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December 30, 2021

VIA ECF AND ELECTRONIC MAIL

Honorable Cathy Seibel
United States District Judge
United States District Court for the Southern District of New York
300 Quarropas St.
White Plains, NY 10601-4150

Re: **Notice of Supplemental Authority re: *Windstream Holdings, Inc., et al. v. Charter Communications, Inc. and Charter Communications Operating, LLC*, Civil Action No. 21-cv-04552 (CS)**

Dear Judge Seibel:

We are counsel to Appellants, Charter Communications, Inc. and Charter Communications Operating LLC ("Charter") in the above-referenced appeal from the Bankruptcy Court. The appeal is fully briefed and Appellants have requested oral argument, if it would assist the Court in considering the largest damages sanction ever imposed by a bankruptcy court for an alleged stay violation.

We write to advise the Court of a recent decision by District Judge McMahon, dated December 16, 2021. *In re Purdue Pharma, L.P.*, No. 21 CV 7532 (CM), 2021 WL 5979108 (S.D.N.Y. Dec. 16, 2021). Judge McMahon reversed and vacated a confirmed plan of reorganization, a key feature of which was premised on the invocation of section 105(a), Second Circuit *dicta*, and the inherent judicial power of the Bankruptcy Court. Several portions of Her Honor's decision thoroughly examine the perceived (though incorrect) breadth of section 105(a) and the supposed significance of congressional silence in the Bankruptcy Code. *Id.* at *51-56 (reviewing the history of section 105(a)'s actual limits), *id.* at *65-67 (discussing the role of Congressional silence and specific governing the general in the Bankruptcy Code). This analysis supports Charter's argument (Dkt. 15 at 50-52; Dkt. 25 at 23-24) that section 105(a) does not confer "inherent authority" to impose damages as a sanction for a stay violation in favor of a *corporate debtor* because Congress carefully calibrated such a remedy only for individuals. The *dicta* from the Second Circuit in

Chateaugay (relied upon by the Bankruptcy Court and Appellees) does not override the proper statutory analysis and *Law v. Siegel*, 571 U.S. 415 (2014).

In addition, Judge McMahon correctly explained that this Court should carefully review *de novo* even factual matters that are not constitutionally "core bankruptcy." *In re Purdue Pharma, L.P.*, 2021 WL 5979108, at *39-42. This analysis supports Charter's argument (Dkt. 15 at 4, 42; Dkt. 25 at 18-19) that the Bankruptcy Court's purported factual findings regarding alleged unlawful competition are entitled to no deference.

If Your Honor has any questions, we respectfully continue to express our interest in answering any questions the Court may have based on the papers.

Respectfully Submitted,

/s/ Susheel Kirpalani

Susheel Kirpalani

cc: All counsel of record (via ECF and Electronic Mail)