

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

In re:

WINDSTREAM HOLDINGS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 19-22312 (RDD)
)

) (Jointly Administered)
)

**ORDER APPROVING THE SETTLEMENT AGREEMENT BETWEEN
THE DEBTORS AND THE NEBRASKA DEPARTMENT OF REVENUE**

Upon the motion, by notice of presentment dated June 4, 2020 (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) approving the Settlement Agreement, a copy of which is annexed hereto as **Exhibit 1**, between the Debtors and the Nebraska Department of Revenue (the “Department”); all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012, as a core proceeding pursuant to 28 U.S.C. § 157(b) that this Court may decide by a final order consistent with Article III of the United States Constitution; and this Court having found that venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion’s request for relief and the opportunity for a hearing thereon were appropriate under the circumstances; and there being no objections to the Motion; and no

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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



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other notice or a hearing being required; and, after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish good and sufficient cause for the relief granted herein, in that the proposed settlement is fair and reasonable and in the best interests of the Debtors' estates and creditors; now, therefore, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to Bankruptcy Rule 9019, the Debtors are authorized to enter into and perform under the Settlement Agreement, and perform, execute, and deliver all documents, and take all actions, necessary to immediately continue and fully implement the Settlement Agreement in accordance with the terms, conditions, and agreements set forth or provided for therein, all of which are approved.
3. Any proof of claim filed for amounts allegedly owing pursuant to the Nebraska Tax Claim that is the subject of the Settlement Agreement are expunged.
4. Notwithstanding any stay of this Order under Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry, for cause
5. The Debtors and their agents are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
6. This Order shall bind the Debtors, their estates and any successors or assigns, including without limitation any trustee, liquidating trustee, or other estate representative.
7. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: White Plains, New York
June 29, 2020

/s/Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Settlement Agreement

CLOSING AGREEMENT

Windstream Nebraska, Inc. (EIN 47-0223220) which is a debtor in Case No. 19-22510, under Chapter 11 of Title 11 of the United States Bankruptcy Code (hereinafter the "Debtor"), and the Nebraska Department of Revenue (the "Department"), enter into this closing agreement as follows:

WHEREAS, on February 25, 2019, the Debtor, together with other affiliates, filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, the Department has filed a notice of claim in the Debtor's bankruptcy proceedings (the "Bankruptcy Claim" or "Bankruptcy Claim No. 7653"), based on assessed liability of tax, interest and penalty for Sales and Use Tax (the "Taxes") for the periods 8/1/2012 through 2/25/2019 (the "Periods");

WHEREAS, the Department and the Debtor dispute the amounts properly owed for the Taxes and Periods subject to the Bankruptcy Claim;

WHEREAS, the parties desire to resolve the matter without litigation; and

WHEREAS, the parties desire to resolve in full the Bankruptcy Claim, by a payment by Debtor of \$850,000.00 to the Department within twenty (20) days of the Bankruptcy Court approval of such payment, in satisfaction of the Bankruptcy Claim described above, and in full and final settlement of any tax, interest, or penalties relating to the Taxes and Periods to which the Bankruptcy Claim relates;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. The recitals above are incorporated herein.
2. Debtor shall submit a motion for approval of the Closing Agreement to the Bankruptcy Court as soon as commercially practicable following execution of this agreement, and agree to make full payment of \$850,000.00 (the "Payment") to the Department within twenty (20) days of approval by the Bankruptcy Court of this agreement.
3. The Department will amend its Bankruptcy Claim in accordance with this agreement upon entry of the order approving this settlement and receipt of the Payment.

4. The Department agrees that the Payment will be in full and final satisfaction of any and all claims the Department has or may have against the Debtor arising during the Periods for any Sales and Use Tax, as well as, any interest and penalties thereon. Debtor also agrees that the Department's agreement to accept this payment in full and final satisfaction serves as full and final satisfaction of any and all Sales and Use Tax refund claims the Debtor has or may have against the Department arising during the Periods.

5. Upon payment, the Department waives and releases the Debtor and its employees, officers, directors, and agents, from any liability for Sales and Use Taxes along with related interest and penalties thereon for the Periods.

6. The parties, on behalf of themselves, and their respective directors, officers, employees, predecessors, agents, representatives, successors, and assigns, release and discharge each other with respect to any and all claims, charges, complaints, demands, actions, causes of action, suits, rights, liabilities, expenses, or otherwise (including, without limitation, attorneys' fees and costs), whether known or unknown, relating to any amounts for the Periods related to any of Sales and Use Taxes along with related interest and penalties thereon for the Periods.

7. The parties acknowledge and agree that the Closing Agreement has been reached and agreed to solely for the sake of resolving and settling the Bankruptcy Claim, and not for purposes of any future consideration relating to any other taxes or any other periods, and does not constitute a formula, method, application, law, or other precedent as to arriving at such amounts or concession of liability.

8. Upon approval of this agreement by the Bankruptcy Court, the Department and the Debtor each relinquish the opportunity to present evidence and arguments in a formal hearing of this case before the Tax Commissioner or his delegate, and each waives the subsequent decision of this case on its merits through a written order that includes findings of fact and conclusions of law. Debtor agrees that the Department will dismiss Debtor's protest currently pending before the Department upon approval of this Agreement by the Bankruptcy Court.

9. Nothing contained herein shall be deemed to apply to any other taxpayer, to any other type of tax, or to any other tax period. This Agreement is solely intended to resolve the issue discussed in this Agreement. No inferences are to be drawn from this Agreement concerning other taxpayers, audit periods, or types of taxes.

10. The Debtor retains all of its rights, defenses, claims, and counterclaims with respect to any other Department tax claims, other than those set forth in the Bankruptcy Claim.

11. This Closing Agreement, its terms, and the obligations and agreements of the parties hereunder shall be subject to approval of this Closing Agreement by the Bankruptcy Court. The parties have fully authorized their respective representatives to execute this Agreement on their behalf.

12. The Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Closing Agreement.

13. This Agreement may be executed in two or more counterparts, each counterpart shall be deemed to be an original, and all counterparts individually or together shall constitute one and the same Agreement. Further, the reproduction of an original signature by electronic means shall be deemed to be an original signature.

14. This Closing Agreement shall be binding upon and inure to the benefit of the Debtor's estate, the parties hereto, and their successors and assigns, including, without limitation, any subsequently appointed Chapter 11 or Chapter 7 Trustee or other estate fiduciary.

Dated: June 1 2020


Windstream Nebraska, Inc.

Printed Name: CLAY ROBINSON

Title: VICE PRESIDENT, TAX


Nebraska Department of Revenue

Printed Name: Tony Fulton

Title: Nebraska Tax Commissioner