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

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In re: Chapter 11 Case No.
WINDSTREAM HOLDINGS, INC., ET AL., 19-22312 (RDD)
Debtors. (Jointly Administered)

**OBJECTION OF JOHNSON CONTROLS, INC. TO NOTICE OF FILING
OF PLAN SUPPLEMENT, ASSUMED EXECUTORY CONTRACT AND
UNEXPIRED LEASE LIST**

Johnson Controls, Inc. (“Johnson Controls” and, together with its affiliates, including, but not limited to Johnson Controls Security Solutions LLC (f/k/a Tyco Integrated Security LLC), and Johnson Controls Fire Protection, “JCI”), hereby files this objection (the “Objection”) to the *Notice of Filing of Plan Supplement, Assumed Executory Contract and Unexpired Lease List* [Docket No. 1973] (the “Cure Notice”). In support of this Objection, JCI states as follows:

Background

1. This is a contested matter, pursuant to Bankruptcy Rules 6006(b) and 9014.
2. Jurisdiction is based upon 28 U.S.C. § 1334.
3. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).
4. On February 25, 2019 (the “Filing Date”), the Debtors filed their petition for relief under Chapter 11 of the United States Bankruptcy Code (“Bankruptcy Code”).



5. Johnson Controls is a Wisconsin corporation that provides building control systems and services to certain of the above-referenced debtors (the “Debtors”) at various locations, pursuant to certain executory contracts among others between JCI and the Debtors, including contracts related to security, fire, and HVAC services (the “JCI Contracts”).

Cure Amount Objection

6. In the Cure Notice, the Debtors seek to establish a cure amount for certain executory JCI Contracts, in the event the JCI Contracts are in fact assumed in connection with the Effective Date¹ of the Plan.

7. The Cure Notice lists three line items related to the JCI Contracts, although there is insufficient detail in the Cure Notice for JCI to positively identify the contracts. *See* Cure Notice, Ex. A at p. 258, ref. nos. 5,825, 5,826, and 5,827.

8. The proposed cure amount listed in the Cure Notice for the JCI Contracts is \$164,752.37 and is “aggregated” for the multiple contracts. *See* Cure Notice at p. 258.

9. JCI does not object to assumption and assignment of the JCI Contracts. However, JCI objects to the proposed cure amount set forth in the Cure Notice. Based on JCI’s records, the correct cure amount aggregated for the JCI Contracts is \$476,984.38 (the “Cure Amount”). JCI anticipates engaging in dialogue with the Debtors to come to an agreement on the Cure Amount for each of the JCI Contracts.

Cure of Default Under § 365(b)(1)(A)

10. Section 365 of the Bankruptcy Code states, in relevant part, that “(a) Except as provided in ... subsection[] (b) of this section, the [debtor-in-possession], subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor. *See*

¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the Cure Notice.

11 U.S.C. §365(b)(1). If there has been a default in an executory contract or unexpired lease of the debtor, the [debtor-in-possession] may not assume such contract or lease unless, at the time of assumption of such contract or lease, the [debtor-in-possession]—(A) cures, or provides adequate assurance that the [debtor-in-possession] will promptly cure, such default...”.

11. “Congress’s intent in imposing these conditions on the ability of the debtor to assume the contract was to insure that the contracting parties receive the full benefit of their bargain if they are forced to continue performance.” *In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2nd Cir. 1996) (citations omitted). “Where a debtor has been permitted by the bankruptcy court to assume a contract pursuant to § 365, equitable estoppel principles may be applied by the court to deny the debtor permission to escape its obligation to perform the contract it assumed.” *Id.* at 1000.

12. In order for the Debtors to assume the JCI Contracts, the Debtors must cure the existing defaults in full, which requires payment of the Cure Amount totaling \$476,984.38.

REQUEST FOR RELIEF

13. Accordingly, JCI requests that the Court deny the final relief requested in the Cure Notice as to the JCI cure amounts and establish the aggregated Cure Amount for the JCI Contracts in the amount of \$476,984.38.

WHEREFORE, JCI requests that the Court enter an order:

- A. Establishing the Cure Amount relating to the JCI Contracts as set forth herein in the amount of \$476,984.38; and
- B. Providing such other and further relief as the Court deems just and appropriate.

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By: /s/ Timothy F. Nixon

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