

Hearing Date: June 17, 2019 at 10:00 AM (Eastern)
Objection Deadline: June 14, 2019 at 4:00 PM (Eastern)

**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)

**NOTICE OF HEARING ON MOTION OF SECURITIES CLASS ACTION LEAD
PLAINTIFF FOR LIMITED RELIEF FROM THE AUTOMATIC STAY**

PLEASE TAKE NOTICE that a hearing will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, in a courtroom to be determined, at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601-4140 (the “Bankruptcy Court”) on June 17, 2019 at 10:00 a.m. (Eastern Time), to consider the *Motion of Securities Class Action Lead Plaintiff for Limited Relief from the Automatic Stay* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that the Motion has been electronically filed with the Clerk of the Bankruptcy Court and may be examined and inspected by accessing the Court’s website (<http://www.nysb.uscourts.gov>) or the website established by the Debtor’s court-approved claims agent, Kurtzman Carson Consultants LLC, in connection with this chapter 11 case (<http://www.kccllc.net/windstream>).

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’ 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.



PLEASE TAKE FURTHER NOTICE that any response or objection to the Motion must be filed with the Court by June 14, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “Objection Deadline”) and served so as to be actually received by such time by: Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, New Jersey 07068, Attn: Michael S. Etkin, Esq. (metkin@lowenstein.com) and Andrew Behlmann, Esq. (abehlmann@lowenstein.com).

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and served with respect to the Motion, such Motion will be deemed unopposed, and the Bankruptcy Court may enter an order granting such Motion without a hearing.

Dated: May 29, 2019

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**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)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF SECURITIES CLASS
ACTION LEAD PLAINTIFF FOR LIMITED RELIEF FROM THE AUTOMATIC STAY**

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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' 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.

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Robert Murray (“Lead Plaintiff”), the court-appointed lead plaintiff in the securities class action captioned as *Robert Murray v. Earthlink Holdings Corp., et al.*, Case No. 4:18-cv-00202-jm (the “Securities Litigation”), pending in the United States District Court for the Eastern District of Arkansas (the “Arkansas District Court”), for himself and the proposed class he represents in the Securities Litigation (the “Class”), hereby submits this motion (the “Motion”) for entry of an order, substantially in the form submitted herewith, granting limited relief from the automatic stay to the extent necessary to permit the Arkansas District Court to conduct oral argument and rule on the pending motions to dismiss the Securities Litigation (the “Motions to Dismiss”) with respect to Windstream Holdings, Inc. (“Windstream”) and EarthLink Holdings Corp. (“EarthLink” and together with Windstream, the “Debtor Defendants”), each of which is a debtor in the chapter 11 cases (the “Chapter 11 Cases”) of the above-captioned debtors in possession (collectively, the “Debtors”). In support of the Motion, Lead Plaintiff respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). The statutory predicate for the relief requested herein is Bankruptcy Code § 362(d).

BACKGROUND

2. The Securities Litigation is a putative class action arising from the 2017 merger (the “Merger”) between the two Debtor Defendants, which are also the plaintiffs in a related adversary proceeding pending before this Court, captioned as *Windstream Holdings, Inc., et al. v. Yadegarian et al.*, Adv. Pro. No. 19-08247-RDD (the “Adversary Proceeding”). The

defendants in the Securities Litigation include the Debtor Defendants and certain of the Debtor Defendants' respective current and former officers and directors (the "Non-Debtor Defendants") and collectively with the Debtor Defendants, the "Securities Defendants").

3. Through the Merger, which was completed on February 27, 2017, each share of EarthLink common stock was exchanged for 0.818 shares of Windstream common stock. Windstream issued approximately 93 million shares of common stock in a transaction valued at approximately \$1.1 billion. Post-closing, Windstream's stockholders owned approximately 51% and former EarthLink stockholders owned 49% of the combined company. The Securities Complaint (defined below) alleges that the Windstream shares issued in connection with the Merger, though purportedly worth \$1.1 billion at the time, were in fact almost worthless.

4. The *Amended Class Action Complaint for Violations of Federal Securities Laws* (the "Securities Complaint")² filed in the Securities Litigation on July 27, 2018, asserts claims against each of the Securities Defendants (a) under sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "1933 Act"), on behalf of Lead Plaintiff and all other persons or entities, except for the Securities Defendants, who purchased or otherwise acquired Windstream shares, pursuant and/or traceable to certain offering documents, and (b) under sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act"), on behalf of Lead Plaintiff and all other persons or entities, except for the Securities Defendants, who held EarthLink stock on the record date for the Merger.³

² References to the Securities Complaint and the allegations therein are for informational purposes only, are qualified in their entirety by the Securities Complaint itself, and do not constitute an admission or stipulation with respect to any factual allegations in the Securities Litigation.

³ The claims asserted in the Securities Complaint are based solely on strict liability and negligence, not on any reckless or intentionally fraudulent conduct by or on behalf of the Securities Defendants, and Lead Plaintiff has specifically disclaimed any allegation of fraud, scienter, or recklessness in connection with such claims. See Securities Complaint, ¶ 7.

5. On September 13, 2018, the Securities Defendants filed the Motions to Dismiss. The Motions to Dismiss were fully briefed on November 29, 2018. Accordingly, on December 21, 2018, Lead Plaintiff filed a request for oral argument on the Motions to Dismiss, a copy of which is annexed hereto as **Exhibit A**, noting that counsel “estimates that no more than one hour would be necessary for combined argument by all parties.” See Exhibit A at 1.

6. The Debtor Defendants and the Windstream-affiliated Non-Debtor Defendants are represented by shared defense counsel in the Securities Litigation and jointly filed one of the Motions to Dismiss. The EarthLink-affiliated Non-Debtor Defendants are represented by separate counsel and filed the other Motion to Dismiss. Before filing the request for oral argument on the Motions to Dismiss, counsel for Lead Plaintiff conferred with counsel for the Securities Defendants, who jointly responded as follows and asked that their position be included in Lead Plaintiff’s request when filed with the Arkansas District Court:

[Securities] Defendants do not believe oral argument is necessary given the parties’ extensive briefing and the state of the law regarding the matters at issue, but defendants would be happy to participate in oral argument if the Court deems it beneficial.

See id. On January 24, 2019, the Arkansas District Court issued a notice of hearing scheduling oral argument on the Motions to Dismiss for March 6, 2019 at 1:30 PM Central.

7. The Debtors commenced the Chapter 11 Cases on February 25, 2019.

8. On February 26, 2019, Windstream filed *Windstream Holdings, Inc.’s Notice of Bankruptcy and Automatic Stay* (the “Notice of Bankruptcy”) in the Securities Litigation. The next day, Lead Plaintiff filed a response to the Notice of Bankruptcy, noting that the automatic stay only impacts the continued prosecution of the Securities Litigation against the Debtor Defendants, and that the Securities Litigation should proceed against the Non-Debtor Defendants absent an order of this Court extending the automatic stay.

9. Just five days before oral argument on the Motions to Dismiss was scheduled to take place, the Securities Defendants filed an unopposed motion seeking a continuance of the March 6 oral argument (the “Continuance Motion”), a copy of which is annexed hereto as **Exhibit B**. The Continuance Motion indicated that Lead Plaintiff’s response to the Notice of Bankruptcy “raises issues regarding the application of the automatic stay to defendants other than Windstream” and that “Windstream plans to resolve those issues by filing a motion in the United States Bankruptcy Court for the Southern District of New York.” *Id.*, ¶ 4. The Continuance Motion further asserted that “[a] *slight delay* to resolve the automatic stay issues presented by the Windstream bankruptcy will not prejudice any of the parties.” *Id.*, ¶ 5 (emphasis added). Lead counsel to Lead Plaintiff, who had not yet retained bankruptcy counsel in connection with the Chapter 11 Cases, consented to the filing of the Continuance Motion as unopposed based entirely upon representations by the Debtor Defendants’ counsel that any delay would be brief. Nearly three months later, those representations have proven to be false.

10. The Arkansas District Court entered a memo docket entry in the Securities Litigation on March 4, 2019, continuing oral argument on the Motions to Dismiss “pending a determination by the United States Bankruptcy Court for the Southern District of New York of the scope of the stay against the non-Windstream defendants” and directing the parties to “advise the [Arkansas District] Court when this determination has been made.”

11. The Debtor Defendants filed the Adversary Proceeding on April 5, 2019, more than a month after they filed the Continuance Motion. In the nearly two months that have elapsed since the filing of the Adversary Proceeding, the Debtor Defendants have not filed the motion to extend the automatic stay that the Continuance Motion represented was forthcoming in early March, or taken any other action whatsoever in the Adversary Proceeding. Instead, the

Debtor Defendants have chosen to simply sit on their hands for nearly three months since availing themselves of a *de facto* stay obtained from the Arkansas District Court through dubious representations.

12. Immediately after the Debtor Defendants filed the Adversary Proceeding, bankruptcy counsel to Lead Plaintiff and the Class contacted counsel for the Debtors to propose a consensual, interim resolution of the Adversary Proceeding with respect to the Securities Litigation. Approximately three weeks later, the Debtors advised bankruptcy counsel to Lead Plaintiff that they were not interested in the suggested consensual resolution.

RELIEF REQUESTED

13. By this Motion, Lead Plaintiff respectfully requests that this Court enter an order, substantially in the form submitted herewith, granting limited relief from the automatic stay to the extent necessary to permit the Arkansas District Court to conduct oral argument and rule on the fully briefed Motions to Dismiss with respect to the Debtor Defendants.⁴

BASIS FOR RELIEF REQUESTED

I. THE COURT SHOULD MODIFY THE AUTOMATIC STAY TO PERMIT THE ARKANSAS DISTRICT COURT TO CONDUCT ORAL ARGUMENT AND RULE ON THE FULLY BRIEFED MOTIONS TO DISMISS.

A. Standard for Relief from the Automatic Stay

14. Bankruptcy Code § 362(d) provides, in pertinent part, as follows:

⁴ Through the Continuance Motion, the Securities Defendants appear to have muddied the waters in the Arkansas District Court by incorrectly stating that Lead Plaintiff's response to the Notice of Bankruptcy "raises issues regarding the application of the automatic stay to [Non-Debtor D]efendants other than Windstream" and that those "issues" required resolution by this Court. No such issues actually exist because, as a pure and incontrovertible matter of law, the automatic stay protects only the Debtors and not any of the Non-Debtor Defendants. Nevertheless, the Arkansas District Court's March 4, 2019 docket entry adopted the Securities Defendants' verbiage, referring to a potential determination by this Court "of the scope of the stay against the non-Windstream defendants." Because no such stay exists, any order entered in connection with this Motion should make clear that the automatic stay, as a matter of law, does not preclude the continued prosecution of the Securities Litigation against the Non-Debtor Defendants at all.

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay --

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest . . .

11 U.S.C. § 362(d).

15. Neither the Bankruptcy Code nor the legislative history defines “cause.” In re Keene Corp., 171 B.R. 180, 183 (Bankr. S.D.N.Y. 1994). Accordingly, the court must determine whether appropriate cause exists to lift the automatic stay on a case-by-case basis. See In re Robbins, 964 F.2d 342, 345 (4th Cir. 1992). The Second Circuit has identified the following twelve “Sonnax factors” that courts consider when deciding whether or not to lift the automatic stay so that litigation may continue in a different, non-bankruptcy tribunal:

(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor’s insurer has assumed full responsibility for [a defense]; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interest of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether [the] movant’s success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) [the] impact of the stay on the parties and the balance of harms.

In re Sonnax Indus., Inc., 907 F.2d 1280, 1286 (2d Cir. 1990); see also In re Bogdanovich, 292 F.3d 104, 110 n.1 (2d Cir. 2002).

16. Not every one of the Sonnax factors will be relevant in every case, or need be satisfied, see Bogdanovich, 292 F.3d at 110; In re Mazzeo, 167 F.3d 139, 143 (2d Cir. 1999), nor does each factor necessarily receive equal weight. In re SunEdison, Inc., 557 B.R. 303, 307-08 (Bankr. S.D.N.Y. 2016). In applying the Sonnax factors, courts have found that “it will often be

more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties in their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.” Matter of Holtkamp, 669 F.2d 505, 508 (7th Cir. 1982) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 50 (1978)).

B. The Relevant Sonnax Factors Weigh in Favor of Lifting the Automatic Stay.

17. A party seeking relief from the automatic stay “bears the initial burden of making a *prima facie* showing of ‘cause’ for relief from the stay, but the ultimate burden of persuasion rests with the debtor to show an absence of ‘cause.’” SunEdison, 557 B.R. at 308; Mazzeo, 167 F.3d at 142. Here, the relevant Sonnax factors (the first, second, sixth, seventh, tenth, eleventh, and twelfth) all weigh heavily in favor of a finding that cause exists to modify the automatic stay for the limited purpose of allowing the Arkansas District Court to conduct an estimated one-hour oral argument and rule on the Motions to Dismiss, which have been fully briefed since November 2018.

2. Sonnax Factor #1: Partial or Complete Resolution of the Issues

18. Allowing the Securities Litigation to proceed so that the Arkansas District Court can hear and decide the Motions to Dismiss will help to determine the future course of both the Securities Litigation and any claims to be asserted against the Debtor Defendants in the Chapter 11 Cases. A ruling in favor of the Securities Defendants would have the effect (subject to reconsideration and/or appeal) of providing a “complete resolution” of the causes of action alleged against the Securities Defendants, including claims against the Debtor Defendants. In the alternative, a ruling against the Securities Defendants, though not a complete resolution on the merits in and of itself, is a gating issue to the complete resolution of the issues in the

Securities Litigation, warranting stay relief. See, e.g., In re U.S. Brass Corp., 176 B.R. 11, 13 (Bankr. E.D. Tex. 1994) (“The Debtor has an interest in participating in the resolution of this issue because it will affect the resolution of future litigation.”). Accordingly, this factor weighs in favor of the limited stay relief sought through this Motion.⁵

3. Sonnax Factor #2: Lack of Connection With or Interference With the Bankruptcy Case

19. The Securities Litigation asserts claims against the Securities Defendants for violations of the 1933 Act and the 1934 Act in connection with the Merger. Such claims are wholly independent from the Chapter 11 Cases and do not raise any bankruptcy-related issues or warrant the Bankruptcy Court’s bankruptcy-specific expertise. See In re Countryside Manor, Inc. 188 B.R. 489, 491 (Bankr. D. Conn. 1995) (“The principles embraced in Sonnax and Bohack clearly support the granting of the Defendants’ motion [for stay relief]. The issues to be decided in the counterclaim are based upon Connecticut law and do not involve questions directed to the expertise of the bankruptcy court.”).

20. Moreover, any burden on the Debtors is minimal at worst, given the procedural posture of the Securities Litigation. The Motions to Dismiss have been fully briefed since November 29, 2018. This is not a situation where the Debtor Defendants can complain that lifting the stay for a limited purpose will interfere with reorganization efforts by requiring the Debtor Defendants to participate in time-intensive discovery or other matters that allegedly are distracting or will distract them from their obligations as debtors under the Bankruptcy Code. Cf. SunEdison, 557 B.R. at 308 (“the continuation of the Merger Litigation at this time will

⁵ At this juncture, Lead Plaintiff is seeking only limited relief from the automatic stay to permit the Arkansas District Court to conduct oral argument and rule on the fully briefed Motions to Dismiss. Lead Plaintiff reserves all rights to seek any other appropriate relief, including but not limited to further relief from the automatic stay, as and when warranted.

enmesh the Debtors, at a minimum, in time-consuming document and written discovery”).⁶ To the contrary, the only effort necessary before the Arkansas District Court can rule on the Motions to Dismiss is for defense counsel (counsel that, for the Debtor Defendants, is shared with a number of the Non-Debtor Defendants and, upon information and belief, whose defense costs are paid by insurance) to prepare for and participate in an oral argument expected to last under an hour in total. No involvement by the Debtor Defendants is necessary in this wholly lawyer-driven exercise. Accordingly, the second Sonnax factor weighs strongly in favor of lifting the automatic stay.

4. Sonnax Factor #6: Primary Involvement of Third Parties

21. There are twenty-one Securities Defendants in the Securities Litigation. Nineteen – nearly all – of the Securities Defendants are Non-Debtor Defendants. Only two of the Debtors, the Debtor Defendants, are defendants in the Securities Litigation. Thus, the sixth Sonnax factor also weighs heavily in favor of the limited stay relief Lead Plaintiff seeks through this Motion.

5. Sonnax Factor #7: Prejudice to Other Creditors

22. As discussed above, oral argument on and adjudication of the Motions to Dismiss will not consume any estate resources. Thus, the limited stay relief Lead Plaintiff seeks will not prejudice or otherwise impact the Debtors or their estates or creditors at all.

⁶ Even if the Court lifted the automatic stay to permit the Securities Litigation to proceed against the Debtor Defendants with no qualifications or restrictions, discovery still would not be a burden in the foreseeable future because all discovery in the Securities Litigation is currently stayed pursuant to the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. § 78u-4(b)(3)(B), while the Motions to Dismiss remain pending. In light of the stay of discovery pursuant to the PSLRA, Lead Plaintiff and the Securities Defendants filed a *Joint Federal Rule of Civil Procedure 26(f) Report* in the Securities Litigation on December 10, 2018, in which the parties proposed to reconvene their Fed. R. Civ. P. 26(f) conference within fourteen days after the Arkansas District Court denies the Motions to Dismiss in any respect.

6. Sonnax Factor #10: Judicial Economy

23. Granting the limited relief requested in this Motion would promote judicial economy by allowing the Motions to Dismiss to be argued and decided efficiently in a single forum – the Arkansas District Court – where the issues raised in the Motions to Dismiss can be adjudicated at the same time by a single court. The Arkansas District Court has jurisdiction over all the parties before it and is familiar with the subject matter of the Securities Litigation and applicable Eighth Circuit law. Moreover, the Arkansas District Court was prepared to hear oral argument nearly three months ago on the Motions to Dismiss, which have been fully briefed since November 29, 2018. As such, the interest of judicial economy is well served by lifting the stay for the limited purpose of allowing the Arkansas District Court to hear and rule on the Motions to Dismiss.

7. Sonnax Factor #11: Readiness for Trial

24. As noted above, the Motions to Dismiss have been fully briefed for nearly six months. The Arkansas District Court was just five days from conducting oral argument on the Motions to Dismiss when the Securities Defendants filed their Continuance Motion on March 1, 2019. The only bar currently preventing oral argument and a decision on the Motions to Dismiss as to all of the Securities Defendants is the automatic stay, which precludes the Securities Litigation from proceeding against the Debtor Defendants, and which the Securities Defendants used as a basis to obtain a temporary (but open-ended) continuance of oral argument.

8. Sonnax Factor #12: Impact on the Parties and Balance of Harms

25. If the automatic stay remains in place, by operation of the continuance of oral argument on the Motions to Dismiss, Lead Plaintiff will be forced, solely due to the bankruptcy of two Debtor Defendants, to wait an indeterminate amount of time to prosecute the Securities

Litigation against the nineteen Non-Debtor Defendants. On the other hand, granting the limited relief sought through this Motion will not impact the Debtors or their estate or creditors *at all* because, as discussed above, there is nothing for the Debtors or their employees to do in connection with the Motions to Dismiss.

26. Moreover, as noted above, the Non-Debtor Defendants already have received the benefit of a *de facto* preliminary injunction. The Securities Defendants filed the Continuance Motion nearly three months ago, supposedly seeking only “a slight delay” of the Motions to Dismiss so that this Court could decide whether to extend the automatic stay to the Non-Debtor Defendants. The Debtor Defendants then waited more than a month to file the Adversary Proceeding in this Court and, contrary to their representations to Lead Plaintiff and the Arkansas District Court in connection with the Continuance Motion, have not moved to extend the automatic stay to the Non-Debtor Defendants or taken any other action to seek immediate relief.

27. Through their inaction, the Debtors have effectively gamed the system to stay the Securities Litigation under the false pretense that they would move swiftly in this Court to extend the automatic stay to the Non-Debtor Defendants. In the absence of any such action by the Debtors, it is appropriate for this Court to modify the automatic stay to the limited extent necessary to enable the argument and adjudication of the Motions to Dismiss. Under these circumstances, the balance of harms weighs heavily in favor of Lead Plaintiff.

28. Each of the relevant Sonnax factors weigh heavily in favor of lifting the automatic stay to allow the Arkansas District Court to hear and decide the Motions to Dismiss with respect to the Debtor Defendants. Similarly, courts routinely grant motions seeking relief from the automatic stay to allow appellate courts to rule on pending appeals (often including oral argument) in the interest of judicial economy and resolution of unliquidated claims. See, e.g., In

re Gelinas, 270 B.R. 88, 91-92 (Bankr. D. Conn. 2001) (lifting the automatic stay to allow final ruling from state appellate court on issues of debtor's liability that were already tried and briefed, noting the appellate ruling would serve judicial economy interests, would resolve certain issues of debtor's liability and would not interfere with the bankruptcy case); In re Capgro Leasing Assocs., 169 B.R. 305, 317 (Bankr. E.D.N.Y. 1994) (allowing debtor to file stay relief motion seeking to proceed with an appeal, noting that allowing "an appeal to go forward correctly prevents this Court from being rendered an appellate court for the State Court proceedings"); In re U.S. Brass Corp., 176 B.R. 11, 13 (Bankr. E.D. Tex. 1994) (lifting the automatic stay for the limited purpose of proceeding with oral argument before the U.S. Supreme Court and obtaining a final judgment, noting "[t]his Court does not believe that any party will be prejudiced by allowing oral argument to proceed."); In re Bellucci, 119 B.R. 763, 769 (Bankr. E.D. Cal. 1990) (bankruptcy court *sua sponte* lifted the automatic stay to permit state court appeal to proceed to judgment, noting that allowing the litigation to proceed in the bankruptcy court would require the "federal bankruptcy court sit as an appellate court in what amounts to a routine appeal from a state court judgment").

29. The proper result, and the reasoning behind that result, are no different here. Allowing oral argument on the Motions to Dismiss to proceed in the Arkansas District Court, a purely lawyer-driven exercise, will impose no burden whatsoever on the Debtors on their estate. The Motions to Dismiss have been fully briefed since November 2018. Counsel for the Securities Defendants, including the counsel the Debtor Defendants share with the Windstream-affiliated Non-Debtor Defendants, have indicated that they believe the issues raised in the briefing on the Motions to Dismiss are so straightforward as to obviate the need for oral argument. Lead counsel for Lead Plaintiff and the Class indicated in their request for oral

argument, and defense counsel has not disputed, that oral argument will take less than an hour in total. There is no valid reason for any further delay. Modifying the automatic stay to permit oral argument on the Motions to Dismiss to proceed and to permit the Arkansas District Court to rule will facilitate the efficient and timely resolution of disputed issues in the forum where they are pending while imposing no burden whatsoever on the Debtors or their estate.

CONCLUSION

30. For all of the foregoing reasons, the Lead Plaintiff respectfully requests that that this Court enter an order granting limited relief from the automatic stay to the extent necessary to permit the Arkansas District Court to conduct oral argument and rule on the pending Motions to Dismiss.

RESERVATION OF RIGHTS

31. This Motion and any subsequent appearance, pleading, claim, or suit made or filed by Lead Plaintiff, either individually or for the Class or any member thereof, do not, shall not, and shall not be deemed to:

- a. constitute a submission by the Lead Plaintiff, either individually or for the Class or any member thereof, to the jurisdiction of the Bankruptcy Court;
- b. constitute consent by the Lead Plaintiff, either individually or for the Class or any member thereof, to entry by the Bankruptcy Court of any final order in any non-core proceeding, **which consent is hereby withheld unless, and solely to the extent, expressly granted in the future with respect to a specific proceeding;**
- c. waive any substantive or procedural rights of the Lead Plaintiff or the Class or any member thereof, including but not limited to (a) the right to challenge the constitutional authority of the Bankruptcy Court to enter a final order or judgment on any matter; (b) the right to have final orders in non-core matters entered only after de novo review by a United States District Court judge; (c) the right to trial by jury in any proceedings so triable herein, in the Chapter 11 Cases, including all adversary proceedings and other related cases and proceedings (collectively, "Related Proceedings"), in the Securities Litigation, or in any other case,

controversy, or proceeding related to or arising from the Debtors, the Chapter 11 Cases, any Related Proceedings, or the Securities Litigation; (d) the right to seek withdrawal of the bankruptcy reference by a United States District Court in any matter subject to mandatory or discretionary withdrawal; or (e) all other rights, claims, actions, arguments, counterarguments, defenses, setoffs, or recoupments to which the Lead Plaintiff or the Class or any member thereof are or may be entitled under agreements, at law, in equity, or otherwise, all of which rights, claims, actions, arguments, counterarguments, defenses, setoffs, and recoupments are expressly reserved.

WHEREFORE, for all of the foregoing reasons, the Lead Plaintiff respectfully requests that this Court enter an order, substantially in the form submitted herewith, granting limited relief from the automatic stay to the extent necessary to permit the Arkansas District Court to conduct oral argument and rule on the Motions to Dismiss with respect to the Debtor Defendants.

Dated: May 29, 2019

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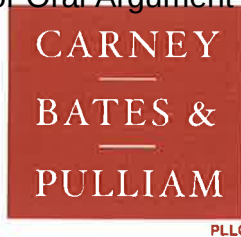
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Additional Counsel to Lead Plaintiff

EXHIBIT A – Request for Oral Argument



Honorable James M. Moody Jr.
United States District Judge
500 West Capitol Avenue, Room C446
Little Rock, AR 72201

December 21, 2018

Re: *Murray v. EarthLink Holdings Corp., et al.*, 4:18-cv-00202-JM

Dear Judge Moody:

Lead Plaintiff hereby requests oral argument on the pending Motions to Dismiss and related Opposition. (ECF Nos. 21, 25, 37, and 40-41.) Counsel for Lead Plaintiff is optimistic that the parties can effectively distill the multitude of issues discussed in the combined 130-pages of briefing in order to help streamline and aid the Court's decision-making process. Lead Plaintiff invited Defendants to concur in this request. They jointly responded as follows: "Defendants do not believe oral argument is necessary given the parties' extensive briefing and the state of the law regarding the matters at issue, but defendants would be happy to participate in oral argument if the Court deems it beneficial. Please include defendants' stated position in your submission to the Court." If the Court is so inclined, Lead Plaintiff estimates that no more than one hour would be necessary for combined argument by all parties.

Respectfully submitted,

Randall K. Pulliam

EXHIBIT B – Continuance Motion

**IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF ARKANSAS**

ROBERT MURRAY, on behalf of himself and)
 all others similarly situated)

Plaintiff,

vs.

EARTHLINK HOLDINGS CORP., SUSAN D.)
 BOWICK, JOSEPH F. EASOR, KATHY)
 S.LANE, GARRY K. MCGUIRE, R. GERARD)
 SALEMME, JULIE A. SHIMER, MARC F.)
 STOLL, WALTER L. TUREK, WINDSTREAM)
 HOLDINGS, INC., CAROL B. ARMITAGE,)
 SAMUEL E. BEALL III, JEANNIE H.)
 DIEFENDERFER, ROBERT E.)
 GUNDERMAN, JEFFREY T. HINSON,)
 WILLIAM G. LAPERCH, LARRY LAQUE,)
 KRISTI MOODY, MICHAEL G. STOLTZ,)
 TONY THOMAS, and ALAN L. WELLS,)

Case No. 4:18-cv-202-JM

Defendants.

**DEFENDANTS' UNOPPOSED JOINT MOTION
FOR CONTINUANCE OF HEARING**

Pursuant to Local Rule 7.5, defendants jointly request a continuance of the scheduled March 6, 2019, hearing on defendants' motions to dismiss and for good cause state the following:

1. On January 24, 2019, the Court set a hearing for March 6 on defendants' pending motions to dismiss. Doc. 44.
2. A month later, on February 25, 2019, Windstream Holdings, Inc. ("Windstream") filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code. The following day, Windstream filed a notice of bankruptcy with

this Court stating that the filing of the bankruptcy proceeding triggered an automatic stay of this proceeding under the Bankruptcy Code. Doc. 45.

3. On February 27, plaintiffs responded to the notice of bankruptcy and argued that the automatic stay applies only to Windstream, that the Court should proceed with the case with regard to the other defendants, and that the March 6 hearing should proceed as scheduled. Doc. 46.

4. Plaintiffs' response raises issues regarding the application of the automatic stay to defendants other than Windstream. Windstream plans to resolve these issues by filing a motion in the United States Bankruptcy Court for the Southern District of New York.

5. The application of the automatic stay is an area that requires caution to avoid a violation of the stay. The motions to dismiss are not a pressing matter—they were pending for several weeks before plaintiff even requested a hearing. *See* Doc. 40, 41, & 43. A slight delay to resolve the automatic stay issues presented by the Windstream bankruptcy will not prejudice any of the parties.

6. Counsel for defendants has discussed this motion with counsel for plaintiff, who indicated that he did not oppose the motion.

WHEREFORE, defendants request that the Court continue the March 6, 2019, hearing until after the automatic stay issue has been resolved, along with all other proper relief.

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Defendants, and EarthLink
Holdings Corp.*

**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 GRANTING MOTION OF SECURITIES CLASS ACTION LEAD PLAINTIFF
FOR LIMITED RELIEF FROM THE AUTOMATIC STAY**

Upon the motion (the “Motion”)² [Doc. No. ____] of Lead Plaintiff for entry of an order granting limited relief from the automatic stay to permit the Arkansas District Court to conduct oral argument and rule on the Motions to Dismiss with respect to the Debtor Defendants; and it appearing that the Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the Southern District of New York dated January 31, 2012; and this Court having found that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that adequate notice of the Motion has been given and no other notice need be given; and this Court having considered the Motion, any objections filed or otherwise raised thereto, and the arguments of counsel and having found that good cause exists for the relief requested in the Motion to the extent set forth herein; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

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’ 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.

² Capitalized terms but not defined in this Order have the meanings given thereto in the Motion.

2. The automatic stay in effect in the Chapter 11 Cases pursuant to 11 U.S.C. § 362(a) is hereby modified, pursuant to 11 U.S.C. § 362(d), to the extent necessary to permit the Arkansas District Court to conduct oral argument and rule on the Motions to Dismiss with respect to the Debtor Defendants.

3. For the avoidance of doubt, the automatic stay does not preclude or otherwise impair the prosecution of the Securities Litigation against any of the Non-Debtor Defendants.

4. This Court retains jurisdiction to resolve any disputes with respect to the implementation and interpretation of this Order.

Date: _____, 2019
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE