

VORYS, SATER, SEYMOUR AND PEASE LLP

Jeffrey A. Marks (*Pro Hac Vice* Admission Pending)
Kari B. Coniglio (*Pro Hac Vice* Admission Pending)
301 East Fourth Street
Suite 3500, Great American Tower
Cincinnati, Ohio 45202
Telephone: (513) 723-4482
Facsimile: (513) 852-8491

Counsel for Cincinnati Bell, Inc. and Certain of Its Subsidiaries and Affiliates

**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
CINCINNATI BELL, INC. AND CERTAIN OF ITS SUBSIDIARIES AND AFFILIATES
TO DEBTORS’ PROPOSED CURE AMOUNTS FOR ASSUMPTION OF CERTAIN
EXECUTORY CONTRACTS UNDER THE PLAN**

Cincinnati Bell, Inc. and/or certain of its subsidiaries and affiliates (together, “Cincinnati Bell”), by and through their undersigned counsel, hereby object (this “Limited Objection”) to the Debtors’ proposed assumption of certain executory contracts under the terms of the *First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code (Technical Modifications)* [Doc. No. 2201] (the “Plan”), filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) and as confirmed pursuant to 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 [Doc. 2243].¹ In support of this Limited Objection, Cincinnati Bell respectfully states as follows:

I. BACKGROUND

1. Certain of the Debtors and Cincinnati Bell are parties to several pre-petition contracts (collectively with all annexes, addenda and other documents attached thereto, and/or incorporated therein, the “Agreements”). As of February 25, 2019 (the “Petition Date”), the Debtors were indebted to Cincinnati Bell in the amount of at least \$779,601.74 (the “Pre-Petition Claim”)², including for services provided for under the Agreements and filed tariffs. Additionally, the Debtors requested and accepted Cincinnati Bell’s continued provision of services to the Debtors after the Petition Date, for which \$642,580.40 also remains unpaid through September 26, 2020³ (the “Post-Petition Claim”).⁴ As used herein, the “Cure Amounts” includes all Pre-Petition Claim and Post-Petition Claim amounts due and owing under the Agreements, totaling no less than \$1,422,182.14 as of the date of this Limited Objection.

2. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

3. On June 22, 2020, the Debtors filed the Plan, which provides, among other things, that (subject to exceptions not applicable to the Agreements) “all Executory Contracts or Unexpired Leases not otherwise assumed or rejected will be deemed assumed by the applicable

¹ Per written consent of the Debtors through counsel, Cincinnati Bell’s deadline to object to the assumption and assignment of the Agreements and the proposed cure amount was extended through and including October 21, 2020 at 4:00 p.m.

² Attached hereto as Exhibit 1 is a summary chart of all Proofs of Claim filed by Cincinnati Bell against the Debtors.

³ Cincinnati Bell reserves its right to payment for all amounts owing for such services after September 26, 2020 and reserves the right to amend or supplement this Limited Objection accordingly.

⁴ A summary of the Post-Petition Claim is attached hereto as Exhibit 2. All invoices supporting the Post-Petition Claim have been provided to the Debtors and are too voluminous to attach hereto. Documents may be provided upon request.

Reorganized Debtor in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code.”⁵ Plan, Art. V(A).

4. The Plan further provides that “[e]ntry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions, assumptions and assignments, or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, the Assumed Executory Contract/Unexpired Lease Schedule or the Rejected Executory Contracts and Unexpired Leases Schedule.” *Id.*

5. On September 18, 2020, the Debtors filed the Notice of Filing of Eighth Amended Plan Supplement (the “Plan Supplement”), including Exhibit A-6 thereto, the Sixth Amendment to the Assumed Executory Contract and Unexpired Lease List (the “Assumed Contract List”), which includes the following executory contracts between the Debtors and Cincinnati Bell subject to the Debtors’ proposed assumption (collectively, the “Assumed Agreements”):

Ref.	Counterparty	Debtor Party	Contract	Cure Amount
2117	Cincinnati Bell Telephone Co.		National Payphone Clearinghouse Services Agreement	TBD \$550,000 ⁶
2118	Hawaii Telecom		NDA	TBD
2119	Cincinnati Bell Specialized Billing	Windstream KDL, LLC	Executory Contract (including all amendments thereto) I186-OH-0441	TBD
2120	Cincinnati Bell Specialized Billing	Windstream KDL, LLC	Executory Contract (including all amendments thereto) I186-OH-0447	TBD
2121	Cincinnati Bell Specialized Billing	Windstream KDL, LLC	Executory Contract (including all amendments	TBD

⁵ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan.

⁶ The \$550,000 cure figure appears to have been based upon a tentative agreed amount reached between Cincinnati Bell and the Debtors as part of a global negotiation of all Pre-Petition and Post-Petition Claims. However, the Debtors and Cincinnati Bell were unable to reach an agreement as to the Post-Petition Claims and no settlement agreement was ever reached or executed by the parties.

			thereto) M186-OH0440	
2122	Cincinnati Bell Specialized Billing	Windstream KDL, LLC	Executory Contract (including all amendments thereto) M186-OH0446	TBD

II. OBJECTION

6. Although Cincinnati Bell does not generally object to the potential assumption of the Assumed Agreements, Cincinnati Bell objects to any proposed assumption absent payment in full to Cincinnati Bell of the Cure Amount owed under all Agreements between Cincinnati Bell and the Debtors. Accordingly, Cincinnati Bell objects to the Assumed Contract List identifying a \$550,000 cure amount as it does not accurately reflect the totality of the Cure Amount owed to Cincinnati Bell, does not set forth the Cure Amount owed under the individual contracts in the Assumed Contract List, and does not identify the Debtor Party for certain of the Agreements.

7. Pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, where—as here—there has been a default in an executory contract, “the [Debtor] may not assume such contract . . . unless, at the time of assumption of such contract . . . the [Debtor]—(A) cures, or provides adequate assurance that [the Debtor] will promptly cure, such default. . . .” 11 U.S.C. § 365(b)(1)(A).

8. Under the Agreements, the Debtors are in default for failing to pay the obligations due to Cincinnati Bell thereunder. Under Section 365(b)(1)(A), the Debtors must cure or provide adequate assurance that the Debtors will promptly cure these defaults.

9. The Assumed Contract List must be corrected to reflect the proper Cure Amount, and any assumption of the Agreements must be conditioned upon payment of the proper Cure Amount to Cincinnati Bell.

10. Cincinnati Bell reserves the right to amend, modify or supplement this Objection (a) in response to any additional filings made in respect of the Assumed Contract List; and/or (b)

prior to, at, or following any hearing held on the relief requested with respect to the Assumed Contract List. Cincinnati Bell further reserves the right to assert a right to payment of all or some of the amounts set forth herein as administrative expense claims under Section 503(b)(1)(A) of the Bankruptcy Code, as rejection damages claims under Section 365(g), and/or as pre-petition claims.⁷

III. CONCLUSION

11. For the foregoing reasons, Cincinnati Bell objects to the Debtors' proposed assumption of the Agreements and to the Assumed Contract List and respectfully requests that the Court (a) deny entry of any order approving the assumption of the Agreements that does not provide for payment in full to Cincinnati Bell of the proper Cure Amounts as set forth herein, and (b) grant such additional relief in favor of Cincinnati Bell as the Court deems proper, just and necessary.

Dated: October 21, 2020

/s/ Jeffrey A. Marks

Jeffrey A. Marks, Esq. (*Pro Hac Vice* Admission Pending)

Kari B. Coniglio (*Pro Hac Vice* Admission Pending)

VORYS, SATER, SEYMOUR AND PEASE LLP

301 East Fourth Street

Suite 3500, Great American Tower

Cincinnati, Ohio 45202

Telephone: (513) 723-4482

Facsimile: (513) 852-8491

jamarks@vorys.com

*Counsel for Cincinnati Bell, Inc. and Certain of Its
Subsidiaries and Affiliates*

⁷ Cincinnati Bell asserts, upon information and belief, that all amounts owed by the Debtors are owed by Non-Obligor Debtors. Accordingly, and because pre-petition claims against Non-Obligor Debtors are entitled to 100% recovery, Cincinnati Bell asserts that the basis for liability – *i.e.*, executory contract assumption and cure payment, administrative expense claim, or general unsecured claims – is irrelevant with respect to Cincinnati Bell's claims against the Non-Obligor Debtors under the terms of the confirmed Plan.

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2020 a true and correct copy of the foregoing *Limited Objection and Reservation of Rights of Cincinnati Bell, Inc. and Certain of its Affiliates and Subsidiaries to Debtors' Proposed Assumption of Certain Executory Contracts under the Plan* was filed and served electronically via the Court's CM/ECF System upon those who are registered to receive electronic notice.

/s/ Jeffrey A. Marks
Jeffrey A. Marks, Esq.

EXHIBIT 1

<u>Creditor</u>	<u>Claim</u>	<u>Debtor ID</u>	<u>Unsecured</u>	<u>Secured</u>	<u>Priority</u>	<u>Total</u>
Cincinnati Bell	3778	2831	\$ 356.70	\$ -	\$ -	\$ 356.70
Cincinnati Bell	3779	8319	\$ 629.87	\$ -	\$ -	\$ 629.87
Cincinnati Bell	3795	1989	\$ 423.39	\$ -	\$ -	\$ 423.39
Cincinnati Bell	3837	7325	\$ 785.80	\$ -	\$ -	\$ 785.80
Cincinnati Bell	3838	2360	\$ 300.49	\$ -	\$ -	\$ 300.49
Cincinnati Bell	3839	3677	\$ 97.94	\$ -	\$ -	\$ 97.94
Cincinnati Bell	3840	3869	\$ 534.80	\$ -	\$ -	\$ 534.80
Cincinnati Bell	3841	2891	\$ 454.31	\$ -	\$ -	\$ 454.31
Cincinnati Bell	3842	3848	\$ 409.25	\$ -	\$ -	\$ 409.25
Cincinnati Bell	3843	2014	\$ 10.00	\$ -	1,082.36	\$ 1,092.36
Cincinnati Bell	3844	2021	\$ 305.07	\$ -	\$ -	\$ 305.07
Cincinnati Bell	3845	n/a	\$ -	\$ -	43.85	\$ 43.85
Cincinnati Bell	3848	5707	\$ 648.12	\$ -	\$ -	\$ 648.12
Cincinnati Bell	3857	6189	\$ 97.02	\$ -	\$ -	\$ 97.02
Cincinnati Bell	3866	2323	\$ 1,158.97	\$ -	\$ -	\$ 1,158.97
Cincinnati Bell	3884	5153	\$ 85.97	\$ -	\$ -	\$ 85.97
Cincinnati Bell	3886	6146	\$ 247.73	\$ -	\$ -	\$ 247.73
Cincinnati Bell	3887	0579	\$ 485.31	\$ -	\$ -	\$ 485.31
Cincinnati Bell	3890	1586	\$ 253.20	\$ -	\$ -	\$ 253.20
Cincinnati Bell	3891	9514	\$ 270.36	\$ -	\$ -	\$ 270.36
Cincinnati Bell	3892	8236	\$ 2,250.38	\$ -	\$ -	\$ 2,250.38
Cincinnati Bell	3893	7547	\$ 1,112.21	\$ -	\$ -	\$ 1,112.21
Cincinnati Bell	3894	0652	\$ 281.96	\$ -	\$ -	\$ 281.96

Cincinnati Bell	3895	5511	\$	326.19	\$	-	\$	326.19
Cincinnati Bell	3896	9584	\$	366.53	\$	-	\$	366.53
Cincinnati Bell	3897	4534	\$	154.58	\$	-	\$	154.58
Cincinnati Bell	3898	0921	\$	17,628.75	\$	-	\$	17,628.75
Cincinnati Bell	3899	9157	\$	105.83	\$	-	\$	105.83
Cincinnati Bell	3900	8773	\$	229.98	\$	-	\$	229.98
Cincinnati Bell	3901	7578	\$	247.08	\$	-	\$	247.08
Cincinnati Bell	3902	2501	\$	600.35	\$	-	\$	600.35
Cincinnati Bell	3903	7414	\$	89.38	\$	-	\$	89.38
Cincinnati Bell	3904	4530	\$	234.87	\$	-	\$	234.87
Cincinnati Bell	3905	9505	\$	242.88	\$	-	\$	242.88
Cincinnati Bell	3906	7478	\$	105.06	\$	-	\$	105.06
Cincinnati Bell	3907	8858	\$	375.62	\$	-	\$	375.62
Cincinnati Bell	3908	0794	\$	9,988.22	\$	-	\$	9,988.22
Cincinnati Bell	4031	0330	\$	10,175.14	\$	-	\$	10,175.14
Cincinnati Bell	4032	0339	\$	4,391.08	\$	-	\$	4,391.08
Cincinnati Bell	4033	0921	\$	12,926.70	\$	-	\$	12,926.70
Cincinnati Bell	4034	1728	\$	4,382.94	\$	-	\$	4,382.94
Cincinnati Bell	4035	0936	\$	178.04	\$	-	\$	178.04
Cincinnati Bell	4036	0326	\$	15,829.00	\$	-	\$	15,829.00
Cincinnati Bell	4037	4247	\$	3,285.05	\$	-	\$	3,285.05
Cincinnati Bell	4038	0913	\$	5,166.78	\$	-	\$	5,166.78
Cincinnati Bell	4039	0984	\$	6,369.70	\$	-	\$	6,369.70
Cincinnati Bell	4040	2891	\$	527.24	\$	-	\$	527.24
Cincinnati Bell	4041	3677	\$	205.99	\$	-	\$	205.99
Cincinnati Bell	4042	4742	\$	7,446.47	\$	-	\$	7,446.47

Cincinnati Bell	4085	0921	\$ 17,628.75	\$ -	\$ -	\$ 17,628.75
Cincinnati Bell	4086	0330	\$ 3,015.81	\$ -	\$ -	\$ 3,015.81
Cincinnati Bell	4486	1022	\$ 36,560.13	\$ -	\$ -	\$ 36,560.13
Cincinnati Bell	4487	8037	\$ 2,237.52	\$ -	\$ -	\$ 2,237.52
Cincinnati Bell	4488	4214	\$ 7.43	\$ -	\$ -	\$ 7.43
Cincinnati Bell	4489	3003	\$ 52,995.70	\$ -	\$ -	\$ 52,995.70
Cincinnati Bell	4490	8208	\$ 205,830.15	\$ -	\$ -	\$ 205,830.15
Cincinnati Bell	4491	3893	\$ 10,321.48	\$ -	\$ -	\$ 10,321.48
Cincinnati Bell	4492	9059	\$ 87,641.45	\$ -	\$ -	\$ 87,641.45
Cincinnati Bell	4493	4046	\$ 5,564.00	\$ -	\$ -	\$ 5,564.00
Cincinnati Bell	4494	2912	\$ 133,704.67	\$ -	\$ -	\$ 133,704.67
Cincinnati Bell	4495	1041	\$ 209.08	\$ -	\$ -	\$ 209.08
Cincinnati Bell	4496	2454	\$ 636.07	\$ -	\$ -	\$ 636.07
Cincinnati Bell	4497	7167	\$ 494.40	\$ -	\$ -	\$ 494.40
Cincinnati Bell	4501	2202	\$ 2,856.80	\$ -	\$ -	\$ 2,856.80
Cincinnati Bell	4502	4014	\$ 55,558.25	\$ -	\$ -	\$ 55,558.25
Cincinnati Bell	4503	2272	\$ 1,154.93	\$ -	\$ -	\$ 1,154.93
Cincinnati Bell	4504	4215	\$ 12,479.06	\$ -	\$ -	\$ 12,479.06
Cincinnati Bell	4505	2272	\$ 407.95	\$ -	\$ -	\$ 407.95
Cincinnati Bell	4708	4236	\$ 855.81	\$ -	\$ -	\$ 855.81
Cincinnati Bell	4709	0326	\$ 28,189.94	\$ -	\$ -	\$ 28,189.94
Cincinnati Bell	4730	5135	\$ 811.98	\$ -	\$ -	\$ 811.98
Cincinnati Bell	4731	5905	\$ 5,008.83	\$ -	\$ -	\$ 5,008.83
Cincinnati Bell	4732	8637	\$ 93.16	\$ -	\$ -	\$ 93.16
Cincinnati Bell	4841	n/a	\$ 1,433.88	\$ -	\$ -	\$ 1,433.88
						\$ 779,601.74

EXHIBIT 2

Billing System	Current	Past Due	Total Aging
Cincinnati Bell CRIS Billing	\$ 6,958.84	\$ 12,168.23	\$ 19,127.07
Cincinnati Bell CABS Billing	\$ 206,282.06	\$ 415,976.51	\$ 622,258.57
Hawaiian Telecom Kenan Billing	\$ 1,098.94	\$ 95.82	\$ 1,194.76
Total	\$ 214,339.84	\$ 428,240.56	\$ 642,580.40