

Stephen E. Hessler, P.C.
 Marc Kieselstein, P.C.
 Cristine Pirro Schwarzman
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
 601 Lexington Avenue
 New York, New York 10022
 Telephone: (212) 446-4800
 Facsimile: (212) 446-4900

James H.M. Sprayregen, P.C.
 Ross M. Kwasteniet, P.C. (*pro hac vice* pending)
 Brad Weiland (*pro hac vice* pending)
 John R. Luze (*pro hac vice* pending)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
 300 North LaSalle Street
 Chicago, Illinois 60654
 Telephone: (312) 862-2000
 Facsimile: (312) 862-2200

Proposed Counsel to the Debtors and Debtors in Possession

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

| | | |
|---|---|----------------------------------|
| In re: |) | Chapter 11 |
| WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹ |) | Case No. 19-22312 (RDD) |
| Debtors. |) | (Joint Administration Requested) |

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND
 FINAL ORDERS AUTHORIZING THE DEBTORS TO PAY
 CERTAIN PREPETITION CLAIMS OF (I) CRITICAL VENDORS,
 (II) LIEN CLAIMANTS, AND (III) SECTION 503(B)(9) CLAIMANTS
 IN THE ORDINARY COURSE OF BUSINESS ON A POSTPETITION BASIS**

Windstream Holdings, Inc. and its debtor affiliates as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, 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.



Relief Requested²

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”), authorizing, but not directing, the Debtors to pay, in their sole discretion: (a) prepetition claims of Critical Vendors (the “Critical Vendor Claims”), in an amount not to exceed \$80 million; (b) prepetition claims (the “Lien Claims”) of Shippers, Warehousemen, and Other Lien Claimants (collectively, the “Lien Claimants”), in an amount not to exceed \$91 million; and (c) prepetition claims of 503(b)(9) Claimants (the “503(b)(9) Claims”), in an amount not to exceed \$13 million. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis. For the avoidance of doubt, pursuant to this Motion, the Debtors seek authority to pay amounts only as they come due in the ordinary course of business or as may be necessary to secure a vendor’s agreement to continue business with the Debtors on Customary Trade Terms and shall not otherwise seek to accelerate payment of amounts that would not otherwise come due in the interim period.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to

² Capitalized terms used but not defined have the meanings given to them elsewhere in this Motion or in the First Day Declaration (as defined below).

the entry of a final order by the Bankruptcy Court in connection with this Motion to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105, 363, 364 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Background

5. The Debtors are a leading provider of advanced network communications and technology solutions for businesses across the United States. The Debtors also offer broadband, entertainment and security solutions to consumers and small businesses primarily in rural areas in 18 states. Additionally, the Debtors supply core transport solutions on a local and long-haul fiber network spanning approximately 150,000 miles. As of the date hereof, the Debtors had approximately 11,600 employees.

6. As set forth in greater detail in the *Declaration of Tony Thomas, Chief Executive Officer and President of Windstream Holdings, Inc., (I) in Support of Debtors’ Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* (the “First Day Declaration”), on February 15, 2019, the United States District Court for the Southern District of New York entered a *Memorandum Decision and Order* against Debtor Windstream Services, LLC after trial in the matter styled *U.S. Bank National Association v. Windstream Services, Inc. v. Aurelius Capital Master, Ltd.*, Case No. 17-cv-7857 (JMF), that recognized an event of default

under the Debtors' prepetition unsecured bond indentures, which in turn resulted in a cross-default under the Debtors' secured term loan and revolver credit facilities. As of the date hereof, the Debtors are obligated for approximately \$5.6 billion in funded debt obligations. To avoid any precipitous action against the Debtors' assets that would have harmed the Debtors' businesses and to gain access to much-needed liquidity in the form of debtor-in-possession financing, the Debtors commenced these chapter 11 cases

7. On February 25, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in these chapter 11 cases. Additional information regarding the Debtors' business, their capital structure, and the circumstances leading to these chapter 11 filings is contained in the First Day Declaration.

The Vendor Claims

8. The Debtors request authorization to pay the prepetition claims of certain parties (collectively, the "Vendor Claims") in light of the importance of the products and services provided by such vendors. Because of the nature of the Debtors' businesses, the Debtors believe that many vendors will make credible and actionable threats that, unless paid on account of their prepetition debt, they will cease to supply the Debtors with the specialized goods and services necessary to maintain the smooth operation of the Debtors' businesses while in chapter 11, or may otherwise impair the Debtors' ability to operate their businesses. Accordingly, to maintain stability during the opening days of these chapter 11 cases and to avoid jeopardizing the Debtors' ability to service their customers going forward, the Debtors seek the relief requested herein.

I. The Critical Vendors and their Claims.

A. The Critical Vendor Products and Services.

9. The Debtors have identified certain vendors (collectively, the “Critical Vendors”) that supply products and services (collectively, the “Critical Vendor Products and Services”) that are vital to the Debtors’ operations. The Debtors rely on a range of Critical Vendor Products and Services without which they would not be able to operate their businesses. Specifically, certain of the Critical Vendors supply operational services that are critical to the Debtors’ ability to effectively and efficiently serve their customers and generate revenue. The Debtors’ trade relationships with their Critical Vendors are not generally governed by long term contracts, thus, the Debtors believe that such trade relationships may materially deteriorate, causing disruption to the Debtors’ operations if the Debtors are unable to pay Critical Vendor Claims as provided herein.³ Accordingly, the Debtors believe that the payment of the Critical Vendor Claims is essential to avoid costly disruptions to the Debtors’ businesses during these chapter 11 cases.

B. The Critical Vendors.

10. In many cases, the Critical Vendor Products and Services are available from only a limited number of vendors, and in some cases, only one vendor. Even where alternative vendors exist, the costs associated with switching from one vendor to another are often significant and would be detrimental to the Debtors’ estates.

³ In several cases, the Debtors’ contracts with certain of the Critical Vendors provide only a framework for the issuance of purchase orders that are limited in scope to particular projects or orders. Thus, the Debtors’ postpetition ability to use the contracts to compel the Critical Vendors to continue to provide goods and services may be limited. In addition, certain Critical Vendors that are party to long-term written supply contracts may cease performance under such contracts postpetition, notwithstanding the application of the automatic stay, causing irreversible harm to the Debtors’ business. The Debtors seek authority to pay such Critical Vendors as necessary, in their business judgment, to ensure continued performance.

11. The Debtors believe that jeopardizing their relationships with the Critical Vendors and attempting to procure the Critical Vendor Products and Services from replacement vendors would impose a severe strain on the Debtors' business operations, and would likely result in significant revenue loss. Even a temporary halt of the provision of Critical Vendor Products and Services would impose a severe strain on the Debtors' operations, and the cumulative impact of such events could have a significant adverse effect on the Debtors' operations and, particularly, on the ability of the Debtors to maintain business-as-usual and serve their customers.

12. Accordingly, in light of the potential for immediate irreparable consequences if the Critical Vendors do not continue to provide uninterrupted and timely deliveries of goods and services, the Debtors have determined, in the exercise of their business judgment, that payment of the Critical Vendor Claims is essential to avoid costly disruptions to their operations.

C. The Debtors' Analysis of Potential Critical Vendor Claims.

13. With the assistance of their advisors, the Debtors have spent significant time reviewing and analyzing their books and records, consulting operations managers and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable law, regulations, and historical practice to identify certain critical business relationships and suppliers of goods and services—the loss of which would immediately and irreparably harm their businesses, by, among other things, shrinking their market share, reducing enterprise value, and ultimately impairing the Debtors' viability as a going-concern. In this process, the Debtors considered a variety of factors, including:

- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;
- whether a vendor is a sole-source, limited-source, or high-volume supplier of goods or services critical to the Debtors' business operations;

- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- the degree to which replacement costs (including, pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor;
- the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through use of the tools available in these chapter 11 cases;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to hold goods owned by the Debtors, or refuse to ship inventory or to provide critical services on a postpetition basis;
- the location and nationality of the vendor; and
- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation.

14. Following this analysis, the Debtors identified approximately 263 vendors as Critical Vendors for purposes of the relief requested herein. This number represents only approximately 5 percent of the Debtors' vendors with outstanding accounts payable as of the Petition Date.

15. As of the Petition Date, the Debtors believe they owed the Critical Vendors approximately \$80 million. Accordingly, by this Motion, the Debtors request authorization, but not direction, to pay all outstanding prepetition obligations on account of the Critical Vendor Claims, up to \$80 million in the aggregate, but only as such amounts come due in the ordinary course of business or as may be necessary to secure a vendor's agreement to continue business with the Debtors on Customary Trade Terms. The \$80 million of requested relief requested is approximately 20 percent of the Debtors' outstanding accounts payables as of the Petition Date.

16. The interruption or absence of the Critical Vendors would reduce the efficiency of the Debtors' operations and, in certain instances, materially impair operations. Any material interruption in the provision of the Critical Vendor Products and Services—however brief—would disrupt the Debtors' operations and could cause irreparable harm to the Debtors' businesses, goodwill, employees, customer base, and market share. Such harm would likely far outweigh the cost of payment of the Critical Vendor Claims. Accordingly, by this Motion, the Debtors seek authorization to pay the Critical Vendor Claims.

II. The Lien Claimants.

17. The Debtors routinely transact business with a number of third parties who may assert various statutory liens (the "Lien Claimants"), including mechanics' lien, against the Debtors and their property if the Debtors fail to pay for the services rendered. The Lien Claimants primarily consist of construction vendors that provide labor and materials to upgrade, maintain, and build out the Debtors' network infrastructure. The Debtors' business is highly dependent upon the full operation of the fiber network. Specifically, the Debtors supply core transport solutions on a local and long-haul fiber network spanning approximately 150,000 miles. Absent payments of the Lien Claims, the Lien Claimants may stop providing services that are essential to the Debtors' operations. Accordingly, payment of the Lien Claimants is vital to avoid costly disruptions to the Debtors' businesses.

18. To the extent any Lien Claimant has perfected a lien on any of the Debtors' property or its customers' property or, in the Debtors' estimation, could assert and perfect a lien on any such property, it is imperative that the Debtors be authorized to immediately pay such Lien Claimants regardless of whether their claims arose prior to or after the Petition Date to secure the release of any such lien and the Debtors' continued uninterrupted access to the goods and services

provided by the Lien Claimants. Further, if amounts owed to the Other Claimants are not paid, certain of the Lien Claimants may be able to assert and perfect mechanics' or other liens against certain of the Debtors' goods or property, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code.⁴

19. Moreover, the value of the assets in the possession of the Lien Claimants generally exceeds the value of their respective prepetition claims. The refusal of Lien Claimants to deliver or return the Debtors' goods as a result of not being paid would severely disrupt the Debtors' operations and potentially cost the Debtors a substantial amount of revenue and future business. The Debtors' ability to maintain access to materials, goods, equipment, and services is critical to the continued viability of the Debtors' business operations.

20. As of the Petition Date, the Debtors estimate that approximately \$91 million is owed to Lien Claimants. Accordingly, by this Motion, the Debtors seek authorization, but not direction, to pay outstanding prepetition obligations on account of the Lien Claimants, up to \$91 million in the aggregate, but only as such amounts come due in the ordinary course of business or as may be necessary to secure a vendor's agreement to continue business with the Debtors on Customary Trade Terms, and to continue to pay the Lien Claimants in the ordinary course of business.

III. 503(b)(9) Claimants.

21. The Debtors have received certain goods from various Vendors within the 20 days before the Petition Date (collectively, the "503(b)(9) Claimants"). Many of the Debtors' relationships with the 503(b)(9) Claimants are not governed by long-term contracts. Rather, the

⁴ The Debtors do not concede that any liens described in this Motion, including contractual liens, mechanics' liens, artisan liens, statutory liens, and liens asserted by Shippers and Warehousemen are valid and enforceable, and expressly reserve the right to contest the extent, validity, and perfection of all such liens.

Debtors often obtain supplies on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its prepetition claims. The Debtors also believe certain 503(b)(9) Claimants could reduce the Debtors' existing trade credit—or demand payment in cash on delivery—further exacerbating the Debtors' limited liquidity.

22. The Debtors seek separate relief for the 503(b)(9) Claimants because the undisputed claims arising from the value of such goods received by the Debtors within 20 days before the Petition Date that have been sold to the Debtors in the ordinary course of business (each, a "503(b)(9) Claim") may be entitled to administrative priority under Section 503(b)(9) of the Bankruptcy Code.⁵

23. As of the Petition Date, the Debtors believe they owed approximately \$13 million on account of the 503(b)(9) Claims. Accordingly, by this Motion, the Debtors seek authorization, but not direction, to pay outstanding prepetition obligations on account of the 503(b)(9) Claims, up to \$13 million in the aggregate, but only as such amounts come due in the ordinary course of business or as may be necessary to secure a vendor's agreement to continue business with the Debtors on Customary Trade Terms, and to continue to pay the 503(b)(9) Claims as they come due in the ordinary course of business.

24. Additionally, prior to the Petition Date, and in the ordinary course of business, the Debtors may have ordered goods which will not be delivered until after the Petition Date (the "Outstanding Orders"). To avoid becoming general unsecured creditors of the Debtors' estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue

⁵ The Debtors do not concede that any claims described in this Motion are conclusively entitled to administrative priority under Section 503(b)(9) of the Bankruptcy Code, and the Debtors expressly reserve the right to contest the extent or validity of all such claims.

substitute purchase orders postpetition. To prevent any disruption to the Debtors' business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order: (a) granting administrative expense priority under Section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the postpetition acceptance of goods subject to Outstanding Orders; and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

IV. Customary Trade Terms.

25. Subject to the Bankruptcy Court's approval, the Debtors intend to pay Vendor Claims only to the extent necessary to preserve their businesses. The Debtors have designated a core group of executives, advisors, and employees who have experience in the Debtors' businesses and in the reorganization process to review, assess, and potentially recommend any payment on account of a Vendor Claim. In return for paying the Vendor Claims, the Debtors will use commercially reasonable efforts to condition payment of the Vendor Claims upon each vendor's agreement to continue supplying goods and services on terms that were in place in the 120 days prior to the Petition Date or are otherwise acceptable to the Debtors in light of customary industry practices (the "Customary Trade Terms").

26. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services on Customary Trade Terms, then: (a) such payment may be deemed to be an improper postpetition transfer on account of a prepetition claim, and therefore, immediately recoverable by the Debtors in cash upon written request; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding

postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

Basis for Relief

27. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing debtor to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (authorizing the payment of prepetition claims to suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

28. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also James A. Phillips*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *See, e.g., In re CoServ*, 273 B.R. 497.

29. In addition, courts may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy

Code codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may authorize preplan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See, e.g., In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow preplan payments of prepetition obligations where such payments are critical to the debtor’s reorganization). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See e.g., Ionosphere Clubs*, 98 B.R. at 176.

30. The relief requested herein is appropriate and warranted under the circumstances. The authority to satisfy the Vendor Claims in the initial days of these cases without disrupting the Debtors’ operations will maintain the integrity of the Debtors’ employee base, supply chain, facilitate the Debtors’ accounts receivable collection, and allow the Debtors to smoothly transition into and efficiently administer these chapter 11 cases. The Debtors request only limited relief sufficient to bridge their businesses through a brief interim period. Failure to pay the Vendor Claims could potentially destroy value that would otherwise inure to the benefit of the Debtors’ estates.

31. Where, as here, debtors have shown that the payment of prepetition claims is critical to maximize the value of their estates, courts in this district and other jurisdictions have routinely authorized payments to international vendors and lien claimants on account of prepetition claims. *See, e.g., In re Aegean Marine Petrol. Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y.

Dec. 6, 2018) (approving the payment of prepetition claims of shippers, warehousemen, and other critical claimants on the basis that shippers and warehousemen could refuse to deliver or return the debtors' goods if prepetition claims were not satisfied); *In re Nine West Holdings, Inc.*, Case No. 18-10497 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (same); *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) (authorizing the payment of prepetition claims of various lien claimants and foreign vendors to avoid disruption to the debtors' business operations); *In re Sabine Oil & Gas Corp.*, Case No. 15-11835 (SCC) (Bankr. S.D.N.Y. Oct. 15, 2015) (approving the payment of prepetition claims of shipper and warehousemen claimants on the basis that shippers and warehousemen could refuse to deliver or return the debtors' goods if prepetition claims were not satisfied).⁶

32. Allowing the Debtors to pay the Vendor Claims is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust Savs. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999). Based on these circumstances, the Debtors submit that the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code.

⁶ Because of the voluminous nature of the orders cited herein, such order have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

33. The Debtors have sufficient funds to pay the amounts described in this Motion by virtue of expected cash flows during the chapter 11 cases and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment with regard to a Vendor Claim. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

34. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, granting the relief requested herein is essential to the Debtors' ability to transition their operations into these chapter 11 cases and maintain the value of their estates postpetition. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' ability to maintain their estates at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

35. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the Interim Order, as applicable, is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Motion Practice

36. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

37. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

38. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the agent under the proposed postpetition debtor in possession financing facility; (d) the administrative agents and indenture trustees under the Debtors' prepetition credit agreement and note indentures; (e) Milbank LLP, counsel to an *ad hoc* group of second lien noteholders; (f) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to an *ad hoc* group of first lien term lenders; (g) Shearman & Sterling LLP, counsel to the Midwest noteholders; (h) the Pension Benefit Guaranty Corporation; (i) the United States Attorney's Office for the Southern District of New York; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the attorneys general in the states where the Debtors conduct their business operations; (m) the Federal Communications Commission; (n) the holders of the Vendor Claims; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

39. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: February 25, 2019
New York, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

Cristine Pirro Schwarzman

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

- and -

James H.M. Sprayregen, P.C.

Ross M. Kwasteniet, P.C. (*pro hac vice* pending)

Brad Weiland (*pro hac vice* pending)

John R. Luze (*pro hac vice* pending)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle Street

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

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

| | | |
|---|---|----------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹ |) | Case No. 19-22312 (RDD) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | |

**INTERIM ORDER AUTHORIZING THE DEBTORS TO PAY
CERTAIN PREPETITION CLAIMS OF (I) CRITICAL VENDORS,
(II) LIEN CLAIMANTS, AND (III) SECTION 503(B)(9) CLAIMANTS
IN THE ORDINARY COURSE OF BUSINESS ON A POSTPETITION BASIS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an interim order (this “Interim Order”), authorizing the Debtors to continue their prepetition business operations, policies, and programs and to pay Vendor Claims, on a postpetition basis in the ordinary course of business, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, 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.kcellc.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 used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ordered that:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2019, at ___:___ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2019, and shall be served on: (a) the Debtors, Windstream Holdings, Inc., 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, Attn.: Kristi M. Moody; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Stephen E. Hessler, P.C., and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: Ross M. Kwasteniet, P.C., Brad Weiland, and John R. Luze; (c) counsel to any statutory committee appointed in these cases; and (d) the Office of The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Paul K. Schwartzberg and Serene Nakano. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.
3. The Debtors are authorized, in their sole discretion, to continue their prepetition business operations, policies, and programs and pay any accrued but unpaid prepetition Vendor

Claims, on a postpetition basis in the ordinary course of business on Customary Trade Terms or as may be necessary to secure a vendor's agreement to continue business with the Debtors on Customary Trade Terms, up to the amount set forth for each category of Vendor Claims set forth in the Motion.

4. The Debtors shall maintain a matrix summarizing amounts paid on account of the Critical Vendor Claims subject to the terms of this Interim Order, including the following information: (a) the name of the Critical Vendor paid; (b) the amount paid to each Critical Vendor (each a "Payment"); (c) the total amount paid to the Critical Vendor to date; (d) the Debtor or Debtors who made the Payment; (e) the date of the Payment; and (f) the purpose of the Payment. This matrix will be provided every week to the U.S. Trustee and any statutory committee of creditors appointed in these chapter 11 cases. The Debtors shall provide the U.S. Trustee, any statutory committee of creditors, and to the Court for an in camera review, with a complete list of the Debtors' Critical Vendors.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common

law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty to inquire otherwise and without liability for following the Debtors' instructions.

7. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all other rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or post-petition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (ii) the other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders).

8. To the extent there is any inconsistency between the terms of any of the DIP Orders and this Interim Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any of the prepetition claims.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

13. The Debtors and their affiliates are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion (including, without limitation, making copies of this Interim Order, the Motion, and any materials or other information related thereto available in any local language in a jurisdiction in which the Debtors or their affiliates operate).

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

White Plains, New York
Dated: _____, 2019

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

| | | |
|---|---|----------------------------------|
| In re: |) | Chapter 11 |
| WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹ |) | Case No. 19-22312 (RDD) |
| Debtors. |) | (Joint Administration Requested) |

**FINAL ORDER AUTHORIZING THE DEBTORS TO PAY
CERTAIN PREPETITION CLAIMS OF (I) CRITICAL VENDORS,
(II) LIEN CLAIMANTS, AND (III) SECTION 503(B)(9) CLAIMANTS
IN THE ORDINARY COURSE OF BUSINESS ON A POSTPETITION BASIS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of a final order (this “Final Order”), authorizing the Debtors to continue their prepetition business operations, policies, and programs and to pay Vendor Claims, on a postpetition basis in the ordinary course of business, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, 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.kcellc.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 used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ordered that:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, in their sole discretion, to continue their prepetition business operations, policies, and programs and pay any accrued but unpaid prepetition Vendor claims on a postpetition basis in the ordinary course of business or as may be necessary to secure a vendor's agreement to continue business with the Debtors on Customary Trade Terms, up to the amount set forth for each category of Vendor Claims set forth in the Motion.
3. The Debtors shall maintain a matrix summarizing amounts paid on account of the Critical Vendor Claims subject to the terms of this Final Order, including the following information: (a) the name of the Critical Vendor paid; (b) the amount paid to each Critical Vendor (each a "Payment"); (c) the total amount paid to the Critical Vendor to date; (d) the Debtor or Debtors who made the Payment; (e) the date of the Payment; and (f) the purpose of the Payment. This matrix will be provided every week to the U.S. Trustee and any statutory committee of creditors appointed in these chapter 11 cases. The Debtors shall provide the U.S. Trustee, any statutory committee of creditors, and to the Court for an in camera review, with a complete list of the Debtors' Critical Vendors.

4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty to inquire otherwise and without liability for following the Debtors' instructions.

6. Notwithstanding anything in the Motion, the Interim Order, or this Final Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all other rights and authorizations granted or approved hereunder, shall be subject in all respects to, as applicable: (i) the orders approving the Debtors' use of cash collateral and/or post-petition debtor-in-possession financing facilities

(collectively, the “DIP Orders”); (ii) the other documentation governing the Debtors’ use of cash collateral and postpetition financing facilities; and (iii) the Budget (as defined in the DIP Orders).

7. To the extent there is any inconsistency between the terms of any of the DIP Orders and this Final Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any of the prepetition claims.

9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. The Debtors and their affiliates are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion (including, without limitation, making copies of this Final Order, the Motion, and any materials or other information related thereto available in any local language in a jurisdiction in which the Debtors or their affiliates operate).

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

White Plains, New York
Dated: _____, 2019

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE