

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

IN RE:

WINDSTREAM HOLDINGS, INC., et al.,¹

Case No. 19-22312

Chapter 11

Debtors.

**LIMITED OBJECTION OF KNOXVILLE UTILITIES BOARD WITH RESPECT TO
THE NOTICE OF FILING OF PLAN SUPPLEMENT**

Comes Knoxville Utilities Board (KUB), by and through counsel, to submit its limited objection (the “Objection”) to the *Notice of Filing of Plan Supplement* (the “Plan Supplement”) [Doc. 1973]. In support, KUB would show as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This Court also has broad authority to exercise power over the administration of this case under 11 U.S.C. § 105 to act as appropriate or necessary in the aid of the exercise of its jurisdiction.

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’ 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.



Background

4. On February 25, 2019 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code commencing these Chapter 11 Cases. These cases are jointly administered under Case No. 19-22313.

5. The Debtors are operating their business as debtors-in-possession, and no trustee or examiner has been appointed.

6. On May 14, 2020, the Debtors filed their *First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al. Pursuant to Chapter 11 of the Bankruptcy Code* [Doc. 1812] (the “Plan”).

7. On June 3, 2020, the Debtors filed the Plan Supplement [Doc. 1973], which attached the Assumed Executory Contract and Unexpired Lease List (the “Assumption and Cure Notice”), which is Exhibit A to the Plan and part of the Plan Supplement.

8. The Plan Supplement provides that “the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan” and that “[i]f the Plan is approved, the documents contained in the Plan Supplement will be approved by the Court pursuant to the Confirmation Order.”

9. The deadline for filing objections to the Plan, including the Plan Supplement, was originally set to be June 17, 2020, but undersigned counsel for KUB reached an agreement with counsel for the Debtors to extend that objection deadline as to KUB to 5:00 PM on June 19, 2020.

10. On June 10, 2020, the Debtors filed their Notice of Filing of First Amended Plan Supplement [Docket No. 2010] (the “Amended Plan Supplement”), which attached the Rejected Executory Contract and Unexpired Lease List that is Exhibit B to the Plan (the “Rejected Contracts List”). No KUB contracts are listed on the Rejected Contracts List in Amended Plan Supplement.

11. Article V.A. of the Plan provides that “[o]n the Effective Date, except as otherwise provided herein, all Executory or Unexpired Leases not otherwise assumed or rejected will be deemed assumed by the applicable Reorganized Debtor.”

Assumption and Cure Notice

12. Page 268 of 523 of the Assumption and Cure Notice lists the following contracts:

Ref	Counterparty	Debtor Counterparty	Description of Contract	Cure Amount
6,066	Knoxville Utilities Board P.O. Box 59017 Knoxville, TN 37950-9017	Windstream KDL, LLC	Executory Contract (including all amendments thereto) – L186-TN-011	\$12,896.76
6,067	Knoxville Utilities Board P.O. Box 59017 Knoxville, TN 37950-9017	Windstream KDL, LLC	Executory Contract (including all amendments thereto) – L186-TN-037	See above
6,068	Knoxville Utilities Board P.O. Box 59017 Knoxville, TN 37950-9017	Windstream KDL, LLC	Executory Contract (including all amendments thereto) – L186-TN-039	See above
6,069	Knoxville Utilities Board P.O. Box 59017 Knoxville, TN 37950-9017	Windstream KDL, LLC	Executory Contract (including all amendments thereto) – P186-TN-010	See above

13. For these contracts, the Assumption and Cure Notice lists an aggregate cure amount of \$12,896.76. This cure amount listed by the Debtors is not accurate and thus not permissible under the Bankruptcy Code in that the amount does not cure defaults associated with the contracts.

14. Prior to any assumption or assignment of executory contracts or unexpired leases in this bankruptcy case, the Debtors are required by 11 U.S.C § 365(b)(1) to provide adequate assurance (a) that the Debtors will promptly cure all defaults under the contracts/leases to be

assumed and assigned and (b) of the future performance of the proposed assignee under the terms of an executory contract or unexpired lease sought to be assumed and assigned.

15. Although it is not clear from the Debtors' contract descriptions, KUB believes that the Debtors seek to assume the following lease agreements to which KUB is a counterparty:

- (a) Real property lease agreement originally dated February 1, 2001 and originally between KUB and Interstate FiberNet, Inc.;
- (b) Master pole attachment license agreement originally dated April 12, 2007 and originally between KUB and Knoxville Data Link, Inc.;
- (c) Dark Fiber Optic Lease Agreement originally dated June 15, 2010 and originally between KUB and Knoxville Data Link, Inc.; and
- (d) Dark Fiber Optic Lease Agreement originally dated March 8, 2011 and originally between KUB and Windstream Knoxville Data, Inc.

16. KUB does not object to assumption of the above-identified leases by the Debtors, but will only consent to that assumption where the appropriate cure amounts are paid to KUB for the purpose of curing existing amounts owed to KUB under the leases prior to assumption.

17. KUB uses a single account to invoice the charges under each of the above-identified leases, Account No. ending 9376. The current balance due to KUB under said account and, more specifically, under the leases which the Debtors seek to assume is fifty one thousand fifty three dollars and seventeen cents (\$51,053.17). Thus full amount must be paid to KUB to cure defaults under the leases to be assumed pursuant to Section 365 of the United States Bankruptcy Code.

18. The same cure amount is reflected in KUB's amended proof of claim.

19. KUB has not consented to any cure amount for any of the leases which differs from the cure amounts set forth in this Limited Objection and KUB further specifically objects to the cure amount as reflected in the Debtors' Plan Supplement and the Assumption and Cure Notice.

20. KUB reserve their rights to object to or demand further clarification of the manner in which the contracts or leases to be assumed are described in the Assumption and Cure Notice.

21. KUB reserves the right to make further objection as is necessary to protect its rights.

WHEREFORE, Knoxville Utilities Board, by and through undersigned counsel, respectfully requests that the Court order that the Debtors' assumption of the leases referenced herein be conditioned on payment of all unpaid prepetition and post-petition amounts accrued under referenced leases through the effective date of assumption, or adequate assurance of same, and for such other and further relief as it may deem just and appropriate under the circumstances

RESPECTFULLY submitted this 18th day of June, 2020.

HODGES, DOUGHTY & CARSON, PLLC

By: /s/James F. Parker
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Limited Objection of Knoxville Utilities Board with Respect to Notice of Filing of Plan Supplement** was filed electronically. The filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Further written notice of this pleading was simultaneously sent to the following parties by Federal Express Standard Overnight Delivery Service on June 18, 2020:

Debtors

Windstream Holdings, Inc.
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RESPECTFULLY submitted this 18th day of June, 2020.

/s/ James F. Parker

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Admitted Pro Hac Vice [Doc. 2143]