

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

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U.S. BANK NATIONAL ASSOCIATION  
Appellant,

v.

\_\_\_\_\_  
WINDSTREAM HOLDINGS, INC., *et al.*,  
Appellees.  
\_\_\_\_\_

In re:

\_\_\_\_\_  
WINDSTREAM HOLDINGS, INC., *et al.*,  
Debtors.  
\_\_\_\_\_

)  
)  
) Case No. \_\_\_\_\_  
)  
)  
)

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

) (Jointly Administered)  
)  
)

**DESIGNATION OF RECORD AND STATEMENT OF ISSUES ON APPEAL  
PURSUANT TO FED. R. BANKR. P. 8009(a)**

Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, U.S. Bank National Association, solely in its capacities as indenture trustee (“U.S. Bank”) under (i) that certain indenture dated as of October 6, 2010 between it and Windstream Services, LLC (“Services”) as issuer of 7.75% Senior Notes due 2020, (ii) that certain indenture dated as of March 28, 2011 between it and Services as issuer of 7.75% Senior Notes due 2021, (iii) that certain indenture dated as of November 22, 2011 between it and Services as issuer of 7.50% Senior Notes due 2022, (iv) that certain indenture dated as of March 16, 2011 between it and Services as issuer of 7.50% Senior Notes due 2023, and (v) that certain indenture dated as of January 23, 2013 between it and Services as issuer of 6.375% Senior Notes due 2023, by and through its undersigned counsel, submits its designation of items to be included in the record on appeal and statement of the issues to be presented on appeal in connection with the appeal of the *Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of*



*Reorganization of Windstream Holdings, Inc., et al., Pursuant to Chapter 11 of the Bankruptcy Code* entered by the Court in these chapter 11 proceedings on June 26, 2020, [Docket No. 2243] (the “Confirmation Order”).

### **STATEMENT OF ISSUES ON APPEAL**

Appellant hereby states the following as the issues on appeal pursuant to 28 U.S.C. § 158(a) and the Federal Rules of Bankruptcy Procedure 8001(a) and 8002:

- (1) Did the Bankruptcy Court err in finding that proceeds of the settlement with Uniti are encumbered by prepetition liens when (a) the Bankruptcy Court had no record of how the settlement proceeds were or would be allocated, (b) certain settled claims were indisputably unencumbered, (c) the Bankruptcy Court’s prior ruling authorizing the settlement establishes that the principal claim being settled was a post-petition recharacterization claim, (d) neither plaintiff (nor their Debtor subsidiaries) could have pledged that recharacterization claim prepetition, and (e) to the extent such claim existed prepetition and could have been pledged by plaintiffs, such claim did not constitute a general intangible?
- (2) Did the Bankruptcy Court err in finding that the Debtors met their burden of showing by competent evidence that their secured creditors were entitled to substantial post-petition “adequate protection” claims when (a) the Debtors employed a novel methodology that valued the total enterprise value of Windstream when the secured creditors did not have liens on the Windstream enterprise, (b) the Debtors’ valuation employed the wrong starting point for the calculation, and (c) the Debtors did not value the assets that actually comprised the secured creditors’ collateral?

**DESIGNATION OF THE RECORD ON APPEAL**<sup>1</sup>

<b>Bankr. ECF No. <sup>2</sup></b>	<b>Document</b>	<b>Hearing Exhibit No. <sup>3</sup></b>
<b>173</b>	Transcript of the hearing in <i>In re Windstream Holdings, Inc., et al.</i> , Case No. 19-22312, dated February 26, 2019	JX 33
<b>242</b>	Limited Objection of U.S. Bank National Association	
<b>376</b>	Final Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Secured Parties, (E) Modifying the Automatic Stay, and (F) Granting Related Relief	JX 40
<b>573</b>	Confidentiality Agreement and Stipulated Protective Order	
<b>728</b>	Motion to Strike the Uniti Master Lease from the Debtors' Schedule G	
<b>786</b>	Motion of the Official Committee of Unsecured Creditors for (i) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of Debtors' Estates and (ii) Consent Rights to Settlement	JX 50
<b>874</b>	Order Appointing a Mediator	
<b>1457</b>	Transcript of the hearing in <i>In re Windstream Holdings, Inc., et al.</i> , Case No. 19-22312, dated April 16, 2019	JX 38
<b>1533*</b>	Notice of Filing of Plan Support Agreement [SEALED MATERIAL]	

<sup>1</sup> Portions of the record designated for appeal were filed or admitted under seal or with redactions (together, the "Sealed Material") in accordance with the Confidentiality Agreement and Stipulated Protective Orders entered into and filed under Docket No. 573 in the Bankruptcy Proceeding and Docket No. 24 in the Adversary Proceeding. Sealed Material is identified in the tables below as having been filed under seal and is noted with an asterisk. Appellants will file a motion with the District Court pursuant to Federal Rule of Bankruptcy Procedure 8009(f) requesting that the District Court accept these portions of the record under seal.

<sup>2</sup> Documents cited herein were filed in the chapter 11 proceeding captioned *In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y.).

<sup>3</sup> Documents that were also admitted as exhibits at the plan confirmation evidentiary hearing, held June 24, 2020 through June 25, 2020 (the "Confirmation Hearing") are cross-referenced in this column.

<b>1558</b>	Notice of Debtors' Motion for Entry of an Order Approving the Settlement Between the Debtors and Uniti Group Inc., including (I) The Sale of Certain of the Debtors' Assets Pursuant to Section 363(B) and (II) The Assumption of the Leases Pursuant to Section 365(A)	
<b>1559*</b>	Notice of Filing of Amended Plan Support Agreement [SEALED MATERIAL]	JX 72
<b>1584*</b>	Notice of Filing of Second Amended Plan Support Agreement [SEALED MATERIAL]	JX 76
<b>1631</b>	Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code	
<b>1632</b>	Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code	
<b>1636</b>	April 2, 2020 Letter from Yates French to The Honorable Robert D. Drain	
<b>1697</b>	Notice of Filing of Definitive Document	JX 83
<b>1703</b>	Second Notice of Filing of Definitive Document	
<b>1704</b>	Third Notice of Filing of Definitive Documents	
<b>1722</b>	Notice of Filing of Exhibits to the Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code	JX 100
<b>1747</b>	Declaration of Anthony Thomas <sup>4</sup>	JX 103
<b>1804</b>	Transcript of the hearing in <i>In re Windstream Holdings, Inc., et al.</i> , Case No. 19-22312, dated May 7, 2020	
<b>1807</b>	9019 Order	
<b>1812</b>	First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code	JX 111
<b>1813</b>	Disclosure Statement	JX 112

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<sup>4</sup> The Bankruptcy Court struck certain portions of the Declaration of Anthony Thomas as reflected in the May 7, 2020 Hearing Transcript. This Court should therefore only consider those portions of the declaration that were admitted into the record. A copy of the declaration in which stricken testimony has been redacted is attached hereto as **Exhibit A**.

<b>1915</b>	May 22, 2020 Letter from Yates M. French to The Honorable Robert D. Drain	
<b>1973</b>	Plan Supplement	
<b>1988</b>	Transcript of the hearing in <i>In re Windstream Holdings, Inc., et al.</i> , Case No. 19-22312, dated May 8, 2020	JX 108
<b>2159*</b>	Objection of the Official Committee of Unsecured Creditors to Confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code [SEALED MATERIAL]	
<b>2161*</b>	Declaration of Lorenzo Marinuzzi in Support of Objection of the Official Committee of Unsecured Creditors to Confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc., <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code [SEALED MATERIAL]	
<b>2162*</b>	Objection of UMB Bank, National Association and U.S. Bank National Association, as Indenture Trustees, to the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code [SEALED MATERIAL]	
<b>2177</b>	Statement/Joinder to Objection of UMB Bank, National Association and U.S. Bank National Association, as Indenture Trustees, to the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, et al., Pursuant to Chapter 11 of the Bankruptcy Code	
<b>2163*</b>	Declaration of Julia M. Winters in Support of the Objection of UMB Bank, National Association and U.S. Bank National Association, as Indenture Trustees, to the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code [SEALED MATERIAL]	
<b>2171</b>	Declaration of David Hartie Regarding the Solicitation and Tabulation of Votes on the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code	JX 154
<b>2172</b>	Direct Examination Declaration of Kevin Nystrom	JX 159
<b>2174*</b>	Declaration of Nicholas Leone, attaching the Expert Report of Nicholas Leone [SEALED MATERIAL]	JX 157
<b>2175*</b>	Declaration of Nicholas Grossi, attaching the Expert Report of Nicholas Grossi [SEALED MATERIAL]	JX 158
<b>2176</b>	Declaration of Anthony Thomas	JX 156

<b>2243</b>	Findings of Fact, Conclusions of Law, and Order signed on 6/26/2020 Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. <i>et al.</i> , Pursuant to Chapter 11 of the Bankruptcy Code	
<b>TBD</b>	Transcript of the hearing in <i>In re Windstream Holdings, Inc., et al.</i> , Case No. 19-22312, dated June 24, 2020	
<b>2250</b>	Transcript of the hearing in <i>In re Windstream Holdings, Inc., et al.</i> , Case No. 19-22312, dated June 25, 2020	
<b>2268</b>	Confirmation Notice of Appeal filed by U.S. Bank	
<b>2269</b>	Confirmation Notice of Appeal filed by CQS	

<b>Adversary Proceeding ECF No.<sup>5</sup></b>	<b>Document</b>	<b>Hearing Exhibit No.</b>
<b>24</b>	Confidentiality Agreement and Stipulated Protective Order	
<b>36</b>	Plaintiff's Opposition to Uniti's Motion to Dismiss	
<b>51*</b>	Joint Initial Opposition to Uniti's Motion for Summary Judgment [SEALED MATERIAL]	
<b>55*</b>	Supplemental Objection of UMB Bank, National Association and U.S. Bank National Association, as Indenture Trustees, to Uniti's Motion for Summary Judgment [SEALED MATERIAL]	
<b>67</b>	Transcript of the hearing in <i>In re Windstream Holdings, Inc., et al.</i> , Case No. 19-22312, dated December 12, 2019	JX 58
<b>71</b>	Amended Complaint	JX 60
<b>112*</b>	Motion in Limine of UMB Bank, National Association and U.S. Bank National Association, as Indenture Trustees, to Preclude Certain Testimony of Paul H. Chill and William P. Zarakas [SEALED MATERIAL]	

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<sup>5</sup> Documents cited herein were filed in the adversary proceeding captioned Windstream Holdings, Inc. v. Uniti Group, Inc., Case No. 19-08279 (RDD) (Bankr. S.D.N.Y.) (the "Adversary Proceeding").

<b>116</b>	Joinder of Windstream Holdings, Inc. and Windstream Services, LLC to the Motion in Limine of UMB Bank, National Association, and U.S. Bank National Association, as Indenture Trustees, to Preclude Certain Testimony of Paul H. Chill and William P. Zarakas	
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<b>Hearing Exhibit No.</b>	<b>Document</b>
<b>JX 16</b>	Amended and Restated Security Agreement among Windstream Services, LLC and JPMorgan Chase Bank, N.A.
<b>JX 17</b>	Sixth Amended and Restated Credit Agreement among Windstream Services, LLC and JPMorgan Chase Bank, N.A. and others
<b>JX 22</b>	Indenture - 8.625% Senior First Lien Notes Due 2025
<b>JX 23</b>	Offering Memorandum for Windstream Services, LLC and Windstream Finance Corp.'s 8.625% Senior First Lien Notes due 2025, dated November 6, 2017
<b>JX 24</b>	Security Agreement among Windstream Services, LLC, Windstream Finance Corp., the Guarantors party thereto and U.S. Bank National Association, as Collateral Agent, dated November 6, 2017
<b>JX 25</b>	First Supplemental Indenture
<b>JX 27</b>	Windstream February 2019 Business Plan
<b>JX 36</b>	Perfection Certificate
<b>JX 45</b>	Windstream Business Plan - Presented: June 2019
<b>JX 93</b>	Liquidation Analysis Presentation - Supplemental Materials
<b>JX 131</b>	Uniti Settlement Cash Flows
<b>JX 148</b>	Amended Rebuttal Expert Report of Kevin Nystrom in Support of Objection of The Official Committee of Unsecured Creditors To Confirmation of The First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc., <i>et al.</i> , Pursuant To Chapter 11 of The Bankruptcy Code

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Dated: July 10, 2020  
New York, New York

WHITE & CASE LLP

By: /s/ J. Christopher Shore  
J. Christopher Shore, Esq.  
Harrison Denman, Esq.  
Julia M. Winters, Esq.  
1221 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 819-8200  
Facsimile: (212) 354-8113

Thomas E Lauria, Esq. (admitted *pro hac vice*)  
Raoul G. Cantero, Esq. (*pro hac vice* pending)  
Southeast Financial Center, Suite 4900  
200 South Biscayne Blvd.  
Miami, Florida 3313  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744

*Special Counsel to U.S. Bank*