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June 15, 2020

VIA E-MAIL/ECF

The Honorable Robert D. Drain
United States Bankruptcy Court
Southern District of New York
300 Quarropas Street
White Plains, NY

Re: In re Windstream Holdings, Inc., et al. – Case No. 19-22312 (RDD)

Dear Judge Drain:

We represent the Official Committee of Unsecured Creditors (the “Committee”) and UMB Bank, National Association and U.S. Bank National Association, in their respective capacities as indenture trustees for the Debtors’ \$1.1 billion in senior unsecured notes (the “Trustees,” and collectively with the Committee, the “Objectors”). We write regarding discovery and the upcoming hearing on confirmation of the Debtors’ First Amended Joint Chapter 11 Plan of Reorganization [Dkt. No. 1812] (the “Plan”), scheduled for June 24, 2020 (the “Confirmation Hearing”).

As you know, despite the Objectors’ continued objection to the extremely short timeframe in which to prepare for the Confirmation Hearing, they agreed to entry of the scheduling order governing the parties’ pre-trial deadlines. (Stipulated Scheduling Order [Dkt. No. 2012], entered on June 11, 2020 (the “Scheduling Order”). Pursuant to the Scheduling Order, among other things, the parties



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agreed to present all fact witnesses for deposition between June 9 and June 12, to submit affirmative expert reports on June 11 and rebuttal expert reports on June 16 by 6 p.m. ET. Experts are scheduled to be deposed on June 17 (for non-rebuttal experts) and June 18 (for rebuttal experts). Although extremely compressed, this schedule would have at least provided for the conclusion of fact discovery prior to the submission of the Objectors' expert reports and within sufficient time to incorporate elicited facts into Plan objections (due June 19 at 12 p.m.).

Despite the breadth of the issues raised by the Debtors' Plan, it would have been simply impossible to take more than a few fact depositions to adduce the information necessary to address the factors of section 1129 and challenge the Debtors' assertions in their Disclosure Statement. To that end, the Committee and the Trustees served Rule 30(b)(6) notices on the Debtors seeking testimony from a designated corporate representative, including on the following topics directly related to issues as to the confirmability of the Plan:

Committee 30(b)(6) Topics

- Topic No. 1 - The Debtors' evaluation of, approval of, or authorization to enter into the Plan and the Plan Support Agreement.
- Topic No. 2 - All discussions of the Plan, the Plan Support Agreement or any term sheet or other document summarizing the material terms of the Plan.
- Topic No. 7 - The Debtors' and the Debtors' prepetition secured lenders' assertions in the Disclosure Statement that all of the Settlement consideration or proceeds are encumbered and that there are no assets available to satisfy general unsecured claims at the Obligor Debtors.
- Topic No. 8 - The allocation of the Settlement consideration or proceeds among the Debtors' estates.
- Topic No. 10 - The value of the assets of the Debtors that are or may be unencumbered, including but not limited to
 - a. Which of the Debtors' assets are encumbered or unencumbered;
 - b. The Debtors' tax attributes, including the value and allocation of net operating losses;
 - c. Information regarding the value of the Debtors' real estate assets;
 - d. Copyrights for which no filing has been made with the U.S. Copyright Office; and
 - e. Any commercial tort claims.
- Topic No. 11 - Any tax matters relating to the Debtors, including any tax sharing agreements and information concerning how the Debtors allocate tax obligations and attributes on an intercompany basis.
- Topic No. 12 - All lien investigations concerning any of the Debtors' assets.
- Topic No. 13 - The negotiation of the terms of the Exit Financing.
- Topic No. 14 - Any potential adequate protection claim against the Debtors and any diminution in value of collateral concerning any such claim.

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- Topic No. 15 - Any intercompany claims between Debtors.

Trustees' 30(b)(6) Topics

- Topic No. 1 - The Amended Disclosure Statement, including the negotiation, drafting and approval thereof.
- Topic No. 2 - The Amended Plan, including the negotiation, drafting and approval thereof.
- Topic No. 3 - The allocation of value of the Debtors' estates under the Amended Plan.
- Topic No. 4 - The allocation of value attributable to the Unit Settlement under the Amended Plan.
- Topic No. 5 - The entitlement of holders of First Lien Claims to adequate protection.
- Topic No. 6 - The analysis, assessment or evaluation of the encumbrances, or lack thereof, on (i) the Debtors' chapter 5 avoidance claims and causes of action, including as asserted in the Adversary Proceeding and as proposed to be asserted by the Official Committee of Unsecured Creditors; (ii) the Debtors' breach of contract claims, including as asserted in the Adversary Proceeding; (iii) the Debtors' recharacterization claims, including as asserted in the Adversary Proceeding; (iv) the Debtors' commercial tort claims; (v) the Unit Arrangement; (vi) the Debtors' real property, as listed on each Debtors' schedules of assets and liabilities; (vii) the Leased Property; and (viii) the Debtors' easements, permits, franchises, and pole agreements.
- Topic No. 7 - The allowance or treatment of any prepetition intercompany claims pursuant to the Amended Plan.

In seeking to maintain a confirmation hearing on the minimum statutory notice, the Debtors assured the Court that they would provide discovery to the Objectors "consistent with both due process and common sense." (May 22, 2020 Letter [Dkt. No. 1915]). Thus, on May 28, 2020, the Debtors served written responses and objections indicating that they would offer a corporate representative to testify on all but one (Topic No. 12) of the Committee's topics and all of the Trustees' topics. Notably, the Debtors' responses and objections did not object to any topic on the grounds that it sought information that was the purview of expert witnesses or indicate in any way that they would not have enough time to prepare and produce a fact witness on each of the topics that they agreed were relevant. Had the Debtors objected on the basis of scope or timing, we would have come to the Court immediately – it was only because the Debtors committed to produce fact witnesses in response to the Objectors' Rule 30(b)(6) notices that we agreed to the amended schedule.

After receiving our commitment to proceed on the schedule laid out in the Scheduling Order, and two minutes before the start of Tony Thomas' deposition, counsel to the Debtors notified the Objectors that Mr. Thomas would only be designated as to three of the Committee's topics (nos. 1, 11 and 13) and none of the Trustees' topics. During Mr. Thomas' deposition, counsel for the Debtors explained only that they intend to offer Messrs. Leone and Grossi for depositions on June 17 or 18 as part of expert discovery.

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In sum, the Debtors ended the fact discovery portion of the schedule having responded to only three topics, and as to these, Mr. Thomas was obviously inadequately prepared. For example, Mr. Thomas had no knowledge (personal or otherwise) as to how the Debtors allocate tax obligations. Moreover, although he signed the Disclosure Statement and Plan on behalf of each of the Debtors, he was unprepared to answer questions regarding the approval of the Plan for any Debtor other than Holdings or Services. Indeed, despite his role as President and CEO, Mr. Thomas had no personal knowledge and had seen no analysis, assessment or evaluation of encumbrances on the Debtors' recharacterization, chapter 5 avoidance or breach of contract claims. As to the Uniti Settlement Consideration, Mr. Thomas testified (again only in his personal capacity) that he had no understanding and had not seen any analysis as to whether the Uniti settlement is subject to liens or other encumbrances.

To the extent that the Debtors intend to designate their experts as corporate representatives, we object to having the fact portions of their testimony elicited after the Objectors' expert reports are due and on the eve of the Plan objection deadline. Were it a topic or two, or a discrete portion of the factual record that the Debtors sought to elicit during expert depositions, the Objectors would not have troubled the Court. But here, the confirmability of the Debtors' Plan hinges on the Court agreeing, as a matter of law and fact, that the secured creditors' hypothetical adequate protection claims¹ are sufficient to consume the actual prepetition unencumbered value available to unsecured creditors, such that more than \$2 billion in claims in this case are entitled to zero recovery. And on these core issues, including how the Uniti Settlement consideration will be allocated (or even when that allocation decision will be made), the investigation into the value of other potential unencumbered assets, the investigation into the propriety of hundreds of billions of dollars of intercompany claims, the Objectors will have no factual record until the day before their objections are due.

Despite the fact that the Debtors do not anticipate emerging from bankruptcy for several months, Debtors' counsel refused to seek an adjournment of the confirmation hearing to permit the Objectors to elicit fact discovery a reasonable time before submitting rebuttal expert reports and their Plan objections. Accordingly, the Objectors respectfully request that the Debtors be precluded from offering any factual testimony in support of confirmation outside of the topics upon which Mr. Thomas was designated as the corporate representative.

We are available for a telephonic conference to discuss these matters at the Court's convenience.

Sincerely,

/s/ Lorenzo Marinuzzi

/s/ J. Christopher Shore

Lorenzo Marinuzzi

J. Christopher Shore

¹ The Debtors have not amended the Plan to provide for the allowance and treatment of first lien adequate protection claims.

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