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**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) |
| |) | |

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF
ALTEC CAPITAL SERVICES, LLC WITH RESPECT TO
PROPOSED ASSUMPTION OF CERTAIN AGREEMENTS UNDER THE PLAN**

Altec Capital Services, LLC (“Altec”), hereby files this Objection and Reservation of Rights (“Objection”) to the Debtors’ proposed assumption and assignment of certain agreements with Altec under the Plan and respectfully avers in support thereof as follows:

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 the Debtors have requested joint administration, 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



I. BACKGROUND

1. On February 25, 2019 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”). The cases are jointly administered under Case No. 19-22313.

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 [Docket No. 1812] (the “Plan”).

3. On June 3, 2020, the Debtors filed their Notice of Filing Plan Supplement [Docket No. 1973] (“Plan Supplement”), which includes an Assumed Executory Contract and Unexpired Lease List (“Assumed Contracts List”). The Plan Supplement provides that “the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan” and that “[i]f approved, the documents contained in the Plan Supplement will be approved by the Court pursuant to the Confirmation Order.” The Assumed Contracts List also contains proposed cure amounts for the listed agreements.

4. The deadline for filing objections to the Plan, including the Plan Supplement, is June 17, 2020.

5. On June 10, 2020, the Debtors filed their Notice of Filing First Amended Plan Supplement [Docket No. 2010] (“Amended Plan Supplement”), which includes a Rejected Executory Contract and Unexpired Lease List (“Rejected Contracts List”).

6. Article V.A. of the Plan provides that “[o]n the Effective Date, except as otherwise provided herein, all Executory and Unexpired Leases not otherwise assumed or rejected will be deemed assumed by the applicable Reorganized Debtor.”

A. Altec Leases

7. Prior to the Petition Date, Altec, and one or more of the Debtors, entered into hundreds of separate Equipment Leases (the “Altec Leases”) with respect to certain equipment generally comprised of trucks and aerial lifts (the “Equipment”). Since the Petition Date, the Debtors have generally been making monthly payments on account of the Altec Leases.

8. Contracts identified on the Assumed Contracts List on pages 17 of 517 through page 35 of 517 (agreements numbered 394 to 742) identify 348 Altec Leases (the “Altec Assumption Listings”). None of Altec’s Leases are included on the Rejected Contracts List.

9. All but eight (8) of the Altec Leases are identified in the Altec Assumption Listings on the Assumed Contracts List. The Altec Leases that are not identified on the Assumed Contracts List are identified on **Exhibit A** hereto. Altec believes that these agreements have likely been inadvertently omitted from the Assumed Contracts List and requests that the Debtors supplement and amend the list to the extent appropriate. Altec also notes that the Altec Assumption Listings contains some duplicate listings that should be removed.

10. The Assumed Contracts List does not include \$42,938.24 on account of property tax payments made by Altec with regard to the Equipment that is due to be paid by the Debtors under the Altec Leases that the Debtors seek to assume under the Plan (the “Omitted Cure Amount”). A detailed breakdown of these amounts is attached hereto as **Exhibit B**. Thus, the Assumed Contracts List does not provide the correct proposed cure amount with respect to the Altec Leases.

II. OBJECTION AND RESERVATION OF RIGHTS

11. Altec does not object to the assumption of the Altec Leases. Altec nevertheless objects to the proposed cure amount with respect to the Altec Leases.

12. Bankruptcy Code § 365(b)(1) provides that a debtor may not assume or assign an executory contract unless and until (i) the debtor cures all existing defaults under the contract and (ii) provides adequate assurance of future performance under the contract. “For a bankruptcy court to make a responsible determination as to an assumption application, it is important for the court to know the universe of claims arising under the contracts to be assumed.” *In re Wireless Data, Inc.*, 547 F.3d 484, 488-89 (2d Cir. 2008) (citing *In re Buckhead Am. Corp.*, 180 B.R. 83, 88 (D. Del. 1995)). “It is particularly important for a bankruptcy court to know to what degree a debtor is in default on an executory contract because a debtor cannot assume such a contract unless the debtor satisfies several statutory conditions designed to make the non-debtor contracting party whole.” *In re Wireless Data, Inc.*, 547 F.3d 484, 488-89 (2d Cir. 2008) (citing *In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2d Cir. 1996)).

13. The Debtors proposed to assume the Altec Leases, but the Debtors do not propose to cure all the defaults under the Altec Leases.

14. Specifically, as set forth above, the proposed cure amount does not include the Omitted Cure Amount.

III. RESERVATION OF RIGHTS

15. Altec expressly reserves all rights and remedies at law or in equity that Altec has or may have against the Debtors and nothing in this Objection is intended or should be construed to limit Altec’s rights, remedies, or interests with respect to the Altec Leases. Altec specifically reserves its rights to object to any other relief sought by the Debtors in connection with the assumption of any of the Altec Leases.

IV. CONCLUSION

16. Altec respectfully submits that it is entitled to be paid the actual cure amount due under the Altec Leases before they can be assumed by the Debtors under the Plan, which includes the Omitted Cure Amount.

WHEREFORE, based on the foregoing, Altec respectfully requests that any order authorizing the assumption of the Altec Leases (i) be consistent with this Limited Objection; (ii) require the Debtors pay Altec all unpaid prepetition and post-petition amounts accrued under the Altec Leases through the effective date of assumption, including the Omitted Cure Amounts set forth above, before the Debtors may assume the Altec Leases; and (iii) grant Altec such further relief to which it may be entitled at law or in equity.

Dated: June 17, 2020

Respectfully submitted,

/s/ Richard A. Robinson

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EXHIBIT A

| Lessee | Account # | Lease # | InventoryID | Term | Start Date | Maturity Date | VIN |
|--------------------------|-----------|----------|-------------|------|------------|---------------|-------------------|
| Windstream Services, LLC | 103086 | 218170 | 176425 | 84 | 7/1/2018 | 7/1/2025 | 3C7WRKAJ8GG373654 |
| Windstream Services, LLC | 103086 | 220953 | 178768 | 84 | 11/1/2018 | 11/1/2025 | 1FDUF4GY0HDA09929 |
| Windstream Services, LLC | 103086 | 45098-20 | 64217 | 84 | 9/1/2015 | 9/1/2022 | 1FDUF4GY8FED12187 |
| Windstream Services, LLC | 103086 | 45098-51 | 90215 | 84 | 8/1/2016 | 8/1/2023 | 3C7WRKAJ5GG279795 |
| Windstream Services, LLC | 103086 | 45098-77 | 114209 | 84 | 2/1/2017 | 2/1/2024 | 3C7WRKAJ1GG329334 |
| Windstream Services, LLC | 103086 | 45098-22 | 64776 | 84 | 11/1/2015 | 11/1/2022 | 1FDUF4GY4FED12204 |
| Windstream Services, LLC | 103086 | 45098-30 | 65276 | 84 | 12/1/2015 | 12/1/2022 | 1FDUF4GY0FEA65411 |
| Windstream Services, LLC | 103086 | 45098-94 | 127740 | 84 | 8/1/2017 | 8/1/2024 | 3C7WRKAJXGG390102 |

EXHIBIT B

Altec Capital Services, LLC

Windstream Services

Property Tax Detail

OMITTED CURE AMOUNT

| Account Number | Lease | Customer | Net |
|-------------------|----------|--------------------------|----------|
| 103086 | 45098-6 | Windstream Services, LLC | 638.78 |
| 103086 | 45098-6 | Windstream Services, LLC | 542.20 |
| 103086 | 45098-6 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-6 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-8 | Windstream Services, LLC | 607.23 |
| 103086 | 45098-8 | Windstream Services, LLC | 927.35 |
| 103086 | 45098-8 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-8 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-10 | Windstream Services, LLC | 489.33 |
| 103086 | 45098-10 | Windstream Services, LLC | 886.92 |
| 103086 | 45098-10 | Windstream Services, LLC | 886.92 |
| 103086 | 45098-10 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-10 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-10 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-13 | Windstream Services, LLC | 539.37 |
| 103086 | 45098-13 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-22 | Windstream Services, LLC | 1,088.72 |
| 103086 | 45098-22 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-26 | Windstream Services, LLC | 919.90 |
| 103086 | 45098-26 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-37 | Windstream Services, LLC | 726.99 |
| 103086 | 45098-37 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-41 | Windstream Services, LLC | 711.95 |
| 103086 | 45098-41 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-43 | Windstream Services, LLC | 801.89 |
| 103086 | 45098-43 | Windstream Services, LLC | 801.94 |
| 103086 | 45098-43 | Windstream Services, LLC | 711.95 |
| 103086 | 45098-43 | Windstream Services, LLC | 711.95 |
| 103086 | 45098-43 | Windstream Services, LLC | 711.95 |
| 103086 | 45098-43 | Windstream Services, LLC | 399.10 |
| 103086 | 45098-43 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-43 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-43 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-43 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-43 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-43 | Windstream Services, LLC | 435.73 |
| 103086 | 45098-43 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-44 | Windstream Services, LLC | 896.36 |

| | | | |
|--------|------------|--------------------------|----------|
| 103086 | 45098-44 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-52 | Windstream Services, LLC | 1,827.03 |
| 103086 | 45098-52 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-56 | Windstream Services, LLC | 1,830.66 |
| 103086 | 45098-56 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-63 | Windstream Services, LLC | 1,356.97 |
| 103086 | 45098-63 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-69 | Windstream Services, LLC | 1,229.89 |
| 103086 | 45098-69 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-72 | Windstream Services, LLC | 1,375.01 |
| 103086 | 45098-72 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-73 | Windstream Services, LLC | 2,313.62 |
| 103086 | 45098-73 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-76 | Windstream Services, LLC | 1,423.72 |
| 103086 | 45098-76 | Windstream Services, LLC | 1,423.52 |
| 103086 | 45098-76 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-76 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-80 | Windstream Services, LLC | 1,390.81 |
| 103086 | 45098-80 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-81 | Windstream Services, LLC | 1,389.63 |
| 103086 | 45098-81 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-84 | Windstream Services, LLC | 1,766.39 |
| 103086 | 45098-84 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-87 | Windstream Services, LLC | 442.94 |
| 103086 | 45098-87 | Windstream Services, LLC | 30.00 |
| 103086 | 45098-95 | Windstream Services, LLC | 1,398.33 |
| 103086 | 45098-95 | Windstream Services, LLC | 30.00 |
| 103086 | 218345 | Windstream Services, LLC | 2,525.68 |
| 103086 | 219433 | Windstream Services, LLC | 2,159.15 |
| 103086 | 45098-13 | Windstream Services, LLC | 200.17 |
| 103086 | 45098-2 | Windstream Services, LLC | 222.51 |
| 103086 | 45098-36 | Windstream Services, LLC | 510.68 |
| 103086 | 45098-38-Z | Windstream Services, LLC | 326.06 |
| 103086 | 45098-4 | Windstream Services, LLC | 311.70 |
| 103086 | 45098-43 | Windstream Services, LLC | 134.87 |
| 103086 | 45098-6 | Windstream Services, LLC | 166.90 |
| 103086 | 45098-66 | Windstream Services, LLC | 695.06 |
| 103086 | 45098-8 | Windstream Services, LLC | 186.18 |
| 103086 | 45098-86 | Windstream Services, LLC | 207.08 |
| 103086 | 45098-90 | Windstream Services, LLC | 697.15 |

42,938.24

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2020, the foregoing was filed electronically with the Clerk of Court with the Court and served through the Court's CM/ECF system upon all registered electronic filers appearing in this case who consented to electronic service and on the parties listed below:

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