract (the “Cure Amount”). On June 10, 2020, the Debtors filed their *Notice of Filing of First Amended Plan Supplement* [Doc. No. 2010], which includes as Exhibit B the list of executory contracts or unexpired leases which the Debtors seek to reject (the “Rejected Contracts List”). No contracts between the Debtors and NKDB are listed on either the Assumed Contracts List or the Rejected Contracts List.

4. The deadline to file an objection to the Plan, including the Assumed Contracts List, is June 17, 2020, at 4:00 PM (ET). To protect its interests, NKDB makes this Limited Objection to address the omission of its contracts with the Debtors and to assert the Cure Amounts owed thereunder.

5. NKDB, as agent for the Commonwealth of Kentucky, Kentucky Communications Network Authority and the Finance and Administration Cabinet, has overseen the construction of a high-speed internet network throughout the Commonwealth of Kentucky. The construction and

creation of this network is called the “Kentucky Wired” project. When complete, the Kentucky Wired project will expand high speed internet service throughout the Commonwealth. To assist in the creation of the Kentucky Wired network, the Commonwealth of Kentucky entered into separate Pole Attachment License Agreements with Debtor Windstream Kentucky East, LLC (“Windstream East Agreement”) and Debtor Windstream Kentucky West, LLC (“Windstream West Agreement”). A true and accurate copy of the Windstream East Agreement, as amended, is attached to Proof of Claim Number 5440 filed by NKDB herein (“East Proof of Claim”). A true and accurate copy of the Windstream West Agreement, as amended, is attached to Proof of Claim Number 5432 filed by NKBD herein (“West Proof of Claim”).

6. Pursuant to the Windstream East Agreement and Windstream West Agreement, NKDB, as agent for the Commonwealth of Kentucky, Kentucky Communications Network Authority and the Finance and Administration Cabinet, was required to pay the Debtors in advance for the all fees and costs required (i) to process requests to attach Kentucky Wired lines or structures to the Debtors’ utility poles, and (ii) to complete the “make ready” work necessary for the attachment of each Kentucky Wired line or structure. These pre-payments included professional and licensing fees paid to the Debtors and were based on estimates of what and where such attachments and lines would be needed as the Kentucky Wired project was constructed in the future.

OBJECTION AND RESERVATION OF RIGHTS

7. NKDB has searched the List of Assumed Contracts List and the Rejected Contracts List and has been unable to identify the Windstream East Agreement and Windstream West Agreement. The Debtors have informally advised that they intend to assume both Agreements and consider them as having Cure Amount of \$0.00. NKDB files this limited

objection to clarify the treatment of the Windstream East and Windstream West Agreements in the proposed Plan and to resolve any dispute over the Cure Amounts owed under the Windstream East Agreement and Windstream West Agreement.

8. On January 31, 2020, NKDB amended the East Proof of Claim, which was originally filed in an unknown amount, to assert a claim of \$1,314,864.73. On January 31, 2020, NKDB amended the West Proof of Claim, which was also originally filed in an unknown amount, to assert a claim of \$95,781.78. These amounts are NKDB's Cure Amounts for the Windstream East and Windstream West Agreements, respectively.

9. These Cure Amounts are composed of amounts owed to NKDB by the Debtors for pre-payments to the Debtors for "make ready" work and related expenses that were (i) never performed by the Debtors (and subsequently performed instead by NKDB pursuant to the Agreements) or (ii) for "make ready" work and attachments that were cancelled after the pre-payments had been paid. Simply stated, the Cure Amounts are refunds owed to NKDB for pre-payments made to the Debtors where the work was either never done or was cancelled before any work was ever done.

10. NKDB expressly reserves its right to amend or supplement this Limited Objection as additional information is provided by the Debtors regarding its Plan, the treatment of the Windstream East and Windstream West Agreements, and the determination of the Cure Amount owed to NKDB.

WHEREFORE, NKDB, as agent, respectfully requests that the Debtors clearly assume the Windstream East Agreement and Windstream West Agreement, that there be a determination and payment of the Cure Amounts outstanding thereunder promptly upon assumption, and that it be awarded such other and further relief as is just and proper under the circumstances.

DATED: June 17, 2020

Respectfully Submitted,

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