

Devin Lawton Palmer, Esq.
BOYLAN CODE LLP
145 Culver Road, Suite 100
Rochester, New York 14620
Telephone: (585) 232-5300
Facsimile: (585) 238-9012

Eric J. Ward, Esq.
**WARD GREENBERG
HELLER & REIDY, LLP**
1800 Bausch & Lomb Place
Rochester, New York 14604
Telephone: (585) 454-0714
Facsimile: (585) 231-1912

Attorneys for Saetec, Inc.

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

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

SAETEC, INC.’S: (A) RESPONSE TO DEBTORS’ NINTH OMNIBUS CLAIM OBJECTION; AND (B) CROSS-MOTION FOR PERMISSIVE ABSTENTION

Saetec, Inc. (“Saetec”), by its attorneys Boylan Code LLP and Ward Greenberg Heller & Reidy, LLP, as and for its Response to the *Debtors’ Ninth Omnibus Objection to Equity Interest Claims, Insufficient Documentation Claims, Late-Filed Claims, No Liability Claims, Substantively Duplicate Claims, Claims to be Modified, and Wrong Debtor Claim* [Docket No. 2528] (the “Claim Objection”), and for its Cross-Motion for Permissive Abstention (the “Response and Cross-Motion”), alleges as follows:

¹ The last four digits of Debtor Windstream Holding, 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.



PARTIES AND BACKGROUND

A. The State Court Action.

1. On or about April 29, 2000 Saetec and the Debtors entered into a sales agent agreement, by which Saetec agreed to act as a non-exclusive independent contractor to procure customers for Debtors' various communications products and services. In return for these services, Debtors' agreed to pay Saetec on a commission basis, including payments through separate "scheduled commissions", "custom product commissions", and "override commissions".

2. Debtors did not pay Saetec all of the commissions to which it was entitled and on October 2, 2013, Saetec commenced an action in New York Supreme Court, Monroe County, Commercial Division (the "State Court") entitled *Saetec, Inc. v. PaeTec Communications, Inc. and Windstream Communications, Inc.*, Index No. 13-11176 (the "State Court Action" or "Saetec Litigation"). A true and accurate copy of the Summons and Complaint Saetec Filed in the State Court Action is attached hereto as Exhibit A.

3. Within the State Court Action, Saetec sought judgment for Debtors' past and ongoing failure to pay Saetec's commissions. In addition, Saetec requested judgment for damages based on Debtors' breach of the Parties' April 29, 2000 Sale Agent Agreement (Second Cause of Action), the Debtor's breach of an April 29, 2000 Non-Circumvent Agreement (Third Cause of Action), and failure to pay sales promotion incentive funds for certain products and services (SPIFs and Custom SPIFs) (Fourth Cause of Action).

4. As more particularly described in the Declaration of Eric J. Ward, Esq., sworn to October 13, 2020, attached hereto as Exhibit B (the "Ward Affidavit"), for the past five and a half years, the Parties actively litigated the State Court Action, including the exchange of

thousands of pages of written document discovery, the taking of multiple fact and expert depositions and the exchange of expert reports.

B. The Bankruptcy and Saetec Claims.

5. On February 25, 2019 (the “Petition Date”), when discovery in the State Court Action was very close to completion, Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code commencing the instant Bankruptcy. Pursuant to section 362 of the Bankruptcy Code, the Saetec Litigation has remained stayed since the Petition Date.

6. On July 10, 2019, Saetec filed separate pre-petition claims² in the Bankruptcy based on the allegations in the State Court Action, a true and accurate copy of one of those claims is attached hereto and made a part hereof as Exhibit C. Therein, Saetec included a Claim Addendum that fully identified the State Court Action and summarized the legal and factual basis behind its \$24,510,991.00 Claim (the “Pre-Petition Claims”).

7. Saetec attached as exhibits to the Pre-Petition Claims: (a) Summary Damage Table; (b) December 18, 2018 Amended Expert Report of Brian C. Hedges of Mengel, Metzger Barr & Co., CPA (“MMB&C”) (as an expert witness in the State Court Litigation) detailing the damages sustained by Saetec; (c) MMB&C’s July 19, 2019 Update of the Amended Expert Report, updating the damages sustained by Saetec through the Petition Date; and (d) the Summons and Complaint filed in the State Court Action. As accurately stated in the Claim Addendum, “Debtor and/or its counsel [in the State Court Action] are already in possession of

² In accordance with the *Order Approving Procedures for Submitting Proofs of Claim* [Docket No. 518], Saetec filed three identical Pre-Petition Claims in the separate Bankruptcies of PaeTec Communications, LLC (BK No. 19-22311) (Claim No. 7850), Windstream Holdings, Inc. (BK No. 19-22312) (Claim No. 5570), and Windstream Communications, Inc. (BK No. 19-22433) (Claim No. 5635), all of which are included in the Debtors’ Claim Objection. While three separate Claims, the total Claim amount owed Saetec on the Pre-Petition Claims is \$24,510,991.00 (for avoidance of the doubt, Saetec is not requesting payment of that amount three times). The Claim Objection also includes Claim Numbers 6259, 6251, and 6260 (the “Additional Claims”). Saetec acknowledges that the Additional Claims are duplicative

documents provided in the aforementioned state court action that additionally support and describe the instant claim.”

8. Throughout the Bankruptcy, Debtors continued to reap the benefits of Saetec’s procurement of customers for Debtors’ telecommunications products and services – all without paying Saetec any of the corresponding commissions. *See In re Briarpatch Film Corp.*, 281 B.R. 820, 834 (Bankr. S.D.N.Y. 2002) (noting, as absent here, that the “automatic stay is a shield, not a sword.”). Based on this continued default, Saetec filed separate post-petition claims³ in the amount of \$365,361.85, with a per diem at the principal rate of \$2,706.31 (the “Post-Petition Claims” and collectively with the Pre-Petition Claims, the “Saetec Claims”). A true and accurate copy of one of the Post-Petition Claims is attached hereto and made a part hereof as Exhibit D.

9. Like the Pre-Petition Claims, the Post-Petition Claims included a Request for Payment Addendum that fully identified the State Court Action and detailed the legal and factual basis behind the claim, and attached as exhibits: (a) Summary Damage Table; (b) MMB&C’s December 18, 2018 Amended Expert Report detailing the damages sustained by Saetec; (c) MMB&C’s July 19, 2019 Update of the Amended Expert; and (d) copy of the Summons and Complaint filed in the State Court Action.

C. The Plan of Reorganization and Saetec’s Plan Treatment.

10. On April 1, 2020, Debtors filed a *Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc., et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 163 (as subsequently revised [Docket No. 2243-1], the “Plan”).

³ In accordance with the *Order Approving Procedures for Submitting Proofs of Claim* [Docket No. 518], Saetec filed three identical Post-Petition Claims in the separate Bankruptcies of PaeTec Communications, LLC (BK No. 19-22311) (Claim No. 6269), Windstream Holdings, Inc. (BK No. 19-22312) (Claim No. 6312), and Windstream Communications, Inc. (BK No. 19-22433) (Claim No. 6305), all of which are included in the Debtors’ Claim Objection.

11. Pursuant to the Plan (Article III, B, 7), Saetec's Claims, both Pre-Petition and Post-Petition, as Class 6B Non-Obligor General Unsecured Claims, are to be paid in full in cash or "reinstated" on the Effective Date.⁴ In addition, as a potential administrative claim, Saetec's Post-Petition Claims are to be paid in full in cash under the Plan (Article II, A). Given this treatment, the Saetec Claims were deemed unimpaired under the Plan. *See id.*

12. The term "reinstated" under the Plan as it applies to Saetec means reinstatement of the State Court Action with both Parties fully retaining their respective rights, claims and defense related thereto. In line with that definition, Debtors filed the *First Amended Plan Supplement* on June 10, 2020 [Docket No. 2010], wherein they noticed their retention of all "claims, defenses, crossclaims and counterclaims related to [the Saetec Litigation] and possible litigation."

13. Out of caution, Saetec filed a *Limited Objection to the Plan* [Docket No. 2024] (the "Plan Objection") to clarify that its rights, claims, and defenses in the Saetec Litigation would similarly be unaltered and retained. Saetec also requested assurance that the broad release language contained in the Plan would not be applicable to the Saetec Claims.

14. In response to Saetec's Plan Objection, the Debtors included in the Confirmation Order specific language as to Saetec and the State Court Action, which reads:

Solely in the event Saetec's Class 6B Claims are Reinstated, all of its legal, equitable and contractual rights shall be fully restored and unaltered, including all of its claims, defenses, crossclaims and counterclaims related to the Saetec Litigation and possible litigation with Debtors. Saetec shall not be a Releasing Party as defined under the Plan and Debtors waive the right to assert, and will not assert in the Saetec Litigation or elsewhere, that Saetec is a Releasing Party. The

⁴ Technically, the Plan calls for treatment "on the later of the Effective Date or the date that such Allowed Non-Obligor General Unsecured Claim becomes due in the ordinary course of the Debtor's or Reorganized Debtors' business..." Here, the later date would in fact, be the Effective Date since the Debtor has owed damages since before Saetec commenced the State Court Action, continuing through the present.

Settlement, Release, Injunction, and Related Provisions contained in Article VIII of the Plan shall be of no force or effect on Saetec.

Conformation Order, ¶ 77 (p. 38 of 66) [Docket No. 2243].

D. Confirmation, Effective Date, Motion for Final Decree.

15. As the Saetec Claims were considered unimpaired, Saetec was prohibited from voting on the Plan.

16. On June 26, 2020, the Court entered a Confirmation Order, approving the Debtor's Disclosure Statement and confirming the Debtor's Plan of Reorganization [Docket No. 2243].

17. On September 21, 2020, the Effective Date of the Plan Occurred [Docket No. 2527]. Pursuant to the Confirmation Order [¶ 128, p. 64 of 66], the automatic stay terminated on the Effective Date.

18. On September 28, 2020, the Reorganized Debtors filed a *Motion for Entry of a Final Decree Closing the Chapter 11 Cases* [Docket No. 2544]. Therein, the Reorganized Debtors affirmed that the Plan has been substantially consummated and that the cases were "fully administered" within the meaning of 11 U.S.C. § 350.⁵

E. The Claim Objection.

19. On September 22, 2020, the day after the Effective Date, the Reorganized Debtors filed a *Ninth Omnibus Claim Objection* [Docket No. 2528], which included objections to the Saetec Claims.

20. The specific basis for Debtors' objection to the Saetec Claims is only that "[t]he Debtors have no liability for the claim after a review of their books and records." *See* Claim Objection, Schedule 4 – No Liability Claims, pp. 40-42 of 60. Based on only the foregoing, the

⁵ The Motion does request that one of the cases, Windstream Finance, Corp., No. 19-22397, remain open for purposes that include acting as the forum to address the "Disputed Claims."

Debtors request that the Saetec Claims, as “No Liability Claims”, “...be disallowed and expunged in their entirety.” Claim Objection, ¶ 25, p. 13 of 60.

ARGUMENT

21. The Saetec Claims were properly executed and filed, and as such they “constitute prima facie evidence of the validity and amount of the claim[s].” Fed. R. Bankr. P. 3001(f). *See also*, 11 U.S.C. § 502(a); *Sherman v. Novak (In re Reilly)*, 245 B.R. 768, 773 (B.A.P. 2nd Cir. 2000).

22. As the objecting party, the Debtors have the “initial burden of presenting a substantial factual basis to overcome the prima facie validity of” the Saetec Claims. *In re Multiponics*, 622 F.2d 709, 714 (5th Cir. 1980). To meet that burden, an objecting party must “produce evidence tending to defeat the claim that is of a probative force equal to that of the creditor's proof of claim.” *In re Simmons*, 765 F.2d 547, 552 (5th Cir. 1985). If the objector does not “introduce evidence as to the invalidity of the claim or the excessiveness of its amount, the claimant need offer no further proof of the merits of the validity and the amount of the claim.” 4-502 COLLIER ON BANKRUPTCY § 502.02[3][f] (15th Ed. 2011).

23. Here, the Debtors, through nothing more than the bald assertion that they “have no liability for the claim after a review of their books and records,” have utterly failed to produce evidence of probative force equal to the Saetec Claims. *See In re Forte*, 234 B.R. 607, 618 (Bankr. E.D.N.Y. 1999) (“The Debtor may not rebut the *prima facie* case merely by stating that the amount...claimed by the [creditor] is not correct; the Debtor must produce some evidence to support that statement.”) (*internal citations omitted*). The Debtors have not met their burden to overcome their prima facie validity. While Saetec “need offer no further proof”, it has supplemented the Saetec Claims through the Ward Affidavit and accompanying exhibits, which

only further support the validity and amount owed. 4-502 COLLIER ON BANKRUPTCY § 502.02[3][f] (15th Ed. 2011).

24. Based on nothing more, Debtors' Claim Objection should be denied, and the Saetec Claims allowed in full under Section 502 of the Bankruptcy Code and Rule 3001.

25. In addition, a denial of the Claim Objection would neither prejudice the Reorganized Debtors, nor alter either Party's position. If the Claim Objection is denied, the Saetec Pre-Petition Claims would be deemed allowed.⁶ Pursuant to the Confirmed Plan, the Debtors would then have the option of either reinstating those Claims or paying them in full. Assuming the former, and as specifically requested by the Debtors, both Parties' respective rights, claims and defenses would be reinstated for purposes of concluding the Saetec Litigation in State Court to determine the total amount of Saetec's damages.⁷ To require the Bankruptcy Court to add an additional layer of litigation through a Claim Objection is entirely unnecessary.

26. Against this backdrop, with the State Court Action nearly ready for trial and the Bankruptcies fully administered, it would be inconsistent with the interests of comity and justice to "jump the State Court tracks" and force the Bankruptcy Court to start the Saetec Litigation anew through a Claim Objection. *In re Brown*, 2013 WL 85131, at *2 (Bankr. M.D. Fla. 2013),

⁶ Pursuant to section 502(a) of the Bankruptcy Code a proof of claim "is deemed allowed, unless a party in interest...objects." As of the Effective Date, the Saetec Claims were not the subject of an objection, and as such they were "allowed" under that section of the Code. Through this Response, Saetec has not waived an alternative argument that the Reorganized Debtors were already required under the Confirmed Plan to pay the Saetec Claims in full or reinstate the Claims on September 21, 2020, the day before the Reorganized Debtors filed the Claim Objection. As such, the Claim Objection is moot.

⁷ To preserve its rights prior to the October 21, 2020 deadline, Saetec intends on filing a *Motion for Allowance and Payment of an Administrative Expense Claim* (the "Administrative Expense Motion") as to the Post-Petition Claims. *See Notice of (I) Entry of Confirmation order, (II) Occurrence of Effective Date, and (III) related Bar Dates* [Docket No. 2527]. However, if this Court were to deny the Claim Objections, or in the alternative, permissively abstain in favor of the State Court, Saetec would withdraw the Administrative Expense Motion without prejudice in order that the State Court fully decide liability and damages for both the Pre-Petition Claims and Post-Petition Claims. This would ensure, for purposes of judicial economy, that the Saetec Claims are not decided piecemeal between State Court and Bankruptcy Court.

aff'd, 526 B.R. 882 (M.D. Fla. 2013), *aff'd*, 572 Fed. Appx. 849 (11th Cir. 2014). *See also, In re Nanodata Computer Corp.*, 74 B.R. 766, 771 (W.D.N.Y. 1987) (“The crux of the matter which should not be forgotten is that bankruptcy jurisdiction as such is not intended as a method for bringing state claims into a federal forum. Rather, and recognizing the significant interplay between state law and bankruptcy issues, federal courts acting in the bankruptcy context should deal with state law only to the extent such is necessarily and directly implicated by the bankruptcy issues.”).

27. As described in greater detail below, factors such as judicial economy, the interest of justice, the interest of comity with state courts, and respect for state law, all support the denial of the Claim Objection, which at the option of the Debtors, would allow the State Court to hear the matter.

28. Based on the forgoing, the Debtors’ Claim Objection must be denied in its entirety and the Saetec Claims should be allowed in full.

RESERVATION OF RIGHTS

29. This Response is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of Saetec to respond and object on any ground whatsoever, and Saetec expressly reserves all further substantive and/or procedural objections that it may have, including but not limited to, objecting to any evidence or arguments that Debtors might advance in reply or at a hearing in support of their Claims Objection.

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[Cross-Motion to follow]

CROSS-MOTION

30. To the extent that the Debtors dispute their liability on the Saetec Claims, Saetec respectfully submits that dispute should be resolved in the pending State Court Action. In the alternative to simply denying the Claim Objection, thereby allowing the State Court Action to proceed through reinstatement under the Plan, Saetec respectfully requests that this Court permissively abstain from deciding the Saetec Claims in favor of the State Court.

31. Pursuant to 28 U.S.C. § 1334(c)(1) and Bankruptcy Rule 5011(b), bankruptcy courts have broad discretion to abstain from hearing claims whenever appropriate “in the interest of justice, or in the interest of comity with State courts or respect for State law.” See *In re Petrie Retail, Inc.*, 304 F.3d 223, 232 (2d Cir. 2002). Permissive or discretionary abstention under section 1334(c)(1), “demonstrate[s] the intent of Congress that concerns of comity and judicial convenience should be met, not be rigid limitations on the jurisdiction of federal courts, but by the discretionary exercise of abstention when appropriate in a particular case.” *Cody, Inc. v. County of Orange (n re Cody, Inc.)*, 281 B.R. 182, 190 (S.D.N.Y. 2002), *aff’d in relevant part at* 338 F.3d 89 (2d Cir. 2003) (affirming the bankruptcy court’s decision to permissively abstain in favor of state court). See also, *In re Pan Am. Corp.*, 950 F.2d 839, 846 (2d Cir. 1991) (“Permissive abstention is warranted when it is more appropriate to have a State court hear a particular matter of State law.”).

32. Bankruptcy courts have exercised this broad discretion under similar facts and permissively abstained to allow the liquidation of claims through state courts and pending state litigation. See *In re Gordon*, 2011 WL 3878356, *4 (Bank. S.D.N.Y. Aug. 30, 2011) (“However, although the Claim needs to be adjudicated, it does not necessarily need to be adjudicated in this Court.”); *In re Southmark Storage Assocs. Ltd. P’ship*, 132 B.R. 231, 233 (Bankr. D. Conn.

1991) (“the clearest case for abstention ... under ... 1334(c)(1) ... is one in which two parties have a dispute under state law and a potential judgment from the state court lawsuit will be the basis for or a defense against a claim in a bankruptcy proceeding”); *In re Hanson*, 525 B.R. 791, 796 (Bank. M.D. Fla. 2015) (Court abstained from hearing the debtor’s objection to a proof of claim filed by HSBC as the issues raised in the objection “are essentially state law matters that can be resolved in the foreclosure action that was pending at the time that the bankruptcy case was filed”); *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 426-427 (Bankr. S.D. Tex. 1987) (“...abstention even over a core proceeding, such as one involving a claim formally asserted against the estate, is not only authorized, but often appropriate.”).

33. Under the analogous scenario of lifting the automatic stay to allow pending state court litigation to act as venue for the liquidation of a creditor’s claim⁸, the United States Bankruptcy Court for the Southern District of New York has held:

...the legislative history of 362 reveals that Congress intended “that one of the factors to consider when determining whether to modify the stay is whether doing so would permit pending litigation involving the debtor to continue in a nonbankruptcy forum,” as “[i]t will often be more appropriate to permit proceedings to continue in their place of origin, where no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that may be handled elsewhere.”

In re Project Orange Assocs., LLC, 432 B.R. 89, 103 (Bankr. S.D.N.Y. 2010) (internal citations omitted).

34. In determining whether to exercise permissive abstention under § 1334(c), courts have considered one or more (not necessarily all) of twelve factors:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable state law,
- (4) the presence of a related proceeding commenced in state court or other non-

⁸ In this case the automatic stay has already terminated on the Effective Date of September 21, 2020, rendering a separate motion to terminate the stay unnecessary.

bankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted “core” proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the court's] docket, (10) the likelihood that the commencement of the proceeding in a bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of non-debtor parties.

In re Portrait Corp. of Am., Inc., 406 B.R. 637, 641-42 (Bank. S.D.N.Y. 2009).

35. Virtually all of these factors support permissive abstention here, to allow the matter heard by the State Court in the State Court Action.

A. The effect or lack thereof on the efficient administration of the estate if a Court recommends abstention.

36. This Court has already confirmed the Debtors’ Plan. The Effective Date has passed. The cases are fully administered and a *Motion for Entry of a Final Decree Closing the Chapter 11 Cases* is currently pending. Granting abstention on the Saetec Claims will certainly not impede the administration of the estate; in fact, it would promote the efficient conclusion of the Chapter 11 cases. *See In re NTL, Inc.*, 295 B.R. 706, 718 (Bankr. S.D.N.Y. 2003) (granting permissive abstention and noting under the first factor that “there will be little impact on the efficient administration of the bankruptcy estate by virtue of the abstention, *especially as the Plan has been confirmed.*”) (*emphasis added*).

37. In addition, abstaining to State Court, rather than keeping the Bankruptcies open indefinitely to begin the Saetec Litigation anew in Bankruptcy Court, conforms to the general principal that a bankruptcy court’s jurisdiction shrinks following confirmation. *See In re Ener1, Inc.*, 558 B.R. 91, 95 (Bankr. S.D.N.Y. 2016) (“...most courts agree that ‘once confirmation occurs, the bankruptcy court’s jurisdiction shrinks.’”), *quoting General Media v. Guccione (In re General Media, Inc.)*, 335 B.R. 66, 73 (Bankr. S.D.N.Y. 2005). *See also, Cantor v. Am.*

Banknote Corp., 2007 WL 3084966, at *3 (S.D.N.Y. Oct. 22, 2007) (“Generally a bankruptcy court’s jurisdiction abates upon confirmation of the reorganization plan.”).

B. The extent to which state law issues predominate over bankruptcy issues.

38. As evident from Saetec’s Complaint in the State Court Action, which is attached as an exhibit to each claim, State law issues predominate the Saetec Claims. The Claims are “wholly a creature of New York contract law, an area with which the New York Supreme Court has unquestioned expertise.” *GE Oil & Gas, LLC v. Turbine Generation Servs., LLC*, 2019 WL 2008575, at *7 (S.D.N.Y. May 7, 2019).

C. The difficulty or unsettled nature of the applicable state law.

39. While not unsettled, the determination as to the extent of unpaid commissions will require expert testimony and the complexity of the matter fits squarely with the New York State Supreme Court, Commercial Division. *See In re Residential Capital, LLC*, 489 B.R. 36, 50 (Bankr. S.D.N.Y. 2013) (Granting motion to permissively abstain to allow the Commercial Division to hear the matter and holding on this factor that “[w]hile this case may not include complex or unsettled areas of law, New York state courts are adept at dealing with such issues....”).

D. The presence of a related proceeding commenced in state court or other non-bankruptcy court.

40. The parties were five and a half years into the State Court Action when Debtors commenced the Bankruptcy. Discovery is nearly complete, and the case will be ready for a trial. In addition, the parties, counsel, a number of the fact witnesses and both Parties’ experts are situated in Monroe County, where the State Court Action is currently venued. Abstention is appropriate here, “particularly...because of the procedural posture of the action in the state court...” *Scherer v Carroll*, 150 B.R. 549, 551 (D. Vt. 1993).

41. It must also be noted that the Parties contractually agreed to the Monroe County, State Court as venue. Paragraph twenty (20) of the Parties' April 29, 2000 Sales Agent Agreement reads:

Governing Law/Jurisdiction/Venue

The laws of the State of New York shall govern the interpretation, enforcement and validity of this Agreement. Any action or proceeding involving this Agreement shall be commenced and maintained only in the courts of the State of New York. *Venue for any action or proceeding so commenced shall be in Monroe County.* Each party agrees to be subject to the personal jurisdiction of the courts of New York State. (*emphasis added*).

See Ward Affidavit, Exhibit 1.

42. As such, should the Bankruptcy Court take over the Saetec Litigation from State Court, it would usurp the clear contractual agreement of the Parties. *See e.g., In re Gordon, supra* at * 5 (“Since an alternate, more appropriate forum exists under the circumstances presented for adjudication of the Claim, this factor weighs in favor of abstention.”).

E. The jurisdictional basis, if any, other than 28 U.S.C. § 1334.

43. There is no Federal jurisdictional basis to force the Saetec Litigation upon this Bankruptcy Court other than section 1334 and the fact Saetec was required to file proofs of claim in the Bankruptcy to preserve its rights.

F. The degree of relatedness or remoteness of the proceeding to the main bankruptcy case.

44. With Plan Confirmation and the Effective Date behind us, a potential lengthy trial on Saetec's State law commercial claims is far afield from the nearly closed main bankruptcy cases. *See In re Nanodata Computer Corp.*, 74 B.R. 766, 771 (W.D.N.Y. 1987) (the Bankruptcy Court recommended abstention “because the debtor's reorganization plan has been confirmed and its reorganization case, for all intents and purposes, is nearly complete and because the

relationship of the reorganization case to this adversary proceeding is too attenuated to warrant further involvement”). In addition, if the Debtors’ truly wanted the Bankruptcy Court to decide the Saetec Litigation it could have filed its Claim Objection a year ago, rather than waiting until after confirmation when the case is now fully administered. *See In re Gordon, supra* at * 4 (“In addition, expedition was not a focus of either the Debtor or the Trustee since neither raised an objection to the Claim until almost a year after the Claim was filed.”).

G. The substance rather than form of an asserted “core” proceeding.

45. While the matter comes before the Bankruptcy Court as a core Claim Objection, the substance is entirely state law based. To decide the proceeding, the Bankruptcy Court would be (at the last hour) litigating state law claims that are already longstanding before the State Court. *See Buechner v. Avery*, 2005 WL 3789110, at *6 (S.D.N.Y. July 8, 2005) (“The interests of comity are promoted by allowing the claims to remain where the plaintiffs elected to bring them, *i.e.* state court.”).

H. The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court.

46. Under the confirmed Plan, the Saetec Claims, if allowed, would be paid in full or reinstated. Reinstatement would mean the Parties would allow the State Court to determine liability and damages in the State Court Action. Both the Debtors (through its *First Amended Plan Supplement*) and Saetec (through its *Plan Objection*) have affirmatively retained their “claims, defenses, crossclaims and counterclaims related to [the Saetec Litigation].” Severing the claims to allow judgment to be entered in State Court is not only feasible, it is what the Debtors requested in their Plan. As such, no prejudice would befall the Debtors through granting permissible abstention. By contrast, denying Saetec the ability to litigate the matter in its chosen forum would be prejudicial. *See Buechner, supra* at *6 (“The plaintiffs have elected to bring

their claims in Supreme Court, New York County. If the case is litigated in this Court, then plaintiffs will be denied their choice of forum.”).

I. The burden of [the court's] docket.

47. It is widely understood that the United States Bankruptcy Court for the Southern District of New York is one of, if not the most prominent Bankruptcy Court in the country. As it is one of the few Courts capable of efficiently managing the “mega-case” Chapter 11 bankruptcies, the weightiness of its case load is well documented and commonly accepted. Forcing this Court to hear a state law commercial trial sounding in breach of contract is not an appropriate use of its time or expertise.

48. By contrast, the Commercial Division is not overburdened; certainly not for a matter such as this, which the Court was intentionally created to hear.⁹ “...New York Supreme Court's Commercial Division is a specialized division for dealing with complex commercial cases, such as this case, and the action alleges only state law claims.” *In re Residential Capital, LLC, supra* at 50 (granting permissive abstention to allow the Commercial Division to adjudicate the matter), *citing Allstate Ins. Co. v. Credit Suisse Sec. (USA) LLC*, 2011 WL 4965150, at *7 (S.D.N.Y. Oct. 19, 2011) (stating that “because the underlying action alleges only state claims, the Commercial Division may have an edge in the relevant legal expertise”).

49. Not only is the Commercial Division the proper tribunal to hear these commercial

⁹22 NYCRR § 202.70 (Preamble):

Created in 1995, today’s Commercial Division of the New York State Supreme Court is an efficient, sophisticated, up-to-date court dealing with challenging commercial cases. From its inception, the Commercial Division has had as its primary goal the cost-effective, predictable and fair adjudication of complex commercial cases. By virtue of its specialized subject matter jurisdiction, exceptional judicial expertise, rules and procedures dedicated to commercial practice, and commitment to high standards of attorney professionalism, the Division has established itself at the forefront of worldwide commercial litigation in the twenty-first century.

claims, it is the venue originally chosen by the parties. Allowing the matter to stay with the State Court, its place of origin, is only further reason to abstain under 28 U.S.C. § 1334. *See In re Holtkamp*, 69 F.2d 505, 508 (7th Cir. 1982) (terminating the stay to allow for state court litigation and holding “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.”).

J. The likelihood that the commencement of the proceeding in a bankruptcy court involves forum shopping by one of the parties.

50. Based in part on the location of the parties and witnesses, Saetec choice of venue was the Monroe County, Commercial Division, the State Court that is the contractually obligated venue through the mutual agreement of the Parties, and Saetec commenced the State Court Action years prior to the Bankruptcy. Debtors’ own Plan calls for the Saetec Claims to be reinstated and therefore, to be decided in that State Court (unless paid in full). A decision by the Debtors to insist, instead, that these causes of action remain with the Bankruptcy Court, could be viewed as forum shopping on their part, especially given that the Debtors are signatories to a contract that mandates the Monroe County, State Court as proper venue.

K. The existence of a right to a jury trial.

51. Jury trials are afforded to parties in the Commercial Division and Saetec has requested a jury trial in the State Court Action. To preserve its rights, Saetec has demanded a jury trial should the Bankruptcy Court retain the matter on a Claim Objection. A copy of Saetec’s Jury Demand is attached hereto as Exhibit E. If the Bankruptcy Court is either not inclined or prohibited to conduct that hearing by a jury, it constitutes an additional reason for granting abstention. *See In re Republic Reader’s Serv., Inc.*, *supra* at 428 (where a right to a jury

trial “exists, whether waived or not, it is indicative that, in the absence of federal issues which give a right to a jury trial, a state law claim lies at the heart of the action.”).

L. The presence in the proceeding of non-debtor parties.

52. Saetec and the Debtors are the only parties in the State Court Action

53. Based on the foregoing, and pursuant to 28 U.S.C. § 1334(c)(1), cause exists for an immediate Order from this Court granting Saetec’s Cross-Claim and permissively abstaining from hearing the Claim Objection, as it applies to the Saetec Claims, thereby allowing the State Court to adjudicate the underlying causes of action.

54. No previous application for the relief sought herein has been made to this or any other court.

55. A copy of the proposed Order granting Saetec’s Cross-Motion is attached hereto and marked as Exhibit F.

CONCLUSION

56. Based on the Debtors’ own requested Plan terms, Saetec respectfully requests that the Court deny the Claim Objection, deem the Saetec Claims allowed, and let the parties litigate the matter in the pending State Court Action. In the alternative and based on the foregoing, this Court should grant Saetec’s Cross-Claim and permissively abstain from hearing the Claim Objection, as it applies to the Saetec Claims, pursuant to 28 U.S.C. § 1334(c)(1), thereby allowing the State Court to adjudicate the underlying causes of action. The interests of justice, comity with the State Court, and respect for State law all favor abstention.

WHEREFORE, Saetec, Inc., by its attorneys, Boylan Code LLP and Ward Greenberg Heller & Reidy, LLP, respectfully requests that the Court deny the Debtors' Claim Objection and deem the Saetec Claims allowed, or in the alternative, grant Saetec's Cross-Claim and permissively abstain from hearing the Claim Objection, as it applies to the Saetec Claims, pursuant to 28 U.S.C. § 1334(c)(1), along with such other relief as this Court deems just, equitable and proper.

Dated: October 14, 2020

Respectfully submitted,

BOYLAN CODE LLP
Attorneys for Creditor Saetec, Inc.

/s/ Devin Palmer

Devin Lawton Palmer, Esq.
C. Bruce Lawrence, Esq.
145 Culver Road, Suite 100
Rochester, New York 14620
Telephone: 585.232.5300
Facsimile: 585.238.9054
dpalmer@boylancode.com

**WARD GREENBERG
HELLER & REIDY, LLP**
Attorneys for Creditor Saetec, Inc
Eric J. Ward, Esq.
1800 Bausch & Lomb Place
Rochester, New York 14604
Telephone: (585) 454-0714
Facsimile: (585) 231-1912

**SAETEC, INC.'S: (A) RESPONSE TO DEBTORS' NINTH OMNIBUS
CLAIM OBJECTION; AND
(B) CROSS MOTION FOR PERMISSIVE ABSTENTION**

EXHIBIT A

STATE COURT ACTION SUMMONS AND COMPLAINT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

SAETEC, INC.,

Plaintiff,

SUMMONS

vs.

Index No.: 13-11176

PAETEC COMMUNICATIONS, INC. and
WINDSTREAM COMMUNICATIONS INC.,

Defendants.

2013 OCT -2 PM 3:11
MONROE COUNTY CLERK

RECEIVED

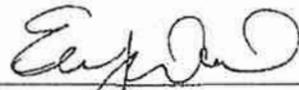
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on the attorneys for all parties in this action within twenty (20) days after service (or within thirty (30) days after service is complete if the Summon is not personally delivered to you within the State of New York) and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Venue is based on a defendant's residence and a written agreement between plaintiff and a defendant, pursuant to CPLR §§ 503 and 501, respectively.

October 2, 2013

WARD GREENBERG HELLER & REIDY LLP

By 
Eric J. Ward
David M. Knapp

300 State Street
Rochester, New York 14614
585-454-0700

Attorneys for Plaintiff Saetec, Inc.

Defendants:

Windstream Communications, Inc.
4001 Rodney Parham Rd.
Little Rock, AR 72212

Paetec Communications, Inc.
One Paetec Plaza
600 Willowbrook Office Park
Fairport, New York 14450

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

SAETEC, INC.,

Plaintiff,

COMPLAINT

vs.

Index No.: 13-11176

PAETEC COMMUNICATIONS, INC. and
WINDSTREAM COMMUNICATIONS INC.,

Defendants.

2013 OCT -2 PM 3:11
MONROE COUNTY CLERK

RECEIVED

Plaintiff Saetec, Inc. ("Saetec"), as and for its complaint, states as follows:

THE PARTIES

1. Plaintiff is a corporation organized under the laws of the State of New Hampshire, with its principal place of business in Lebanon, New Hampshire.

2. Defendant PaeTec Communications, Inc. ("PaeTec") is a corporation organized under the laws of the State of Delaware, with its principal place of business in Monroe County, New York.

3. Defendant Windstream Communications, Inc. ("Windstream") is a corporation organized under the laws of the state of Delaware. Windstream transacts business within the State of New York and has a new corporate office located on the corner of Main Street and Clinton Avenue in Rochester, Monroe County, New York.

BACKGROUND

4. PaeTec was founded in 1998 as a supplier of communications solutions to medium and large businesses and institutions. PaeTec sells a variety of products and services to

its customers, including local and long distance voice services, data and internet services, enterprise communications management software, customer premises equipment, security solutions and managed services.

5. PaeTec uses both an employee sales force and independent sales agents to acquire new customers and to expand the variety of products and services utilized by existing customers.

6. Upon information and belief, in late 2011, PaeTec became a subsidiary of Windstream Corporation, the parent company of Windstream.

7. Saetec was founded in 1995. Saetec is an independent sales agent, which procures customers for telecommunications companies, including PaeTec. Saetec has maintained its own sales force, and also serves as a "master agent," contracting with and coordinating the work of sub-agents to procure additional business for companies like PaeTec.

8. In early 2000, PaeTec was a young company, and it wanted to grow its customer base and revenues aggressively.

9. At that time, Saetec had experience in the telecommunications industry, as well as significant contacts with business customers and institutions that PaeTec wished to attract. Saetec also had relationships with experienced sales agents who could act as sub-agents to procure customers for PaeTec. As a result, Saetec was particularly well situated to help PaeTec expand its customer base.

10. Accordingly, on or about April 29, 2000, Saetec entered into a Sales Agent Agreement with PaeTec (the "Agency Agreement"), by which Saetec agreed to act as a non-exclusive, independent contractor to procure customers for PaeTec's various communications products and services.

11. Under the Agency Agreement, Saetec operates strictly on a commission basis, bearing all of the costs it incurs in connection with its efforts to secure customers for PaeTec.

12. In exchange for its efforts and expenditures on PaeTec's behalf, Saetec is entitled to commissions on sales of products and services to customers Saetec procures ("Saetec Accounts") for PaeTec at agreed-upon rates set forth in Schedule A to the Agency Agreement (the "Scheduled Commissions").

13. In addition, per the Agency Agreement, Saetec is entitled to receive commissions on sales of non-standard products and services at rates separately agreed upon in advance by Saetec and PaeTec, provided that, if they do not agree in advance upon a different rate, Saetec is entitled to commissions on sales of non-standard products and services at rates no less than those set forth in the Agency Agreement (the "Custom Products Commissions").

14. The Agency Agreement also provides that, on top of the Scheduled Commissions and Custom Products Commissions set forth above, Saetec is entitled to an additional commission on all sales to Saetec Accounts (the "Override Commission").

15. The Override Commission initially was set at 2% and subsequently was increased to 5%.

16. Under the Agency Agreement, Saetec is entitled to receive Scheduled Commissions, Custom Products Commissions, and Override Commissions on all sales to Saetec Accounts for as long as they remain customers of PaeTec, regardless of whether an order is placed by Saetec or procured directly by PaeTec by any other means.

17. The parties have amended the Agency Agreement several times since it was executed. Except as modified by those amendments, the terms and conditions of the Agency Agreement have remained unchanged, and Saetec continues to be entitled to receive Scheduled

Commissions, Custom Products Commissions and Override Commissions on all sales to Saetec Accounts during the term of the Agency Agreement, in accordance with its terms.

18. On January 25, 2011, however, PaeTec advised Saetec that, effective April 25, 2011, it was terminating Saetec's right to earn Override Commissions on all accounts and that it would pay Scheduled Commissions pursuant to a new, unilaterally modified schedule. PaeTec neither sought nor received Saetec's consent for this adverse alteration. Since April 25, 2011, PaeTec has stopped paying Saetec its Override Commissions and has paid decreased Commissions pursuant the new, unilaterally modified schedule for all accounts.

19. Under the terms of the Agency Agreement, PaeTec does not have the right to unilaterally discontinue payment of the Override Commissions or to change the Scheduled Commission rates for Saetec Accounts. Specifically, paragraph 17 of the Agency Agreement provides that the Agency Agreement, "including its Schedule(s), can only be amended, modified or supplemented by a separate written document duly executed by authorized representatives of both parties."

20. Moreover, paragraph 6(f) of the Agency Agreement provides that any changes to the Scheduled Commissions "shall not retroactively affect any obligation incurred prior to such change." Thus, PaeTec does not have the right to unilaterally modify the Scheduled Commission rates or discontinue payment of the Override Commissions for existing Saetec Accounts.

21. By letter dated July 26, 2013, Windstream advised Saetec that it was terminating Saetec's Agency Agreement with PaeTec "for convenience," effective September 1, 2013. Windstream further advised that it unilaterally was modifying the terms and conditions of the Agency Agreement, including the commissions to which Saetec is entitled pursuant to the Agency Agreement.

22. The Agency Agreement provides that "it shall continue in full force and effect until terminated ... by either party on thirty (30) days prior written notice to the other[.]" Windstream is not a party to the Agency Agreement and, although it apparently purports to have such authority, has no authority to unilaterally modify the terms of, or to terminate, the Agency Agreement.

23. Under the Agency Agreement, neither Windstream nor PaeTec is permitted to unilaterally modify the terms and conditions of the Agency Agreement, including the commission rates to which Saetec is entitled.

24. Saetec has performed, and continues to perform, its obligations under the Agency Agreement, including the procurement of orders for PaeTec products and services from new and existing Saetec Accounts pursuant to its terms.

25. PaeTec has accepted, and continues to accept, orders from Saetec Accounts for products and services, and has generated, and continues to generate, revenue from sales to those Saetec Accounts.

**FIRST CAUSE OF ACTION
(Declaratory Judgment)**

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25, as if fully set forth herein.

27. An actual and justiciable controversy within the meaning of CPLR 3001 exists between the parties concerning PaeTec's and/or Windstream's right to terminate and/or unilaterally modify the terms and conditions of the Agency Agreement, including by changing Scheduled Commissions and ceasing to pay Override Commissions.

28. As a result of this controversy, Saetec seeks and is entitled to a declaration that:

- a. Saetec has fully performed its obligations under the Agency Agreement;

- b. Defendants' purported unilateral termination and/or modifications of the Agency Agreement, including changes to the Scheduled Commissions and elimination of Override Commissions, are void and without effect; and
- c. The Agency Agreement, as amended by mutual agreement of the parties, continues in full force and effect; or
- d. In the alternative, even if PaeTec and/or Windstream's purported termination and/or modifications of the Agency Agreement are effective as to new accounts, the Agency Agreement, as amended by mutual agreement of the parties, remains in full force and effect as to all Saetec business existing as of the date of such termination and/or modification.

**SECOND CAUSE OF ACTION
(Breach of the Agency Agreement)**

29. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1- 28, as if fully set forth herein.

30. Despite its obligations under the Agency Agreement, PaeTec has failed to establish systems and internal controls to accurately track and pay commissions due and owing under the Agency Agreement.

31. PaeTec has failed, and continues to fail, to pay Saetec all commissions to which it is entitled under the Agency Agreement, as amended, for products and services sold to Saetec Accounts.

32. For example, PaeTec has: (i) paid Saetec commissions on certain Saetec Account revenues at rates lower than those required by the Agency Agreement, (ii) failed to report and pay any commissions at all on certain Saetec Account revenues, (iii) failed to report and pay Saetec commissions on certain wholesale revenues, (iv) improperly deducted certain customer

credits and expenses from the Saetec Account revenues on which commissions are based, (v) failed to report and pay Saetec commissions on additional products and services purchased by certain Saetec Accounts; (vi) on Saetec Accounts, failed to report and pay the Override Commission due under the Agency Agreement at the proper rate, or failed to pay the Override Commission at all; and (vii) failed to report and pay Saetec appropriate commissions on certain CABS, 0+ and calling card sales revenue; and (viii) entered into agreements with Saetec Accounts to charge the customers lower rates and lowered Saetec's commission rates and payout without Saetec's knowledge and consent; all of which constitutes a breach of the Agency Agreement.

33. Saetec began bringing commission deficiencies to PaeTec's attention as early as the fall of 2000. Since that time, PaeTec repeatedly has acknowledged that it did not pay all of the commissions due to Saetec, reassured Saetec that it was investigating the deficiencies, and promised to correct the deficiencies and pay all outstanding amounts due to Saetec.

34. For example, in verbal conversations and emails PaeTec assured Saetec that it was working on validating the unpaid commission amounts and ensuring that the problems were corrected going forward.

35. PaeTec has provided Saetec with a copy of an internal PaeTec memorandum summarizing the Saetec commission issue, and acknowledging that, as of the date of the memorandum, PaeTec owed Saetec at least \$506,900, and "if [PaeTec] dug deeper, it would be + 10%" more. In the same memorandum, PaeTec also acknowledged that it also owed Saetec commissions on additional items, including CABS, calling card and O+ sales.

36. Following further discussions regarding PaeTec's outstanding obligations to Saetec and additional analyses of Saetec's claims by PaeTec—at least some of which it provided

to Saetec—Saetec and PaeTec entered into an agreement which tolled any applicable statute of limitations and afforded PaeTec the opportunity to continue to investigate the deficiencies in its commission payments to Saetec.

37. Following termination of the tolling agreement, in an effort to forestall a lawsuit by Saetec, PaeTec continued to represent that it was investigating Saetec's claims and to promise that it would pay all outstanding amounts due to Saetec. In furtherance of those efforts, PaeTec made several "good faith" payments in partial satisfaction of its past-due obligations. These "good faith" payments were applied towards the oldest of the monies owed to Saetec.

38. PaeTec executives stated to Saetec that the commission system was unable to accurately track and properly pay commissions and opined that the system likely never would be corrected. In order to mitigate and avoid the ongoing accrual of underpayments in base commissions PaeTec and Saetec agreed that the Schedule A of the Commission Addendum of the Sales Agent Agreement would be set to a flat base-rate commission of 25%.

39. Subsequent to this Agreement, PaeTec did not convert the commission system, explaining to Saetec that it would prevent PaeTec from determining and rectifying prior underpayments, which would have to be calculated prior to the system adjustment. PaeTec again assured Saetec that it would continue to address and remedy all underpayments.

40. Saetec reasonably relied upon PaeTec's repeated assurances, both before and after the tolling agreement, that unpaid commissions would be identified and paid. However, despite PaeTec's promises, it has still not paid all commissions due to Saetec.

41. PaeTec has breached the Agency Agreement and Saetec has been damaged as a result of that breach in an unknown amount believed to be not less than \$2,400,000, with the exact amount to be determined at trial.

THIRD CAUSE OF ACTION
(Breach of the Non-Circumvent Agreement)

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 – 41, as if fully set forth herein.

43. At the same time Saetec and PaeTec entered into the Agency Agreement, both parties entered into a Non-Circumvent Agreement, also dated April 29, 2000.

44. The Non-Circumvent Agreement is intended to preserve and protect Saetec's relationships with its sub-agents.

45. In the Non-Circumvent Agreement, PaeTec agreed to refrain from dealing directly with identified Saetec sub-agents.

46. Moreover, in the event that PaeTec entered into a direct relationship with an identified Saetec sub-agent, PaeTec agreed to pay Saetec full commissions for any sales procured by that sub-agent, in accordance with the terms of the Agency Agreement.

47. The Non-Circumvent Agreement is still in force and effect today, and continues to be binding on PaeTec.

48. Saetec has performed, and continues to perform, its obligations under the Non-Circumvent Agreement.

49. Upon information and belief, PaeTec has interfered and dealt directly with one or more of Saetec's sub-agents in breach of the Non-Circumvent Agreement.

50. Upon information and belief, as a result of PaeTec's interference, one or more of Saetec's sub-agents has procured accounts for PaeTec directly, instead of through Saetec as contemplated by the Non-Circumvent Agreement (the "Sub-Agent Accounts").

51. Upon information and belief, as a result of PaeTec's interference, one or more of Saetec's sub-agents has been recommended by PaeTec to contract with other Paetec relationships and cease submitting business through Saetec.

52. Upon information and belief, PaeTec has sold products and services to those Sub-Agent Accounts.

53. Upon information and belief, PaeTec has failed to disclose to Saetec the monthly billings to those Sub-Agent accounts and to pay Saetec commissions on sales to the Sub-Agent Accounts, in breach of the Non-Circumvent Agreement.

54. Upon information and belief, Saetec has been damaged as a result of PaeTec's breach of the Non-Circumvent Agreement in an unknown amount believed to be not less than \$250,000, with the exact amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Breach of the SPIF and Custom SPIF Agreements)

55. Saetec repeats and realleges each and every allegation contained in paragraphs 1 -- 54, as if fully set forth herein.

56. PaeTec has offered, and continues to offer, sales promotion incentive funds (i.e., payments) for certain products and services ("SPIFs") to its independent sales agents, including Saetec.

57. Such SPIFs are intended to reward independent sales agents when their accounts purchase certain high-margin products and services identified by PaeTec. SPIFs are offered and earned in addition to any other commissions PaeTec has agreed to pay its independent sales agents.

58. Saetec Accounts have ordered, and continue to order, numerous products and services that meet all of the requirements necessary for Saetec to earn the SPIFs offered by PaeTec, which orders PaeTec has accepted and continues to accept.

59. A binding contract is formed between PaeTec and Saetec each time a Saetec Account purchases a product or service in accordance with the SPIF terms offered by PaeTec (each, a "SPIF Agreement").

60. PaeTec has paid some, but not all, of the SPIFs Saetec has earned, in breach of one or more of the SPIF Agreements.

61. PaeTec also has, from time to time, offered to pay to Saetec sales promotion incentive funds for certain products and services, in addition to the SPIFs generally offered to its independent sales agents ("Custom SPIFs").

62. Saetec Accounts have ordered, and continue to order, numerous products and services that meet all of the requirements necessary for Saetec to earn the Custom SPIFs offered by PaeTec, which orders PaeTec has accepted and continues to accept.

63. A binding contract is formed between PaeTec and Saetec each time a Saetec Account purchases a product or service for which PaeTec offered to pay a Custom SPIF (each, a "Custom SPIF Agreement").

64. PaeTec has paid some, but not all, of the Custom SPIFs earned by Saetec, in breach of one or more of the Custom SPIF Agreements.

65. At the same time that it brought other commission deficiencies to PaeTec's attention, Saetec also raised PaeTec's failure to pay all of the SPIFs and Custom SPIFs that Saetec had earned.

66. During the parties' discussions, PaeTec repeatedly promised to investigate and pay any unpaid SPIFs and Custom SPIFs, once it had investigated and resolved the other issues Saetec had raised regarding unpaid commissions.

67. Saetec reasonably relied upon PaeTec's repeated assurances that unpaid SPIFs and Custom SPIFs would be identified and paid once the other outstanding commission issues had been resolved.

68. Despite PaeTec's promises, it has still not paid all of the SPIFs and Custom SPIFs earned by Saetec.

69. As a result of defendant's breach of one or more SPIF Agreements and one or more of the Custom SPIF Agreements, plaintiff has been damaged in an unknown amount believed to be not less than \$150,000, with the exact amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against defendant:

- (a) For a declaration that
 - i. Saetec has fully performed its obligations under the Agency Agreement;
 - ii. Defendants' purported unilateral termination and/or modifications of the Agency Agreement, including changes to the Scheduled Commissions and elimination of Override Commissions, are void and without effect; and
 - iii. The Agency Agreement, as amended by mutual agreement of the parties, continues in full force and effect; or
 - iv. In the alternative, even if PaeTec and/or Windstream's purported termination and/or modifications of the Agency Agreement are effective as to new accounts, the Agency Agreement, as amended by mutual agreement of the

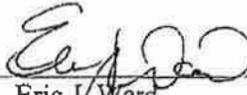
parties, remains in full force and effect as to all Saetec Accounts existing as of
the date of such termination and/or modification.

- (b) For compensatory damages of not less than \$2,400,000 on the second cause of
action;
- (c) For compensatory damages of not less than \$250,000 on the third cause of action;
- (d) For compensatory damages of not less than \$150,000 on the fourth cause of
action;
- (e) For interest from the dates commissions should have been paid on the Second,
third, and fourth causes of action;
- (f) For injunctive relief directing defendant to accurately track and timely pay all
future commissions owed to plaintiff;
- (g) For costs of this action; and
- (h) For such other and further relief as the Court deems just and proper.

October 2, 2013

WARD GREENBERG HELLER & REIDY LLP

By


Eric J. Ward
David M. Knapp

300 State Street
Rochester, New York 14614
585-454-0700

Attorneys for Plaintiff Saetec, Inc.

**SAETEC, INC.'S: (A) RESPONSE TO DEBTORS' NINTH OMNIBUS
CLAIM OBJECTION; AND
(B) CROSS MOTION FOR PERMISSIVE ABSTENTION**

EXHIBIT B

DECLARATION OF ERIC J. WARD, ESQ.

Devin Lawton Palmer, Esq.
BOYLAN CODE LLP
145 Culver Road, Suite 100
Rochester, New York 14620
Telephone: (585) 232-5300
Facsimile: (585) 238-9012

Eric J. Ward, Esq.
**WARD GREENBERG
HELLER & REIDY LLP**
1800 Bausch & Lomb Place
Rochester, New York 14604
Telephone: (585) 454-0714
Facsimile: (585) 231-1912

Attorneys for Saetec, Inc.

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

In re:)
)
)
WINDSTREAM HOLDING, INC., *et al.*,)
)
)
)
)
Debtors.)
_____)

Case No. 19-22312 (RDD)
Chapter 11

**ATTORNEY DECLARATION OF
ERIC J. WARD**

ERIC J. WARD, hereby declares, pursuant to 28 U.S.C. § 1746(2), under penalty of perjury that the following is true and correct:

1. I am a partner of Ward Greenberg Heller & Reidy LLP, attorneys for Saetec, Inc. (“Saetec”) and am personally familiar with the facts and circumstances discussed herein. I submit this Declaration in response to *Debtors’ Ninth Omnibus Objection to Equity Interest Claims, Insufficient Documentation Claims, Late-Filed Claims, No Liability Claims, Substantively Duplicate Claims, Claims to be Modified, and Wrong Debtor Claim* [Docket No. 2528] (the “Claim Objection”), and in support of Saetec’s Cross-Motion for Permissive Abstention (the “Response and Cross-Motion”),

2. I am trial counsel for Saetec in New York State court litigation entitled *Saetec, Inc. v. PaeTec Communications and Windstream Communications, Inc.*, Index No. 13-11176, pending in the Supreme Court, Monroe County Commercial Division (the “State Court Action”).

3. The State Court Action (and the basis for the filing of Saetec's Proof of Claim in this bankruptcy proceeding) arises from a written contract dated April 29, 2000 between Saetec and PaeTec Communications, Inc., one of the Debtors here (the "Agreement"). Per the Agreement, Saetec agreed to procure customers for PaeTec's telecommunications products and services as an independent contractor within a specified territory at specified commission rates. A copy of the Agreement is attached as Exhibit 1.

4. The Agreement contains an evergreen provision, stating in pertinent part that "Agent [Saetec] shall be entitled to receive commissions for products and services provided by PaeTec to customers procured hereunder for as long as such customers remain customers of PaeTec." Agreement, ¶ 6(b). The Agreement also allows for Saetec to "receive commissions on all subsequent sales of PaeTec services to customers procured by Agent for PaeTec, regardless of whether the order is placed by Agent or the customer." Agreement, ¶ 6(c). And although the Agreement permits PaeTec to change commission rates unilaterally, that right is going-forward only; paragraph 6(f) provides that changes to commissions "shall not retroactively affect any obligation incurred prior to such change." Thus, PaeTec was not permitted to change the commission rates for then-existing Saetec accounts.

5. Saetec performed its obligations under the Agreement, including the generation of a substantial number of orders for PaeTec products and services from new customers. Over time, Saetec also substantially increased the products and services requested by its accounts, and its customers also substantially increased their purchasing directly from PaeTec. In fact, for many years, Saetec was one of PaeTec's largest and most productive outside sales agents. PaeTec accepted orders from Saetec accounts for products and services, and generated (and continues to generate) significant revenue from sales to those Saetec accounts.

6. Almost from the beginning of the relationship, however, PaeTec began to significantly underpay Saetec for the work it performed under the Agreement. Among other things, Paetec improperly paid Saetec commissions on certain accounts at lower commissions than required by the Agreement, it improperly failed to report and pay commissions at all on certain Saetec-procured accounts, it improperly failed to pay Saetec commissions on additional products and services purchased by Saetec-procured customers, and it improperly lowered Saetec's commission rates and payouts without Saetec's knowledge, let alone without obtaining Saetec's contractually-required consent. And after filing for bankruptcy, PaeTec's successor, Windstream, notified Saetec that it would no longer pay earned commissions, even though it knew that such commissions were due and owing to Saetec. *See* April 17, 2019 letter from Windstream, attached hereto as Exhibit 2.

7. By virtue of PaeTec's considerable underpayments, Saetec commenced the State Court Action on October 2, 2013 by the filing of a Summons and Complaint in New York Supreme Court, Monroe County in accordance with a contractual jurisdiction and venue clause designating that court. (Agreement, ¶ 20.) Given the nature of the dispute, the case was assigned to the Commercial Division of the court. A copy of the complaint in the State Court Action is attached to Saetec's Proofs of Claim filed in this case. *See* Exhibit B to Saetec's Response.

8. The parties then began to engage in extensive discovery and motion practice. Between 2014 and 2018, Saetec issued four separate demands for documents as well as interrogatories. The Debtors issued three sets of document demands and interrogatories. Additionally, in January 2018, Saetec moved to compel Windstream to provide additional documents in response to its first set of document demands. The motion was granted on February 2, 2018.

9. Since the commencement of discovery, Windstream has made eighteen separate document productions. Collectively, the parties have produced tens of thousands of pages of documents. Some of these documents include Excel spreadsheets that contain hundreds of thousands of rows of commission data.

10. The parties also have taken the deposition testimony of ten fact witnesses (including some witnesses several times). They have exchanged reports of expert accountants retained in the case, and have taken the deposition testimony of each of these experts. Several of the fact witnesses and both parties' experts reside in the Monroe County, New York vicinity.

11. By early 2019, the case was nearing completion of discovery and the filing of a Note of Issue, signifying readiness for trial. In anticipation of completing discovery, each party filed motions – Windstream to amend its answer to assert an additional affirmative defense, and Saetec to compel the production of specific documents. Just days after the filing of those motions, the Debtors filed for bankruptcy, thus staying the State Court Action. Both motions therefore are pending.

12. Given the extensive course of the State Court Action and the near-completion of discovery and readiness for trial, and for the reasons set forth in Saetec's Response and Cross-Motion, the dispute between Saetec and PaeTec should be resolved by trial in State Court.

Dated: October 14, 2020

/s/ Eric J. Ward
Eric J. Ward

**EXHIBIT 1
TO
EXHIBIT B
(DECLARATION OF ERIC J. WARD, ESQ.)**



Communications, Inc.

SALES AGENT AGREEMENT

This sets forth the Agreement made as of this 29 day of April, 2000, by and between PaeTec Communications, Inc. ("PaeTec"), a Delaware corporation with offices at 290 Woodcliff Drive, Fairport, New York 14450 and Saetec Inc. ("Agent"), a New Hampshire corporation with offices at River Mill Commercial Center, Suite 460, 85 Mechanic Street, Lebanon, NY 03766-1500. Agent's tax identification number is 02-0477487.

1. **Appointment and Acceptance.** Subject to the terms and conditions of this Agreement, PaeTec authorizes Agent to serve as a non-exclusive independent contractor to procure customers for PaeTec's various telecommunications products and services as described in the attached Schedule A in the territory identified in the attached Schedule B (the "Territory"). Agent accepts such appointment and represents to PaeTec that it has all licenses, consents, approvals, authorizations, qualifications, and/or registrations necessary to lawfully procure customers for PaeTec in the Territory pursuant to the terms of this Agreement, and that it is not prohibited in any way from entering into or performing this Agreement by any other agreement, commitment, law, or regulation. Agent agrees to use its best efforts to solicit and procure order on behalf of PaeTec, and expressly acknowledges that it is granted no right, privilege, or authority to offer for sale any of PaeTec's products or services outside of the Territory.

2. **Term and Termination.**

(a) This Agreement shall be effective for a term of two (2) years, commencing on the date set forth at the beginning. Thereafter, it shall continue in full force and effect until terminated (i) by either party on thirty (30) days prior written notice to the other or (ii) as provided below.

(b) If either party commits a material and substantial breach of this Agreement, the other party may give written notice of such breach. If the breach is not cured within ten (10) days of receipt of the notice, the non-breaching party may immediately terminate this Agreement without liability for such termination.

(c) PaeTec shall have the right to terminate this Agreement immediately upon written notice to Agent in the event of (i) any material and substantial misrepresentation made by Agent to any customer or prospective customer relating to PaeTec's products or services; (ii) any fraudulent activity on the part of Agent; or (iii) any material and substantial violation of Section 5 of this Agreement by Agent.

(d) Upon any termination of this Agreement, Agent shall immediately return to PaeTec the originals and all copies of any information, documents, and other materials provided to it by PaeTec.

3. **Acceptance of Orders.** All orders procured by Agent for PaeTec products and services shall be subject to the written acceptance of PaeTec in its sole discretion before such orders shall become final and binding. Agent shall have no signatory authority to bind PaeTec to any agreement, and PaeTec reserves the right to reject any order submitted by Agent. Agent shall advise all customers and prospective customers of the restrictions described in this paragraph. All services shall be provided by PaeTec solely pursuant to written agreements prepared and supplied by PaeTec and executed by the customer and PaeTec. All billing shall be rendered directly to the customer by PaeTec.

4. **Pricing/Terms of Service.** [The prices and terms and conditions of sale of PaeTec's products and services shall be set by PaeTec.] PaeTec expressly reserves the right to change the prices, terms, and conditions of sale, and/or to expand, reduce, or modify the products and services it offers, at any time. PaeTec shall use reasonable efforts to notify Agent in writing, in advance of any such change. Agent agrees that it shall not impose any direct or indirect charge on customers relating to PaeTec's products and services without PaeTec's prior written consent. Agent further agrees that it will make no warranties or representations about PaeTec's products and services other than those specifically authorized by PaeTec.

5. **Customers.** All customers accepted by PaeTec under this Agreement shall be and shall remain customers of PaeTec with respect to PaeTec services. Agent shall not terminate, attempt to terminate, or otherwise interfere in any way with PaeTec's relationship with any such customer without the prior written consent of PaeTec. If Agent violates this prohibition materially and substantially during the term of this Agreement, PaeTec may terminate this Agreement pursuant to Section 2(c) above. If Agent violates this prohibition materially and substantially after this Agreement has been terminated, any obligation of PaeTec to pay residual commissions to Agent shall immediately and irrevocably terminate. Notwithstanding the foregoing, if a customer brought to PaeTec by Agent requests that Agent move its service to another carrier due to unresolved issues, Agent agrees to notify PaeTec of such issues and, to the extent that it is reasonably possible, assist PaeTec in resolving such issues to the customer's satisfaction. In the event that PaeTec is unable after a reasonable period of time to resolve the customer's issues, and provided the customer has no contractual commitment to remain with PaeTec, Agent may move that customer to another carrier without violating this Agreement.

6. **Commissions.**

(a) Agent shall be paid commissions under the terms and conditions set forth below and on the attached Schedule A within thirty (30) days following the month in which customers procured hereunder are invoiced by PaeTec. Commission payments shall be based on "Net Billed Revenue" (as defined below) and may be accrued until such time as the total payment exceeds \$100.00. In consideration of all the commitments Agent is making to PaeTec, Agent shall be entitled to an additional 2% commission on all sales.

(b) Except in cases where this Agreement is terminated by PaeTec in accordance with Section 2(b) or 2(c), Agent shall be entitled to receive commissions for products and services provided by PaeTec to customers procured hereunder for as long as such customers remain customers of PaeTec. In the event of termination pursuant to Section 2(b) or 2(c), PaeTec shall cease to pay commissions to Agent as of the date of termination.

(c) Agent's commissions shall initially be based on PaeTec revenue for customer usage for the applicable month, net of customer deductions, credits, applicable taxes or surcharges, other governmental assessments, and any one-time or recurring fees ("Net Billed Revenue"). A commission report will be provided to Agent with each commission payment and will (i) reflect those customers procured by Agent for PaeTec during the term of this Agreement and (ii) reflect PaeTec revenue for such customer usage for the applicable month. Agent shall receive commissions on all subsequent sales of PaeTec services to customers procured by Agent for PaeTec, regardless of whether the order is placed by Agent or the customer.

(d) Agent shall not be entitled to commissions on customer invoices which remain unpaid for greater than ninety (90) days from the date of the invoice. Accordingly, PaeTec shall have the right to deduct or offset from Agent's commission payments on an ongoing basis, and to retain such deductions or offsets for PaeTec's own account, any commission payments previously made to Agent relating to invoices which are not paid by the customer within this stated ninety (90) day period. In the event a customer subsequently pays the invoice, Agent will be entitled to a commission on

(e) The commission percentages set forth in Schedule A are valid only on standard PaeTec products and services. Commissions on non-standard products and services will be determined on a case-by-case basis. Commissions for non-standard products (if lower than standard commissions) will be disclosed and agreed upon prior to selling product in question.

(f) The commission percentage set forth in Schedule A are subject to change at PaeTec's discretion. Any changes shall not retroactively affect any obligation incurred prior to the date of such change. PaeTec shall notify Agent at least ninety (90) days prior to any such change.

7. **Withholding.** Agent shall provide PaeTec with a completed IRS form W-9 indicative of Agent's tax status. Failure to do so will require PaeTec to withhold twenty percent (20%) of all commissions exceeding \$600.00 in any calendar year.

8. **Independent Contractors.** The relationship created by this Agreement shall be that of independent contractor and not of employer and employee or partners. As independent contractors, the parties shall not have, or hold themselves out as having, the power or authority to bind or create liability for the other by their intentional or negligent acts. Agent shall be solely responsible for and shall pay all its expenses incurred in connection with the performance of its duties under this Agreement and shall not be entitled to receive any fringe benefits or other benefits of any kind provided by PaeTec to its employees. Agent shall be solely responsible for the payment of all taxes (including estimated taxes) payable with respect to commissions earned by it pursuant to this Agreement.

9. **Employment of Additional Personnel.** Agent may hire salesmen or sub-agents to assist Agent in its performance of this Agreement. All such personnel shall be employees of Agent, and their compensation, payroll taxes, withholding, and direction and control shall be the sole responsibility of Agent. In the capacity as employer, Agent shall act individually and not as Agent for PaeTec.

10. **Confidentiality.** Agent shall keep confidential all information disclosed by PaeTec to Agent for purposes of this Agreement. All such information shall remain the sole and exclusive property of PaeTec, and it may not be directly or indirectly disseminated to any third party without the prior written consent of PaeTec. PaeTec shall keep confidential any information disclosed by Agent relating to Agent's business activities.

11. **Intellectual Property/Approval of Advertising.** Agent agrees that PaeTec is the exclusive owner of all trademarks and tradenames relating to the products and services provided by PaeTec. Agent may use such trademarks and tradenames only for the purpose of advertising and promoting PaeTec's products and services, and Agent shall acquire no proprietary or other rights with respect to such tradenames, trademarks or other intellectual property of PaeTec. All advertising by Agent regarding PaeTec's products and services is subject to PaeTec's prior written approval.

12. **Indemnification and Limitation of Liability.**

(a) Each party shall indemnify, defend, and hold harmless the other from and against any and all claims, losses, damages, costs, and expenses (including reasonable attorney's fees) arising out of or alleged to have been caused by their respective negligent, willful, or unauthorized acts, omissions, or misrepresentations.

(b) In no event shall either party be liable to the other or to any customer procured by Agent for any indirect, special, incidental, or consequential damages for any reason whatsoever, nor shall PaeTec be liable for damages in excess of those which could be awarded to a customer of PaeTec under PaeTec's tariffs.

(c) PaeTec's entire liability for any failure of its products or services shall be limited to that set forth in its tariffs as filed from time to time with the appropriate state or federal regulatory agency.

13. **Non-Solicitation.**

(a) With respect to the products and services described on Schedule A, Agent agrees that, for a period of time equal to the greater of (i) as long as Agent is entitled to receive commissions pursuant to this Agreement or (ii) eighteen (18) months following any termination of this Agreement, Agent shall not and Agent shall cause its employees and sub-agents not to solicit in competition with PaeTec any person, business or other entity which is a PaeTec customer or which has been a customer of PaeTec during the one year period immediately preceding termination of this Agreement or induce or attempt to persuade any PaeTec employee to terminate his or her employment relationship to enter into other employment.

(b) Except as expressly permitted by this Agreement, Agent shall not, during the term of this Agreement or at any time following termination of this Agreement, make use of any list of PaeTec customers or otherwise divulge any trade secrets or other confidential information of PaeTec.

(c) The following provision shall apply to the interpretation and enforcement of subparagraphs (a) and (b) above: (i) since other remedies cannot fully compensate PaeTec for a violation, PaeTec shall be entitled, in addition to any other remedies or relief available to it, to injunctive relief to prevent a violation or halt a continuing violation of the covenants set forth in subparagraphs (a) and (b) above; (ii) if, in any action before a court or agency empowered to enforce this Agreement, any covenant is found to be unenforceable, such covenant shall be deemed modified to the extent necessary to make it enforceable; and (iii) if PaeTec must commence litigation to enforce its rights under this Section 13, it may also recover its reasonable attorney's fees from Agent in connection with the litigation.

(d) In the event of a violation by Agent of any of the prohibitions set forth in subparagraphs (a) and (b) above, PaeTec may immediately and irrevocably terminate the payment of any and all commissions that may be payable to Agent hereunder, regardless of whether PaeTec seeks or obtains injunctive relief pursuant to subparagraph 13(c).

14. **Insurance.**

Throughout the term of this Agreement, Agent shall maintain the following minimum amounts of insurance with an insurance carrier having an A.M. Best rating of "A" or better;

- (a) workers' compensation, with employer's liability of \$500,000 per accident, \$500,000 per employee, and \$500,000 aggregate;
- (b) commercial general liability with \$1,000,000 per occurrence, and \$1,000,000 general aggregate; and
- (c) Automobile liability for all owned, hired, and non-owned automobiles with \$1,000,000 combined single limit.

Schedule A

	12 Mos.		24 Mos.		36 Mos.	
	OUT	IN	OUT	IN	OUT	IN
LOCAL DIALTONE (see attached rate schedules)						
Low Rates	12%	12%	14%	14%	16%	16%
Medium Rates	14%	14%	18%	16%	18%	18%
High Rates	16%	16%	18%	18%	20%	20%
LMS (see attached rate schedules)						
Low Rates	12%	12%	14%	14%	16%	16%
Medium Rates	14%	14%	18%	16%	18%	18%
High Rates	16%	16%	18%	18%	20%	20%
INTRASTATE/INTRALATA (see atch rate scheds)						
All Rates	15%	15%	15%	16%	15%	15%
INTERSTATE - OUT & IN						
Dedicated Local w/Long Distance (35,000 minutes)						
Out	In					
0.050	0.056	25%	26%	28%	26%	27%
0.045	0.051	20%	20%	21%	21%	22%
0.039	0.045	15%	15%	16%	16%	17%
Switched Local w/Long Distance (under 35,000 minutes)						
Out	In					
0.069	0.075	25%	25%	26%	26%	27%
0.059	0.065	20%	20%	21%	21%	22%
0.049	0.055	15%	15%	16%	16%	17%
Dedicated Long Distance Only						
Out	In					
0.051	0.057	25%	26%	26%	26%	27%
0.045	0.051	20%	20%	21%	21%	22%
0.039	0.045	15%	16%	16%	16%	17%
Switched Long Distance Only						
Out	In					
0.079	0.085	30%	30%	31%	31%	32%
0.075	0.079	25%	25%	26%	26%	27%
0.069	0.075	20%	20%	21%	21%	22%
0.055	0.069	15%	15%	16%	16%	17%
INTERNATIONAL						
On-Net						
Destiny		25%	n/a	26%	n/a	25%
Horizon		20%	n/a	20%	n/a	20%
Voyager		16%	n/a	15%	n/a	15%
West Direct		12%	n/a	12%	n/a	12%
Off-Net						
Destiny		25%	n/a	26%	n/a	25%
Horizon		20%	n/a	20%	n/a	20%
Voyager		15%	n/a	15%	n/a	15%
CANADA						
Switched Long Distance						
Out	In					
0.089	0.239	15%	16%	15%	15%	15%
Dedicated Long Distance						
Out	In					
0.069	0.179	15%	15%	16%	16%	15%
TRAVEL CARD 0.17						
		16%		15%		15%
INTERNET/DSL PORT CHARGE						
		15%		15%		15%
POINT TO POINT CIRCUITS						
		15%		15%		15%
800 ORIGINATION						
		5%		5%		5%

Agent Representative's Initials Date ET 4/16/20
 PacTec President's Initials Date 1/3

LONG DISTANCE with LOCAL

Switched (under 35,000 minutes of total long distance usage)

1+ Intrastate			1+ IntraLATA			800 Intrastate		
State	Rate	Comm.	State	Rate	Comm.	State	Rate	Comm.
California	0.040	15%	California	0.035	15%	California	0.040	15%
Connect	0.059	15%	Connect	0.059	15%	Connect	0.059	15%
Florida	0.059	15%	Florida	0.055	15%	Florida	0.059	15%
Mass	0.059	15%	Mass	0.055	15%	Mass	0.059	15%
Maryland	0.059	15%	Maryland	0.055	15%	Maryland	0.059	15%
New Hamp	0.049	15%	New Hamp	0.049	15%	New Hamp	0.059	15%
N.Jersey	0.059	15%	N.Jersey	0.055	15%	N.Jersey	0.059	15%
NY - Ups	0.059	15%	NY - Ups	0.055	15%	NY - Ups	0.059	15%
NY - Roch	0.059	15%	NY - Roch	0.055	15%	NY - Roch	0.059	15%
NY - NYC	0.059	15%	NY - NYC	0.055	15%	NY - NYC	0.059	15%
Pennsylv	0.059	15%	Pennsylv	0.055	15%	Pennsylv	0.059	15%
Rhode Is	0.069	15%	Rhode Is	0.069	15%	Rhode Is	0.069	15%
Virginia	0.059	15%	Virginia	0.055	15%	Virginia	0.059	15%

Dedicated (35,000 minutes of total long distance usage)

1+ Intrastate			1+ IntraLATA			800 Intrastate		
State	Rate	Comm.	State	Rate	Comm.	State	Rate	Comm.
California	0.035	15%	California	0.032	15%	California	0.035	15%
Connect	0.049	15%	Connect	0.049	15%	Connect	0.049	15%
Florida	0.049	15%	Florida	0.045	15%	Florida	0.049	15%
Mass	0.049	15%	Mass	0.045	15%	Mass	0.049	15%
Maryland	0.049	15%	Maryland	0.045	15%	Maryland	0.049	15%
New Hamp	0.045	15%	New Hamp	0.045	15%	New Hamp	0.049	15%
N.Jersey	0.049	15%	N.Jersey	0.045	15%	N.Jersey	0.049	15%
NY - Ups	0.049	15%	NY - Ups	0.045	15%	NY - Ups	0.049	15%
NY - Roch	0.049	15%	NY - Roch	0.045	15%	NY - Roch	0.049	15%
NY - NYC	0.049	15%	NY - NYC	0.045	15%	NY - NYC	0.049	15%
Pennsylv	0.049	15%	Pennsylv	0.045	15%	Pennsylv	0.049	15%
Rhode Is	0.029	15%	Rhode Is	0.029	15%	Rhode Is	0.049	15%
Virginia	0.049	15%	Virginia	0.045	15%	Virginia	0.049	15%

Agent Representative's Initials Date J 4/25/00
 PaeTec President's Initials Date PS

Long Distance Only Rate Schedule

Switched 1+ Intrastate			Switched 1+ IntraLATA			Switched 800 Intrastate		
State	Rate	Comm.	State	Rate	Comm.	State	Rate	Comm.
Alabama	0.089	15%	Alabama	0.089	15%	Alabama	0.089	15%
Arkansas	0.099	15%	Arkansas	0.099	15%	Arkansas	0.099	15%
Arizona	0.199	15%	Arizona	0.199	15%	Arizona	0.199	15%
California	0.049	15%	California	0.045	15%	California	0.049	15%
Colorado	0.189	15%	Colorado	0.189	15%	Colorado	0.189	15%
Connect	0.069	15%	Connect	0.069	15%	Connect	0.069	15%
Delaware	0.069	15%	Delaware	0.069	15%	Delaware	0.069	15%
Florida	0.069	15%	Florida	0.069	15%	Florida	0.069	15%
Georgia	0.069	15%	Georgia	0.069	15%	Georgia	0.069	15%
Iowa	0.159	15%	Iowa	0.159	15%	Iowa	0.159	15%
Idaho	0.169	15%	Idaho	0.169	15%	Idaho	0.169	15%
Illinois	0.059	15%	Illinois	0.059	15%	Illinois	0.059	15%
Indiana	0.079	15%	Indiana	0.059	15%	Indiana	0.089	15%
Kansas	0.175	15%	Kansas	0.175	15%	Kansas	0.175	15%
Kentucky	0.079	15%	Kentucky	0.079	15%	Kentucky	0.079	15%
Louisian	0.079	15%	Louisian	0.079	15%	Louisian	0.079	15%
Mass	0.059	15%	Mass	0.059	15%	Mass	0.059	15%
Maryland	0.069	15%	Maryland	0.069	15%	Maryland	0.069	15%
Maine	0.149	15%	Maine	0.149	15%	Maine	0.149	15%
Michigan	0.059	15%	Michigan	0.059	15%	Michigan	0.069	15%
Minnesota	0.189	15%	Minnesota	0.189	15%	Minnesota	0.189	15%
Missouri	0.175	15%	Missouri	0.175	15%	Missouri	0.175	15%
Mississip	0.115	15%	Mississip	0.115	15%	Mississip	0.115	15%
Montana	0.149	15%	Montana	0.149	15%	Montana	0.149	15%
N.Carolina	0.159	15%	N.Carolina	0.159	15%	N.Carolina	0.159	15%
N.Dakota	0.299	15%	N.Dakota	0.299	15%	N.Dakota	0.299	15%
Nebraska	0.269	15%	Nebraska	0.269	15%	Nebraska	0.269	15%
N.Hampsh	0.069	15%	N.Hampsh	0.069	15%	N.Hampsh	0.069	15%
N.Jersey	0.069	15%	N.Jersey	0.059	15%	N.Jersey	0.069	15%
N.Mexico	0.279	15%	N.Mexico	0.279	15%	N.Mexico	0.279	15%
Nevada	0.129	15%	Nevada	0.129	15%	Nevada	0.129	15%
NY - NYC	0.079	15%	NY - NYC	0.079	15%	NY - NYC	0.079	15%
NY - Roch	0.079	15%	NY - Roch	0.065	15%	NY - Roch	0.079	15%
NY - Ups	0.079	15%	NY - Ups	0.069	15%	NY - Upsta	0.079	15%
Ohio	0.059	15%	Ohio	0.059	15%	Ohio	0.069	15%
Oklahoma	0.099	15%	Oklahoma	0.099	15%	Oklahoma	0.099	15%
Oregon	0.179	15%	Oregon	0.179	15%	Oregon	0.179	15%
Pennsylv	0.069	15%	Pennsylv	0.059	15%	Pennsylv	0.069	15%
Rhode Is	0.129	15%	Rhode Is	0.129	15%	Rhode Is	0.129	15%
S.Carolina	0.149	15%	S.Carolina	0.149	15%	S.Carolina	0.149	15%
S.Dakota	0.189	15%	S.Dakota	0.189	15%	S.Dakota	0.189	15%
Tennessee	0.229	15%	Tennessee	0.229	15%	Tennessee	0.229	15%
Texas	0.119	15%	Texas	0.119	15%	Texas	0.119	15%
Utah	0.179	15%	Utah	0.179	15%	Utah	0.179	15%
Virginia	0.094	15%	Virginia	0.094	15%	Virginia	0.094	15%
Vermont	0.099	15%	Vermont	0.099	15%	Vermont	0.099	15%
Washington	0.139	15%	Washington	0.139	15%	Washington	0.139	15%
Wisconsin	0.059	15%	Wisconsin	0.059	15%	Wisconsin	0.069	15%
W.Virginia	0.149	15%	W.Virginia	0.149	15%	W.Virginia	0.149	15%
Wyoming	0.219	15%	Wyoming	0.219	15%	Wyoming	0.219	15%

Agent Representative's Initials Date J 4/29/20
 PaeTec President's Initials Date J

Schedule A

Long Distance Only Rate Schedule

Dedicated 1+ Intrastate			Dedicated 1+ IntraLATA			Dedicated 800 Intrastate		
State	Rate	Comm.	State	Rate	Comm.	State	Rate	Comm.
Alabama	0.049	15%	Alabama	0.049	15%	Alabama	0.049	15%
Arkansas	0.069	15%	Arkansas	0.069	15%	Arkansas	0.069	15%
Arizona	0.139	15%	Arizona	0.139	15%	Arizona	0.139	15%
California	0.039	15%	California	0.035	15%	California	0.039	15%
Colorado	0.115	15%	Colorado	0.115	15%	Colorado	0.115	15%
Connect	0.049	15%	Connect	0.049	15%	Connect	0.049	15%
Delaware	0.049	15%	Delaware	0.049	15%	Delaware	0.049	15%
Florida	0.049	15%	Florida	0.045	15%	Florida	0.049	15%
Georgia	0.049	15%	Georgia	0.049	15%	Georgia	0.049	15%
Iowa	0.099	15%	Iowa	0.099	15%	Iowa	0.099	15%
Idaho	0.119	15%	Idaho	0.119	15%	Idaho	0.119	15%
Illinois	0.039	15%	Illinois	0.039	15%	Illinois	0.045	15%
Indiana	0.059	15%	Indiana	0.059	15%	Indiana	0.065	15%
Kansas	0.109	15%	Kansas	0.109	15%	Kansas	0.109	15%
Kentucky	0.049	15%	Kentucky	0.049	15%	Kentucky	0.049	15%
Louisian	0.079	15%	Louisian	0.079	15%	Louisian	0.079	15%
Mass	0.049	15%	Mass	0.045	15%	Mass	0.049	15%
Maryland	0.049	15%	Maryland	0.045	15%	Maryland	0.049	15%
Maine	0.079	15%	Maine	0.079	15%	Maine	0.189	15%
Michigan	0.039	15%	Michigan	0.039	15%	Michigan	0.045	15%
Minnesota	0.129	15%	Minnesota	0.129	15%	Minnesota	0.129	15%
Missouri	0.119	15%	Missouri	0.119	15%	Missouri	0.119	15%
Mississip	0.069	15%	Mississip	0.069	15%	Mississip	0.069	15%
Montana	0.079	15%	Montana	0.079	15%	Montana	0.079	15%
N.Carolina	0.119	15%	N.Carolina	0.119	15%	N.Carolina	0.119	15%
N.Dakota	0.159	15%	N.Dakota	0.159	15%	N.Dakota	0.159	15%
Nebraska	0.149	15%	Nebraska	0.149	15%	Nebraska	0.149	15%
New Hamp	0.049	15%	New Hamp	0.049	15%	New Hamp	0.049	15%
N.Jersey	0.049	15%	N.Jersey	0.045	15%	N.Jersey	0.049	15%
N.Mexico	0.149	15%	N.Mexico	0.149	15%	N.Mexico	0.149	15%
Nevada	0.069	15%	Nevada	0.069	15%	Nevada	0.069	15%
NY-NYC	0.049	15%	NY-NYC	0.045	15%	NY - NYC	0.049	15%
NY-Roch	0.049	15%	NY-Roch	0.045	15%	NY - Roch	0.049	15%
NY-Upstate	0.049	15%	NY-Upstate	0.045	15%	NY - Upsta	0.049	15%
Ohio	0.049	15%	Ohio	0.049	15%	Ohio	0.055	15%
Oklahoma	0.069	15%	Oklahoma	0.069	15%	Oklahoma	0.069	15%
Oregon	0.129	15%	Oregon	0.129	15%	Oregon	0.129	15%
Pennsylv	0.049	15%	Pennsylv	0.045	15%	Pennsylv	0.049	15%
Rhode Is	0.049	15%	Rhode Is	0.049	15%	Rhode Is	0.049	15%
S.Carolina	0.095	15%	S.Carolina	0.095	15%	S.Carolina	0.095	15%
S.Dakota	0.129	15%	S.Dakota	0.129	15%	S.Dakota	0.129	15%
Tennessee	0.085	15%	Tennessee	0.085	15%	Tennessee	0.085	15%
Texas	0.129	15%	Texas	0.129	15%	Texas	0.129	15%
Utah	0.099	15%	Utah	0.099	15%	Utah	0.099	15%
Virginia	0.049	15%	Virginia	0.045	15%	Virginia	0.049	15%
Vermont	0.069	15%	Vermont	0.069	15%	Vermont	0.069	15%
Washing	0.089	15%	Washing	0.089	15%	Washingto	0.089	15%
Wisconsin	0.049	15%	Wisconsin	0.049	15%	Wisconsin	0.055	15%
W.Virginia	0.119	15%	W.Virginia	0.119	15%	W.Virginia	0.119	15%
Wyoming	0.119	15%	Wyoming	0.119	15%	Wyoming	0.119	15%

Agent Representative's Initials Date JE 4/15/20
 PaeTec President's Initials Date JA

Schedule B

Territory

Agent is authorized to solicit orders on behalf of PaeTec anywhere in the United States where PaeTec is authorized and certified to do business, subject to the following restrictions:

- Section 3 of this Agreement ("Acceptance of Orders") governs all solicitation and procurement of orders by Agent.
- Customers must be located in the contiguous forty-eight (48) states and must be serviced by one of the following RBOC/ILEC companies:

- | | |
|-------------------|---------------------|
| - Bell Atlantic | - Southwestern Bell |
| - Bell South | - Frontier |
| - US West | - SNET |
| - Pacific Telesis | - Cincinnati Bell |
| - GTE | - Sprint United |
| - Ameritech | |

- Agent may not solicit any of the following without the prior written consent of PaeTec:

- Information Providers
- Internet Service Providers
- Licensed Interexchange Carriers
- Licensed Competitive Local Exchange Carriers
- Independent Local Exchange Carriers
- Local Exchange Carriers
- Colleges and Universities
- Government Agencies
- Affinity Groups and Associations
- Residential Customers

Initials *EW*
Initials *EW*



AMENDMENT
TO
SALES AGENT AGREEMENT

This sets forth an Amendment made as of this 13 day of October, 2000 to the Sales Agent Agreement dated 4/29/2000 by and between PaeTec Communications, Inc. ("PaeTec") and SAETEC, Inc. ("Agent") (the "Agreement"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PaeTec and Agent hereby agree to amend the Agreement as follows:

1. In addition to the commissions for which Agent is eligible pursuant to Schedule A of the Agreement, Agent shall now become eligible for commissions in connection with interexchange carrier revenues generated from the sale of PaeTec local services. Accordingly, a new Paragraph "6.(i)" shall be added to the Agreement to read as follows:

"(i) Agent shall be eligible to receive commissions for revenues from IXC termination charges and IXC origination charges generated from local services sold. The commissions paid to Agent shall be 30% of the revenue generated, minus any commission percentage paid directly to the customer. Furthermore, this paragraph will apply only for customers generating a combined 35,000 terminating and originating minutes per location per month. Agent expressly agrees that it will not submit any proposal for PaeTec local service to any customer until after a profitability analysis has been performed by PaeTec based on information supplied by the Agent, and further provided that such profitability analysis is satisfactory to PaeTec and that PaeTec has notified Agent that it is authorized to present a proposal to the customer. Thereafter, all orders shall continue to be subject to the acceptance of PaeTec in accordance with Section 3 above."

2. Except as set forth in this Amendment, all other terms and conditions set forth in the Agreement remain unchanged.

The assent of the parties to this Amendment as of the date set forth at the beginning is established by the following signatures of their duly authorized representatives.

AGENT

PAETEC COMMUNICATIONS, INC.

By: [Signature]

By: [Signature]

Print Name: Jeremy L. Katz

Print Name: John V. Brunoy

Title: President

Title: VP of Sales

TERM PLAN (4 & 5 YR. term plans will be paid at 3 YR. commissions*)

LOCAL DIALTONE (techpath or pri)

(see attached rate schedules)

	1 YEAR	2 YEAR	3 YEAR
High Rates	16%	18%	20%
Medium Rates	14%	16%	18%
Low Rates	12%	14%	16%

LOCAL MEASURED SERVICE (lms or zone traffic)

(see attached rate schedules)

High Rates	16%	18%	20%
Medium Rates	14%	16%	18%
Low Rates	12%	14%	16%

INTRASTATE / INTRALATA - OUT & IN (switched or dedicated)

(see attached rate schedules for originating state)

	15%	15%	15%
--	-----	-----	-----

DEDICATED INTERSTATE - OUT & IN (w/local or stand alone)

0.059	23%	24%	25%
0.055	21%	22%	23%
0.049	19%	20%	21%
0.045	17%	18%	19%
0.039	15%	16%	17%
0.035	13%	14%	15%

<.0349 commission on ICB (Individual Case Basis) ONLY

ICB	ICB	ICB
-----	-----	-----

SWITCHED INTERSTATE - OUT & IN

(PaeTec LD w/cic #6340/6341 on Bell Service)

0.0690	23%	24%	25%
0.0590	18%	19%	20%
0.0490	13%	14%	15%

<.0489 is not acceptable, nor commissionable

0%	0%	0%
----	----	----

INTERNATIONAL (switched/dedicated)

Noble	25%	25%	25%
Regal	20%	20%	20%
Sterling	15%	15%	15%

CANADA

	Out	In			
Switched Rate	0.099	0.239	15%	15%	15%
Dedicated Rate	0.069	0.179	15%	15%	15%

TRAVEL CARD / CONFERENCE CALLING

0.17/ 0.24	20 15%	20 15%	20 15%
------------	--------	--------	--------

INTERNET

20%	20%	20%
-----	-----	-----

VPN SOLUTIONS

20%	20%	20%
-----	-----	-----

Equipment for Service * (excluding DTI cards, routers, channel banks)

ICB	ICB	ICB
-----	-----	-----

FRAME RELAY

8%	8%	8%
----	----	----

~~800 ORIGINATION~~ (approved orders only with qualified traffic requirements)

5%	5%	5%
----	----	----

Revised February 2002

ICB: Commissions listed as "ICB" on the table above will be negotiated on an individual case basis, and must be noted on a signed copy of Schedule C in order to be effective.

[Handwritten Signature]
 9/1/02



AMENDMENT
TO
SALES AGENT AGREEMENT

This sets forth an Amendment made as of this 30th day of DECEMBER, 2003 to the Sales Agent Agreement dated April 29, 2000 by and between PAETEC Communications, Inc. ("PAETEC") and Saetec, Inc. ("Agent") (the "Agreement"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PAETEC and Agent hereby agree to amend the Agreement as follows:

1. Schedule A to the Agreement is hereby amended by replacing that Schedule with the revised Schedule A attached to this Amendment. Commissions on sales made under the previous schedule will continue to be paid in accordance with the previous schedule. Rates to customers under the previous schedule shall remain in effect for the length of term for which the customer has signed *STARTING 4/1/03 NEW ACCOUNTS FORWARD ON NEW PLAN - ALL RATES MOVE TO NEW PLAN.*
2. In accordance with Section 6 (f) of the Agreement, the previous Schedule A shall remain available to the Agent for a period of 90 days from the date of this Amendment.
3. Except as set forth in this Amendment, all other terms and conditions set forth in the Agreement remain unchanged.

J

The assent of the parties to this Amendment as of the date set forth at the beginning is established by the following signatures of their duly authorized representatives.

AGENT

PAETEC COMMUNICATIONS, INC.

By: *[Signature]*

By: *John V. Burney*

Print Name: JERRY L. BITE

Print Name: John V. Burney

Title: President

Title: SVP OF SALES

Schedule A

TERM PLAN (4-6 Yr. term plans will be paid at 3 Yr. commissions)

LOCAL DIAL TONE (trunkpath or pri)

(see attached rate schedules)

	1 YEAR	2 YEAR	3 YEAR
High Rates	16%	18%	20%
Medium Rates	14%	16%	18%
Low Rates	12%	14%	16%

LOCAL MEASURED SERVICE (lms or zone traffic)

(see attached rate schedules)

High Rates	16%	18%	20%
Medium Rates	14%	16%	18%
Low Rates	12%	14%	16%

ON-NET INTRASTATE / INTRALATA - OUT & IN (dedicated)

(see attached rate schedules)

High Rates	17%	18%	19%
Medium Rates	15%	16%	17%
Low Rates	13%	14%	15%

OFF-NET INTRASTATE / INTRALATA - OUT & IN (dedicated)

(see attached rate schedules)

	13%	14%	15%
--	-----	-----	-----

ON-OFF-NET INTRASTATE / INTRALATA - OUT & IN (switched)

(see attached rate schedules for originating state)

	13%	14%	15%
--	-----	-----	-----

DEDICATED INTERSTATE - OUT & IN (w/ local or stand alone)

0.045	23%	24%	25%
0.039	21%	22%	23%
0.035	18%	20%	21%
0.029	17%	18%	18%
Requires \$1500 MMF 0.025	15%	16%	17%
Requires \$3000 MMF 0.018	13%	14%	15%
<0.019 commission on ICB (Individual Case Basis) ONLY	ICB	ICB	ICB

SWITCHED INTERSTATE - OUT & IN

(Per Tariff LD W/cls #6340/6341 on Bell Service)

0.0590	23%	24%	25%
0.0490	18%	19%	20%
0.0390	13%	14%	15%
<0.039 commission on ICB (Individual Case Basis) ONLY	ICB	ICB	ICB

INTERNATIONAL (switched/dedicated)

Sterling	25%	25%	25%
Topaz	20%	20%	20%
Valet	18%	18%	18%

CANADA

	Out	In			
Switched Rate	0.069	0.169	15%	15%	15%
Dedicated Rate	0.049	0.129	15%	15%	15%

TRAVEL CARD / CONFERENCE CALLING

0.15 / 0.24	20%	20%	20%
-------------	-----	-----	-----

INTERNET

	20%	20%	20%
--	-----	-----	-----

VPN SOLUTIONS

	20%	20%	20%
--	-----	-----	-----

MESSAGE LABS

	\$3.00/10%	\$3.50/15%	\$4.00/20%
--	------------	------------	------------

Equipment for Service * (excluding DTI cards, routers, channel banks)

	ICB	ICB	ICB
--	-----	-----	-----

FRAME RELAY

	8%	8%	8%
--	----	----	----

Revised January 2004

Net Billable Revenue Agent's commissions under this Agreement shall be based on "Net Billable Revenue," defined as PacTel revenue for customer usage the applicable month, net of customer deductions, credits, applicable taxes, surcharges, other governmental assessments, and any one-time or recurring

ICB's Commissions listed as "ICB" on the table above will be negotiated on an individual Case Basis, and must be noted on a signed copy of Schedule A in order to be effective.

GIS 30%

OT 45%

Discretionary Ass 17%

NO. 000

May 06 05 11:13a

P. 1

05/04/05 17:47

NO. 874 001

AMENDMENT TO AGENT AGREEMENT

This amendment ("Amendment") is made as of this 25 day of April, 2005, to the Agent Agreement dated April 29, 2000 (the "Agreement"), by and between PAETEC Communications, Inc. ("PAETEC") and SAETEC, Inc. ("Agent").

WHEREAS, PAETEC has entered into a contract with Fidelity Investments Institutional Services Company, Inc., ("Fidelity") originally dated July 17, 2002, and subsequently amended by an amendment dated February 8, 2005 (collectively the "Fidelity Agreement"), pursuant to which PAETEC is selling Fidelity certain telecommunications products and services; and

WHEREAS, Agent is the selling agent on the Fidelity account and PAETEC and Agent have agreed to this amendment with respect to cost sharing for any fraud that may arise from the use of PAETEC services by Fidelity.

A. Fidelity and PAETEC hereby agree to the following terms and conditions with respect to the responsibility for charges arising from fraudulent or unauthorized usage of PAETEC services under the Fidelity Agreement:

"In the event of fraud, PAETEC shall use its best efforts to promptly notify Fidelity and to take all appropriate actions to mitigate and minimize the impact of the fraud and prevent future occurrences. Agent understands and agrees that not all fraud will be preventable by PAETEC as PAETEC has no control over the actions or omissions of Fidelity's employees using the services and PAETEC has no control over the Fidelity customer premise equipment (e.g. PBX) through which fraud may be perpetrated. In the event of any fraud, PAETEC and Fidelity shall use best efforts to obtain recovery from Fidelity for all charges in accordance with the Fidelity Agreement. In the event that Fidelity refuses to pay for charges arising from fraudulent or unauthorized use of the PAETEC Services, Agent shall reimburse PAETEC for fifty percent (50%) of the total unpaid charges attributable from fraud on the Fidelity account, provided that Agent's share of the fraud charges shall be based on PAETEC's actual underlying cost rather than retail prices and further provided that Agent's responsibility hereunder shall only apply to the PAETEC Services added to the Fidelity agreement by virtue of the February 2005 amendment. Notwithstanding the foregoing, Agent shall not be liable for Fidelity unauthorized or fraudulent usage to the extent that (i) Fidelity had previously notified PAETEC of the problem; (ii) the problem was within PAETEC'S reasonable ability to correct or prevent, and (iii) PAETEC negligently or willfully fails to correct or prevent such unauthorized or fraudulent usage. The payment due from Agent shall be netted against commissions owed to Agent. These terms shall remain in effect for the duration of time that Agent is eligible to receive commissions on the Fidelity account."

B. Except as modified by this Amendment, the terms and conditions set forth in the Agreement remain unchanged.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed by their duly authorized representative, to be effective as of the date first above written.

PAETEC Communications, Inc.
By: Chris Banhoff
Print Name: Chris Banhoff
Title: President
Date: 05/06/05

Agent
By: [Signature]
Print Name: Jeremy Katz
Title: President
Date: April 25, 2005

ORIGINAL



Amendment
to
Sales Agent Agreement

This amendment ("Amendment") is made as of this 15 day of May 2005, to the Sales Agent Agreement dated April 29, 2000 (the "Agreement"), by and between PAETEC Communications, Inc. ("PAETEC") and Saetec, Inc. ("Agent"). Agent and PAETEC individually are referred to as a "Party" and collectively as the "Parties".

WHEREAS, the Agreement sets forth the terms and conditions under which Agent is authorized to procure customers for PAETEC's various retail telecommunications products and services and the compensation to Agent associated therewith; and

WHEREAS, the Parties desire to amend the Agreement to set forth the specific terms and conditions under which Agent shall be authorized to procure customers for PAETEC's various wholesale products and services and the compensation associated therewith.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

A. Section 1 of the Agreement is hereby revised to read in its entirety as follows:

Appointment and Acceptance. Subject to the terms and conditions of this Agreement, PAETEC authorizes Agent to serve as a non-exclusive independent contractor to: (i) procure customers for PAETEC's various retail telecommunications products and services as described in the attached Schedule A in the territory and subject to the restrictions identified in the attached Schedule B (the "Retail Territory") and (ii) procure customers for PAETEC's various wholesale telecommunications products and services to the customers and in the territory identified in the attached Schedule C (the "Wholesale Territory"). The Retail Territory and the Wholesale Territory shall collectively hereinafter be referred to as the Territory. Agent accepts such appointment and represents to PAETEC that it has all licenses, consents, approvals, authorizations, qualifications, and/or registrations necessary to lawfully procure customers for PAETEC in the Territory pursuant to the terms of this Agreement, and that it is not prohibited in any way from entering into or performing this Agreement by any other agreement, commitment, law, or regulation. Agent agrees to use its best efforts to solicit and procure orders on behalf of PAETEC, and expressly acknowledges that it is granted no right, privilege, or authority to offer for sale any of PAETEC's products or services outside of the Territory.

B. Section 6 of the Agreement is hereby revised to add the following additional provision:

"(j) Notwithstanding anything in the Agreement to the contrary, with respect to the PAETEC wholesale products and services sold to any customers listed on Schedule C, Agent shall be paid a commission at the rate set forth in Schedule D within thirty (30) days following the month in which customers procured hereunder are invoiced by PAETEC. Commission payments shall be based on PAETEC Net Billed Revenue, calculated as defined in Section 6(c) of the Agreement, and may be accrued until such time as the total payment exceeds \$100.00. Annually PAETEC shall have the right to true-up the commission rates for existing accounts on a prospective basis based on the actual profitability of the customer accounts as compared to the expected profitability at the time the commission rate was established for each specific customer account. The provisions of Sections 6(a) shall not apply to the payment of commissions on wholesale customer revenue."

- C. Schedules C and Schedule D attached to this Amendment are hereby incorporated into the Agreement.
- D. The October 13, 2000, amendment to the Sales Agent Agreement shall not apply to any orders for wholesale services.
- E. Except as modified by this Amendment, the terms and conditions set forth in the Agreement remain unchanged.
- F. Revenue generated from wholesale customers procured by Agent shall not be included for the purposes of calculating Agent's eligibility for any warrants pursuant to the warrant agreement between PAETEC and Agent.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed by their duly authorized representative, to be effective as of the date first above written.

PAETEC Communications, Inc.

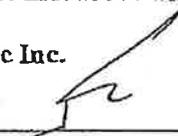
By: 

Print Name: PATRICK TATA

Title: V.P. Wholesale Sales

Date: 6-27-05

Saetec Inc.

By: 

Print Name: J. L. KATZ

Title: PRESIDENT

Date: 6/20/05

SCHEDULE C

WHOLESALE TERRITORY

Agent is authorized to solicit wholesale orders on behalf of PAETEC anywhere in the United States where PAETEC is authorized and certified to do business, subject to the following restrictions:

- Section 3 of this Agreement (“Acceptance of Orders”) governs all solicitation and procurement of orders by Agent.
- Customer’s must be located in the contiguous forty eight states and must be serviced by one of the following RBOC/ILEC companies:
 - Bell Atlantic
 - Bell South
 - US West
 - Pacific Telesis
 - GTE
 - Ameritech
 - Southwestern Bell
 - Frontier
 - SNET
 - Cincinnati Bell
 - Sprint United
- Notwithstanding anything in the Agreement or any schedule thereto to the contrary, Agent shall have the non-exclusive right to procure orders for PAETEC’s wholesale services from the following types of customers. Any such orders shall be compensated in accordance with the Wholesale Commission Schedule as set forth in Section 6 of the Agreement (as amended):
 - Information Providers
 - Internet Service Providers
 - Licensed Interexchange Carriers
 - ILECs, CLECs, BLECs, DLECs
 - VOIP providers
 - Calling Card Companies
 - ESPs
 - Fax Broadcasters
 - Wireless Carriers

Agent shall not be permitted to procure orders from any entity not included on the above list without PAETEC’s prior written consent.

Schedule D
Wholesale Commission Schedule*

PAETEC Net Profit **	Commission Percentage
30% Net Profit	20%
20 to 29% Net Profit	15%
15 to 19% Net Profit	10%
0 to 14% Net Profit	0%

* Commission also may be paid on a pre approved percentage

**PAETEC Net Profit - after payment of agent commission as determined by PAETEC on an individual basis for the end-user account at the time of contract.

Non-Circumvent Agreement

This Agreement made and entered into this 29 day of April, 2000, by and between SAETEC, Inc. a New Hampshire Corporation (herein referred to as SAETEC), and PAETEC Communications, Inc.

PaeTec agrees that SAETEC can submit names of individuals, organizations or member of organizations with whom SAETEC has entered into agreements that prohibit these persons from dealing directly with PaeTec as primary sales agents. In the event that any of these named individuals, organizations or members of organizations contacts PaeTec, PaeTec agrees not to discuss any rates, commissions, or offer any direct agency agreements.

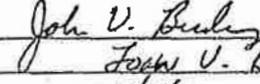
In the event that PaeTec does sign any individual, organization or member of organization which name was provided by SAETEC to an agency agreement, SAETEC will receive a full disclosure of all companies submitted and monthly billings on an ongoing basis and receive full commissions as outlined in the commission exhibit.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

SAETEC, INC.

PAETEC Communications, Inc.


Eric L. Katz, President
4/29/00


John V. Buehler
5/5/00

CONFIDENTIAL

Saetec Agents

Andrew Kaplan/Jorge Fernandes	Redicom Communications	Providence, RI
Ronald Cauda	RJC Associates	Lodi, NJ
Solomon Sandel	Delson Communications	Brooklyn/Monroe, NY
Matthew Paul	Metrocall, Inc.	Nashua, NH
Barry Rossinoff	Hereandnow.Com	St. Johnsbury, VT
Ralph Bevilaqua	Telecom Partners	Brookline, MA
Doug Bross	Discount Telecom Services	Westport, CT
Jeffrey Brown		Watertown, MA
Michael Corso/Randy Abrams	CNI Telecom	Chappaqua, NY
William Dubovsky	Comtel Information Svcs.	Staten Island, NY
Steven Ferraris		Norwich, VT
Lance Hyatt	Hyatt & Associates	Owings Mills, MD
Grant Judd <i>JB</i>	Judd Communications	Cotuit, MA
Brian McKenna	PBA Communications	Portland, ME
Brian Rhodes	In-Touch Communications	Dayton, VA

JB Initials

JB Initials

The following information is confidential and proprietary information of SAETEC, INC. and is subject to a non-disclosure agreement.

**EXHIBIT 2
TO
EXHIBIT B
(DECLARATION OF ERIC J. WARD, ESQ.)**

WINDSTREAM
ENTERPRISE

SAETEC INC
30 BANK ST
LEBANON, NH 03766-1756

April 17, 2019

RE: Your Windstream and/or Affiliated partner/agent agreement(s)

Dear Valued Partner:

As you likely are aware, Windstream and its subsidiaries recently filed voluntary petitions for Chapter 11 reorganization, which provides Windstream an opportunity to put a restructuring plan through the court that will allow Windstream to continue to support a strong channel program.

As part of the reorganization process, Windstream serves as a fiduciary with regard to its creditors, assets, liabilities, and business affairs and is responsible for reaching an overall reorganization that is beneficial to the Company and that is in the best interests of its associated creditors as a whole.

To that end, Windstream is granted the right to assume or reject certain executory contracts under the Bankruptcy Code. Windstream is in the process of reviewing all partner/agent agreements for either assumption or rejection.

Regardless of whether Windstream assumes your partner/agent agreement(s) or files with the bankruptcy court its formal intention to reject the agreement(s), it is Windstream's opinion that any commissions otherwise payable under your partner/agent agreement(s) are pre-petition liabilities that will be cared for through the formal bankruptcy process. As a result, effective immediately and at least for the duration of Windstream's review process, Windstream will not be paying any subsequent commission payments with regard to your partner/agent agreements.

We encourage you to contact the number below and to reach out to your channel manager for more information.

Respectfully,

Windstream
(877)759-8815

**SAETEC, INC.'S: (A) RESPONSE TO DEBTORS' NINTH OMNIBUS
CLAIM OBJECTION; AND
(B) CROSS MOTION FOR PERMISSIVE ABSTENTION**

EXHIBIT C

PRE-PETITION CLAIM

Fill in this information to identify the case:

Debtor 1 Windstream Communications, LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Southern District of New York

Case number 19-22433

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor? Saetec, Inc.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

<p>Where should notices to the creditor be sent?</p> <p><u>Boylan Code LLP attn: Devin Palmer</u> Name</p> <p><u>145 Culver Road, Suite 100</u> Number Street</p> <p><u>Rochester NY 14620</u> City State ZIP Code</p> <p>Contact phone <u>585.232.5300</u></p> <p>Contact email <u>dpalmer@boylancode.com</u></p> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>_____ Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p> <p>Contact phone _____</p> <p>Contact email _____</p>
---	---

4. Does this claim amend one already filed?
 No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?
 No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 24,510,991.00. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.
Outstanding pre-petition commissions

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? No Yes. Check one:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ <u>13,650.00</u>
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

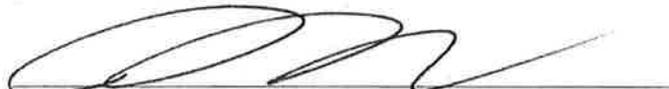
- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/10/2019
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name Devin Lawton Palmer
First name Middle name Last name

Title Partner

Company Boylan Code LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 145 Culver Road, Suite 100
Number Street

Rochester NY 14620
City State ZIP Code

Contact phone 585.232.5300 Email dpalmer@boylancode.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Chapter 11

WINDSTREAM COMMUNICATIONS, LLC,
Debtor.

Case No. 19-22433 (RDD)
(Jointly Administered)¹

PREPETITION PROOF OF CLAIM ADDENDUM

1. Name of claimant:

Saetec, Inc. ("Saetec")

2. Name of Debtor prepetition claim asserted against:

Windstream Communications, LLC (7928); BK No. 19-22433 (RDD).²

3. Nature and description of the claim (you may attach a separate summary):

Saetec's claim is based upon unpaid commissions earned pre-petition. A more thorough summary of those commissions is set forth in the exhibits annexed hereto and associated with the state court action *Saetec, Inc. v. PaeTec Communications, Inc. and Windstream Communications Inc.* (Sup. Ct. Monroe County, Index No. 13-11176).

Saetec has only one employee and during the 12 months preceding the petition date, at least 75 percent that Saetec earned by acting as an independent contractor in the sale of goods or services was earned from the debtor. \$13,650.00 of this pre-petition claim represents sale commissions earned within 180 day before the bankruptcy petition was filed, entitling that portion of the claim to priority under 11 U.S.C. § 507(a)(4)(B) and plan treatment in accordance with 11 U.S.C. § 1129(a)(9).

¹ Jointly administered under Windstream Holdings, Inc., et al., Case Number 19-22312 (RDD).

² Pursuant to Sections 8(d) and 8(e) of this Court's Order (I) Setting Bar Dates for Submitted Proofs of Claim, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof (Doc. 518), Saetec has filed separate prepetition claims in the following jointly administered bankruptcies: (a) In re Windstream Holdings, Inc., Case No. 19-22312; (b) In re Windstream Communications, LLC, Case No. 19-22433; and (c) In re PaeTec Communications, LLC, Case No. 19-22311.

4. Amount of claim:

\$24,510,991.00*

* The current claim amount does not include: (a) Saetec's Third Cause of Action in the attached Complaint alleging that defendants breached the Non-Circumvent Agreement by entering into direct relationships with Saetec's subagents and failing to pay Saetec full commissions on sales made by such subagents ("Non-Circumvent Claim"); and (b) that portion of Saetec's Second Cause of Action in the attached Complaint for breach of the Agency Agreement that relates to defendants' failure to pay commissions on all sales made to Saetec-procured customers that defendants acquired as part of their purchase of Covista, Inc. ("Covista Claim") Saetec reserves the right to amend the claim to, among other things, include additional unpaid pre-petition commissions, including but not limited to the Non-Circumvent Claim and the Covista Claim.

5. Documentation supporting the claim must be attached hereto.

Attached and made a part hereof as Exhibit A is documentation in support of Saetec's pre-petition claim. Specifically included in Exhibit A is: (a) Summary Damage Table (including Principal Damages after Bankruptcy Filing); (b) Update to Amended Expert Report of Brian C. Hedges; (c) Amended Expert Report of Brian C. Hedges, Mengel Metzger Barr, CPA; (d) Summons and Complaint in *Saetec, Inc. v. PaeTec Communications, Inc. and Windstream Communications Inc.* (Sup. Ct. Monroe County, Index No. 13-11176). Debtor and/or its counsel (Bond, Schoeneck & King PLLC (See Doc. No. 685)) are already in possession of documents provided in the aforementioned state court action that additionally support and describe the instant Claim. Saetec reserves the right to add additional documentation.

6. Reservation of rights.

This Proof of Claim shall not be deemed a consent by Saetec to having any matters relating to any disputed claims heard by the United States Bankruptcy Court for the Southern District of New York, including but not limited to, any dispute presently before any state court, or any administrative, regulatory or arbitral forums, or requiring consideration of laws or regulations other than the Bankruptcy Code; nor shall Saetec's submission of this Proof of Claim waive any right of Saetec to have final orders in non-core matters entered only after a de novo review by a district court judge, or to have the United States District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal, or any other rights, claims, actions defenses, setoffs or recoupment (whether contingent, unliquidated or otherwise) to which Saetec is or may be entitled under any agreements, in law or equity, all of which rights, claims, actions, defenses, setoffs and recoupments (whether contingent, unliquidated or otherwise) are expressly preserved.

Respectfully submitted,

Dated: Rochester, New York
July 12, 2019

BOYLAN CODE LLP
Attorneys for Saetec, Inc.



Devin Lawton Palmer, Esq.
145 Culver Road, Suite 100
Rochester, New York 1420
Telephone: 585.232.5300
Facsimile: 585.238.9056
E-mail: dpalmer@boylancode.com

Proof of Claim of Saetec, Inc.

Exhibit A

Summary Damage Table (including Principal Damages after Bankruptcy Filing)

Saetec, Inc. v. Paetec Communications, Inc. and Windstream Communications, Inc.
 Summary Damage Tables (including Per Diem Principal Damages after Bankruptcy Filing)

	Amended Report	Updated Figures through Bankruptcy	Total Principal through Bankruptcy	Prejudgment Interest through Bankruptcy	Total Principal and Prejudgment Interest	Per Diem Principal Rate
Opinion #1 Damages	\$2,712,043	\$98,473	\$2,810,516	\$2,673,305	\$5,483,821	\$428.83
Opinion #2 Damages	\$5,621,797	\$302,307	\$5,924,104	\$2,955,462	\$8,879,566	\$1,244.82
Opinion #3 Damages	\$2,045,812	\$123,322	\$2,169,134	\$1,176,744	\$3,345,878	\$409.05
CABS Damages (Opinion #1)	\$0	\$213,343	\$213,343	\$73,843	\$287,186	\$61.29
CABS Damages (Opinion #2)	\$0	\$1,381,145	\$1,381,145	\$1,375,883	\$2,757,028	\$25.15
Fidelity Damages	\$0	\$2,054,059	\$2,054,059	\$1,130,025	\$3,184,084	\$537.18
SPIFF Damages	\$0	\$284,093	\$284,093	\$289,335	\$573,428	N/A
Total Damages	\$10,379,651	\$4,456,743	\$14,836,394	\$9,674,597	\$24,510,991	\$2,706.31

Calculation Key: [A] [B] [C] = [A] + [B] [D] [E] = [C] + [D]

Proof of Claim of Saetec, Inc.

Exhibit A

Update to Amended Expert Report of Brian C. Hedges



MENGEL METZGER BARR & CO. LLP

Certified Public Accountants

July 10, 2019

Mr. David Knapp, Esq.
Ward Greenberg Heller & Reidy LLP
1800 Bausch & Lomb Place
Rochester, NY 14604

Re: *Saetec, Inc., v. Paetec Communications, Inc. and Windstream Communications, Inc.*, (Index #13-11176)

Dear Mr. Knapp:

I submit this letter to update the Amended Expert Report of Brian C. Hedges (“Amended Report”) and supplement Saetec’s claims relating to the ongoing litigation matter, *Saetec, Inc., v. Paetec Communications, Inc. and Windstream Communications, Inc.*, Index No. 13-11176 (hereinafter the “Litigation”). The following sections compute an updated claim through the filing of Windstream Communications, Inc.’s (“Windstream”, together with Paetec, Inc., “The Defendants”) Bankruptcy as of February 25, 2019.

In the Amended Report, I calculated three categories of damages, as referenced in Table 1 below:

Table 1: Amended Report Damages

Damage Category	Amended Report Damages		
	Principal	Prejudgment Interest	Total
Hedges Opinion #1	\$2,712,043	\$2,345,776	\$5,057,819
Hedges Opinion #2	\$5,621,797	\$2,573,090	\$8,194,887
Hedges Opinion #3	\$2,045,812	\$928,275	\$2,974,087
Total	\$10,379,651	\$5,847,141	\$16,226,792

After the filing of the Amended Report, I received updated revenue and commission information from Windstream and used this information to update the figures in the Amended Report. This updated information was available through January 31, 2019 and therefore I updated my analysis using the same assumptions from the Amended Report through January 31, 2019.¹ To update the analysis through the Bankruptcy filing on February 25, 2019, I extrapolated the average damage amounts to determine a per diem damage rate for February 2019 that I applied through February 25, 2019. Refer to Table 2 below for the updated damage categories included in the Amended Report:

Table 2: Amended Report Damages, updated through February 25, 2019

Damage Category	Amended Report Damages		Updated through 2/25/2019		Total	
	Principal	Prejudgment Interest	Principal	Prejudgment Interest	Principal	Prejudgment Interest
Hedges Opinion #1	\$2,712,043	\$2,345,776	\$98,473	\$327,529	\$2,810,516	\$2,673,305
Hedges Opinion #2	\$5,621,797	\$2,573,090	\$302,307	\$382,372	\$5,924,104	\$2,955,462
Hedges Opinion #3	\$2,045,812	\$928,275	\$123,322	\$248,469	\$2,169,134	\$1,176,744
Total	\$10,379,651	\$5,847,141	\$524,102	\$958,370	\$10,903,754	\$6,805,511

¹ Hedges Opinion #1 included 15 months of updated data. Hedges Opinion #2 included 8 months of updated data.

After updating the amended report, I also quantified the following claims that Saetec has as part of the Litigation relating to: (1) Carrier Access Billing System ("CABS") damages, (2) additional Fidelity damages, and (3) SPIFF damages.

[1] CABS Damages

The Defendants owed Saetec 30% of all Carrier Access Billing System ("CABS") charges for all Saetec accounts that The Defendants serviced. During November 2011, The Defendants stopped paying Saetec CABS commissions on all Opinion #1 accounts. For the Opinion #1 accounts (see [1A] in Table #3 below), I applied the percentage of CABS commissions to total revenue for the 15-month period preceding November 2011 to all Opinion #1 revenue for November 2011 through February 25, 2019. The total amount of the CABS Damages (Opinion #1 only) is \$287,186, which includes \$213,343 in principal and \$73,843 in prejudgment interest through February 25, 2019.

By contrast, The Defendants never paid CABS commissions for Opinion #2 accounts.² For the Opinion #2 accounts (see [1B] in Table #3 below), I determined the amount of estimated CABS Damages in two ways, based upon the data available to me:

- From August 2002 through October 2011, I calculated an estimate of CABS revenue as a percentage of total revenue from Opinion #1 and used this as a proxy for determining Opinion #2 CABS revenue (e.g., if total Opinion #1 CABS Commissions were \$300,000 and Opinion #1 total revenue was \$10,000,000, the CABS revenue is assumed to be 10% of revenue).³ I then multiplied the resulting estimated Opinion #2 CABS revenue by the 30% CABS commission rate to determine the CABS commissions that should have been paid for Opinion #2 accounts (and those in footnote 2).
- From November 2011 through February 25, 2019, I applied the same methodology as for the Opinion #1 amounts above for all Opinion #2 accounts (and those in footnote 2).

The total amount of the CABS Damages (Opinion #2 only) is \$2,757,028, which includes \$1,381,145 in principal and \$1,375,883 in prejudgment interest through February 25, 2019.

[2] Additional Fidelity Damages

Saetec sold Fidelity originally as a customer for The Defendants and was commissioned on this account as early as 2002. However, after that time, The Defendants added Fidelity accounts that were not commissioned to Saetec. I received a second listing of accounts (previously not reported to Saetec) produced by The Defendants as part of the Litigation. During the Litigation, a former employee⁴ for Paetec acknowledged that during 2011 Paetec "was billing [Fidelity] at least \$150,000 to \$175,000 a month." By contrast, the revenue amounts for Fidelity that were produced to us during the Litigation for the same period are less than \$50,000 per month, a difference of over \$100,000 per month.

I have computed the difference between the Fidelity revenue amounts from 2011, based upon Mr. Witkowski's testimony, and the revenue for Fidelity accounts which were produced to Saetec as part of the Litigation to compute a difference, which Saetec claims it is owed. Additionally, as Mr. Witkowski left

² As indicated on page 4 of my Amended Report, there were two large accounts in particular (Empire Exec Car and R&R Professional Recovery) for which commissions were not paid after June 2002 and July 2006, respectively. I have added these two accounts to the Opinion #2 revenue for the purposes of the CABS Damages analysis.

³ Step #1 for this representative example: Divide 300,000 by 30% CABS commission, which results in \$1,000,000 in CABS revenue. Step #2: Divided \$1,000,000 in CABS revenue by the \$10,000,000 in total Opinion #1 revenue, which results in CABS Revenue as being 10% of total Opinion #1 revenue. We deemed this to be a reasonable approximation for Opinion #2 CABS revenue, absent additional data.

⁴ Brian T. Witkowski; Mr. Witkowski's deposition was taken during December 2018 during this Litigation.

Paetec in or around May 2011, we have assumed that this amount would have continued in total for all Fidelity accounts through February 25, 2019.

The total amount of the additional Fidelity Damages claim is \$3,184,084, which includes \$2,054,059 in principal and \$1,130,025 in prejudgment interest through February 25, 2019.

[3] SPIFFs Damages

Periodically, The Defendants would offer bonuses (hereinafter, "SPIFFs") to agents in its sales network (including Saetec) which included one-time sales incentives for selling a product, package, or service provided by The Defendants. During the Litigation, Saetec produced several SPIFF offers made by The Defendants.⁵

These SPIFFs offered either a one-time dollar payment (e.g., \$500 per product for a 2-year agreement or \$750 per product for a 3-year agreement) or a percentage of an amount that The Defendants would charge the Saetec customer (e.g., 100% of the Monthly Recurring Commission or 50% of the upfront installation fee). I reviewed the contract, revenue, and SPIFF information available to us to quantify the dollar amount of SPIFFs that The Defendants should have paid to Saetec. This amount that should have been paid to Saetec was approximately \$28,293 (the "SPIFF Offer amount").

Additionally, I reviewed a document produced by The Defendants (D00012936) that indicated that for a 28-month period (December 2004 to March 2007) that The Defendant owed Saetec \$313,000 in total SPIFFs, based on a custom SPIFF agreement between The Defendants and Saetec. Added together with the SPIFF Offer amount above, The Defendants should have paid Saetec a minimum of \$341,293 in SPIFFs.

However, based upon data provided by The Defendants, the total SPIFF payments to Saetec were \$57,200. To calculate damages, I reduced the amounts which The Defendants should have paid to Saetec for SPIFFs by the amount that The Defendants paid Saetec for SPIFFs.

The total amount of the SPIFF Damages claim is \$573,428, which includes \$284,093 in principal and \$289,335 in prejudgment interest through February 25, 2019.

Conclusion

The following table represents my opinion of damages with respect to the legal claims included in my Amended Report and this letter, which I have computed with a reasonable degree of accounting certainty.

Table 3: Total Saetec Damage Claims, updated through February 25, 2019

Damage Category	Amended Report Damages		
	Principal	Prejudgment Interest	Total
Hedges Opinion #1	\$2,810,516	\$2,673,305	\$5,483,821
Hedges Opinion #2	\$5,924,104	\$2,955,462	\$8,879,566
Hedges Opinion #3	\$2,169,134	\$1,176,744	\$3,345,878
[1A] CABS Damages (Hedges Opinion #1)	\$213,343	\$73,843	\$287,186
[1B] CABS Damages (Hedges Opinion #2)	\$1,381,145	\$1,375,883	\$2,757,028
[2] Additional Fidelity Damages	\$2,054,059	\$1,130,025	\$3,184,084
[3] SPIFFs Damages	\$284,093	\$289,335	\$573,428
Total	\$14,836,394	\$9,674,597	\$24,510,991

⁵ The documents I reviewed that were a part of Saetec's production that included SPIFF offers from October 2004 through December 2010 were: SAETEC0001279, 1894, 2008, 4356, 4390, 4457, 4692, 4693, 4847, 4848, 5068, 5116, 5117, 5140, 5918, 5926, 5930, 6107, 6131.

The amounts above are based on all facts and information that has been made available to me as of the date of this letter. Should additional information come to my attention which changes the analyses herein, I reserve the right to amend this letter. This letter does not include an analysis of damages with respect to Saetec's claim for breach of the Non-Circumvent Agreement, or that part of Saetec's claim for breach of the Agency Agreement relating to The Defendants' failure to pay commissions on sales made to certain Covista customers acquired by The Defendants. I reserve the right to amend and/or supplement this letter to provide an analysis of damages with respect to those claims.

Very truly yours,



Brian C. Hedges, CPA, CFE, CVA
Principal | Investigative & Dispute Resolution Services

Proof of Claim of Saetec, Inc.

Exhibit A

Amended Expert Report of Brian C. Hedges, Mengel Metzger Barr, CPA



AMENDED EXPERT REPORT OF BRIAN C. HEDGES

**SAETEC, INC., V. PAETEC COMMUNICATIONS, INC.
and WINDSTREAM COMMUNICATIONS INC.**

(Index No. 13-11176)

BRIAN C. HEDGES, CPA, CFE, CVA

A handwritten signature in black ink, appearing to read "B. Hedges", written over a horizontal line.

DECEMBER 18, 2018

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*Amended Expert Report of Brian C. Hedges
December 18, 2018*

*Saetec, Inc., v. Paetec Communications, Inc. and Windstream
Communications, Inc. (Index No. 13-11176)*

ASSIGNMENT

Mengel Metzger Barr & Co. LLP (“MMB”) was retained as an expert witness by Ward Greenberg Heller & Reidy (“Counsel”) on behalf of Plaintiffs, Saetec, Inc. (“Saetec” or “Client”) to opine on damages sustained by Saetec due to breaches of contract by Paetec Communications, Inc. (“Paetec”) and Windstream Communications, Inc. (individually, “Windstream”; together with Paetec, “The Defendants”).¹

If I learn other facts (through additional document discovery or on-going fact depositions) or through my on-going quality control review which may change my report or exhibits attached hereto in any way, I reserve the right to amend this report. This report amends figures from my November 5, 2018 report due to new facts I have learned since November 5, 2018 and my review of previously provided discovery from The Defendants.

QUALIFICATIONS

I, Brian C. Hedges, am a Principal in MMB’s Investigative & Dispute Resolution Services division. I am a Certified Public Accountant with 11 years of experience in the fields of public accounting and consulting. In addition, I have my Certified Valuation Analyst and Certified Fraud Examiner designations.²

Throughout my career at MMB, I have prepared expert witness analyses for different purposes, including lost profit computations, economic damages, and rebuttals thereto. In addition to the lost profit (or loss of economic income) analyses, I have provided litigation support services in valuation disputes involving closely held businesses, including dissenting shareholder and minority shareholder oppression cases. My analyses have been utilized at Mediation, Arbitration, in Monroe County Supreme Court, and Federal Court.³ My curriculum vitae is annexed hereto as Attachment A.

DOCUMENTATION REVIEWED

In preparing this report, Mengel Metzger Barr & Co., LLP received the following documents from Counsel:

- Court filings, including the Summons and Complaint, dated October 2, 2013
- The Sales Agent Agreement and corresponding Schedule A attachments, between Saetec and The Defendants, originally dated April 29, 2000 with amendments (“Agent Agreement”)
- An ICB Commission Form for all sales by The Defendants to Fidelity (SAETEC007628)
- Commission data produced by The Defendants, detailing commissions paid to Saetec from December 2000 through October 2017⁴

¹ MMB is not opining on the breach itself. Our work assumes that Saetec prevails on liability.

² The Certified Valuation Analyst designation is governed by the National Association of Certified Valuators and Analysts and the Certified Fraud Examiner credential governed by the Association of Certified Fraud Examiners.

³ At two of my predecessor firms in Chicago, IL, I was part of teams that prepared analyses and expert opinions for state court and Federal Court venues in several Midwestern states.

⁴ As explained in greater detail below, I grouped the actual commissions that The Defendants paid to Saetec into four different categories: (1) base commissions paid, at Schedule A rates that The Defendants calculated, (2) override

*Amended Expert Report of Brian C. Hodges
December 18, 2018*

*Saetec, Inc., v. Paetec Communications, Inc. and Windstream
Communications, Inc. (Index No. 13-11176)*

- Transaction-level data produced by The Defendants, including:
 - o Sales to 963 accounts, each identified by a unique "SUB_ID", for which commissions were paid by The Defendants to Saetec (hereinafter "Commissioned Accounts"); this information was provided from February 2000 through October 2017; should MMB receive updated sales information for these Commissioned Accounts through a more recent period, I reserve the right to amend my report
 - o Sales to 1,002 accounts,⁵ each identified by a unique "SUB_ID", for which commissions were not paid by The Defendants to Saetec (hereinafter "Never Paid Accounts"); this information was provided from October 2000⁶ through May 2018; should MMB receive updated sales information for these 1,002 accounts through a more recent period, I reserve the right to amend my report
- Listing of The Defendants' accounts, including account name, account ID number ("SUB_ID"), parent account ID number ("BILL_PRNT_SUB_ID"), date of signing of original contract, date which billing began, and length of contract

I have included all information that I have reviewed to generate my opinions in AMENDED Attachment B. My opinions are summarized below.

SUMMARY OF MY OPINIONS

Based upon my professional expertise and with a reasonable degree of accounting certainty, I have the following opinions relating to the damages suffered by Saetec.

1. **The Defendants paid improper commission percentages to Saetec from 2000 through October 2017 and Saetec was damaged in the principal amount of \$2,712,043 as a result;**
2. **In addition to the improper commission percentages in Opinion #1, The Defendants failed to pay commissions to Saetec on sales of products and services for the Never Paid Accounts and Saetec was damaged in the principal amount of \$5,621,797 as a result;**
3. **In May 2011 The Defendants stopped paying a five percent override percentage to Saetec for sales to the Commissioned Accounts damaging Saetec in the principal amount of \$641,562 and The Defendants never paid an override percentage to Saetec for sales to the Never Paid Accounts damaging Saetec in the principal amount of \$1,404,250 as a result; and**
4. **Prejudgment interest through October 31, 2018 based on the damages in Opinions #1 through #3 equals \$5,847,142 and future prejudgment interest accrues at a rate of \$2,559 per day**

commissions, which The Defendants stopped paying in April 2011, and (3) one-time "Spiff" payments, and (4) "CABS" commissions. For items (3) and (4), refer to the AMENDED Appendix 4A and Appendix 4B.

⁵ The Defendants' production D00025163 included 1,002 accounts in total. After the writing of my November 5, 2018 Report, I traced 22 accounts which were at one point commissioned by The Defendants. I have amended Opinions #1 and #2, to reflect what occurred, despite The Defendants' exclusion of the 22 commissioned accounts in their D00012982 production (refer to "SQL" tab in the Microsoft Excel file). The overall impact of this finding is \$0, but Opinions #1 and #2 are more properly restated to reflect commissioned paid by The Defendants. Refer to AMENDED Appendix 1C for a listing of all accounts and the computation of the expected commissions for the accounts by product and month.

⁶ The data provided relating to the Never Paid Accounts begins in October 2000. This date is later than the information provided relating to the Commissioned Accounts (February 2000).

*Amended Expert Report of Brian C. Hodges
December 18, 2018*

*Saetec, Inc., v. Paetec Communications, Inc. and Windstream
Communications, Inc. (Index No. 13-11176)*

The bases for my opinions are included in more detail in the section below.

BASES FOR MY OPINIONS

I have arrived at my opinions, which are summarized above, through a combination of previously acquired skills, knowledge, expertise, experience, and training as well as a thorough review and an independent analysis of the documents produced by The Defendants and listed in **AMENDED Attachment B**. The bases for my opinions are included in subsections 1 through 4 below.

1. The Defendants paid improper commission percentages to Saetec from 2000 through October 2017 and Saetec was damaged in the principal amount of \$2,712,043 as a result

I constructed separate databases to analyze the damages suffered by Saetec due to improper commission percentages paid on sales to the Commissioned Accounts. Specifically, I compared actual commissions that were paid, based upon the commission spreadsheets produced by The Defendants (refer to D00011294, D00012998, and D00011295) to the commissions that should have been paid by applying the commission percentages from Schedule A in the Agent Agreement (SAETEC007629-7640) to the revenue reflected on the revenue spreadsheets that were produced by The Defendants (refer to D00012980, D00012981, and D00023265). Any shortfall between the two yielded damages to Saetec; conversely, if The Defendants paid a greater amount than should have been paid, that amount was deducted from the damages I computed.

I have presented aggregate damage figures in the tables below; however, throughout my report, I will reference various appendices to my report, which include documents that comprise my working file to quantify damages on a per account, per product/service, per month basis. These appendices are provided with this report and are incorporated herein.

In my review of the revenue and commission data provided by The Defendants, I observed that The Defendants: (A) paid improper commission percentages to Saetec on certain products and services,⁷ (B) began paying a flat 12.5% percentage commission in September 2013, which is not reflected on Schedule A of the Agent Agreement,⁸ and (C) stopped paying commissions entirely on sales to certain accounts for which The Defendants previously had paid commissions.

⁷ Where I agreed with the historical commission percentages that The Defendants paid to Saetec, damages would be zero for that revenue.

⁸ A 12.5% commission percentage was less than all other agreed upon commission percentages, thereby damaging Saetec by the difference between 12.5% and the percentages listed on Schedule A (e.g., \$10,000 in sales on a 20% commissionable item would result in \$750 in damages; $\$10,000 \times 20\% = \$2,000$ compared to a $\$10,000 \times 12.5\% = \$1,250$ in commission paid). It is my understanding that the 12.5% flat commission percentage that was applied beginning in September 2013 included a broader base of revenue; however, even with this broader base of revenue, the 12.5% flat commission percentage paid was less than the commissions which should have been paid during this period. Refer to **AMENDED Appendix 2**.

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With respect to (A) above, three representative examples are below (refer to **Appendix 5**):

- OnProcess Technology ("OnProcess") signed a 3-year agreement with The Defendants (refer to D00026036, D00012982, D00026221, D00026035 & D00025164). I analyzed Dedicated Interstate products/services for OnProcess which were commissioned by The Defendants to Saetec (particularly REV_RATE_PLAN_ID 2826 and 2634). The Defendants paid Saetec a 13% rate beginning in 2007. Upon review of the 2003 Schedule A rates for a 3-year term contract, the minimum rate which should have been paid was 15% (Low Rates) and the maximum rate which may be paid was 25% (High Rates). The Defendants damaged Saetec for the OnProcess Dedicated Interstate products I reviewed specifically by a minimum of 2% of all sales.
- Similarly, I analyzed specific Internet Products, which The Defendants commissioned to Saetec at a 15% rate during 2005 through 2010. Upon review of the commission spreadsheets produced by The Defendants (refer to D00011294, D00012998, & D00011295) there were three different Internet Bandwidth charges that were commissioned (REV_RATE_PLAN_ID 3092, 3094, and 3096) at 15%. Upon further review of the 2003 Schedule A rates, the Internet sales to the accounts were to be commissioned to Saetec at a 20% commission percentage, regardless of the length of the contract term. The Defendants damaged Saetec for the Internet Bandwidth sales for 2006 and after which were commissioned at 15% by a minimum of 5% of all sales.
- Like the Internet Products, I analyzed PRI (Primary Rate Interface) T1 products from 2003 through August 2013 for those Commissioned Accounts which had a 3-year contract term.⁹ The Defendants paid a 13% or 15% rate on many of the PRI T1 products. Upon review of the 2002 and 2003 Schedule A, the minimum percentage which should have been paid was 16% (Low Rates) and the maximum rate which may be paid was 20%. The Defendants damaged Saetec for the PRI T1 3-year term products I reviewed by a minimum amount of 1-3% of all sales.

With respect to (C) above, two representative examples are below:

- Empire Exec Car/Limo DBA Towncar Exec (SUB ID 174300): From June 2001 through May 2002, The Defendants paid commissions to Saetec on all accounts related to Empire Exec Car/Limo DBA Towncar Exec (hereinafter "Towncar"). Starting in June 2002, The Defendants stopped paying commissions on sales to Towncar with no justification that I have seen through my review of information provided to me to date. The damages associated with The Defendants stopping commissions to Saetec relating to Towncar are \$74,626. This amount is included in Table 2 below.
- R&R Professional Recovery (Parent ID 171225): Similarly, from March 2001 through June 2006, The Defendants paid commissions to Saetec on all accounts related to R&R Professional Recovery (hereinafter "R&R"). Starting in July 2006, The Defendants stopped paying commissions on sales to R&R with no justification that I have seen through my review of information provided to me to date. The damages associated with The Defendants stopping commissions to Saetec relating to R&R are \$64,684. This amount is included in Table 2 below.

⁹ Based upon information provided by Saetec, all PRI T1 products / services belong in the Local Dialtone category on Schedule A.

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The key documents in developing the databases used to calculate Saetec’s damages are explained in more detail in Table 1 below:

Table 1: Documents Relied Upon to Create Damages Model

Document (Bates reference)	Description	Specific Use(s)
D00026036, D00012982, D00026221, D00026035 & D00025164	List of The Defendants’ accounts	1. Categorized Saetec accounts (including Commissioned Accounts and Never Paid Accounts) by a common parent ID number, and/or contract signing date; 2. Identified when certain accounts converted from the 2000 Schedule A to the 2003 Schedule A, upon renewal, for purposes of determining the appropriate commission percentages
D00011294, D00012998, & D00011295	Transaction-level detail for commissions paid to Saetec, including revenue subject to commissions, commission percentage, and a product name (refer to AMENDED Appendix 4A)	Quantified amounts paid monthly to identify amounts actually paid in commissions to Saetec to calculate Saetec’s damages
D00012980, D00012981, D00023265, & D00025163	Transaction-level detail for sales transactions relating to Saetec sales, including both Commissioned Accounts and Never Paid Accounts	1. Quantified which products were sold for each parent ID for all Related Accounts (defined below) in aggregate; ¹⁰ 2. Determined which products were commissionable and not commissionable
SAETEC0007629 to SAETEC0007645	Sales Agent Agreement between Saetec and The Defendants, including various Schedule A attachments	The Schedule A attachments to the Agent Agreement allowed me to apply a commission percentage to products which should have been commissioned

In addition to the information above, to the extent I was not able to determine which product or service fell into a category on Schedule A with reasonable certainty based upon the product and service name in The Defendants’ spreadsheets, I relied upon Saetec’s knowledge of the products and services sold.

I have included the following Attachments, which detail the assumptions I used to calculate Saetec’s damages:

- **Attachment C-1¹¹** is a listing of the Commissioned Accounts produced by The Defendants (refer to D00026036, D00012982, D00026221, D00026035 & D00025164 for additional information). This attachment includes account identification information (account name, parent ID numbers, account ID numbers, contract signing dates, etc.). Based upon a review of the information in the original documents, I determined that there were many accounts had that similar characteristics either with a common (1) parent ID number, (2) parent billing number, (3) description in the account name, (4)

¹⁰ As indicated in further detail below, I have aggregated all related accounts by a common “MMB_NAME”, which more broadly allowed me to quantify sales to a particular account relationship, sold by Saetec, which may have had a dozen or more Related Accounts.

¹¹ A description of **Attachment C-2** is included in Opinion #2 on page 8 below.

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contract signing date, or (5) a combination thereof (hereinafter "Related Accounts"). I assigned all Related Accounts a unique "MMB_NAME", which allowed me to aggregate revenues and commissions by a Related Account / "MMB_NAME" name. This also allowed me to apply commission percentages from Schedule A of the Sales Agent Agreement (refer to SAETEC007629 to SAETEC007640) in aggregate, or by "MMB_NAME". Finally, the information provided me with a contract term which, as I explain in greater detail below, allowed me to select when the 2000, 2002, or 2003 Schedule A percentages apply.

- **Attachment D** is a schedule of all transaction types from The Defendants' revenue spreadsheets (refer to D00012980, D00012981, D00023265, and D00025163). Based upon the product description from the revenue spreadsheets ("TRANS_NM") and communication with Saetec, I categorized each unique product into a broader MMB_PRODUCT_NAME category. This MMB_PRODUCT_NAME corresponds to the product and/or service types listed on Attachment A of the Agent Agreement (refer to SAETEC007629 to SAETEC007640). If there were certain products, services, or monthly charges or fees (e.g., taxes) which were not commissionable per the Agent Agreement, I assigned these to a "Not Commissionable" category. Certain commissionable products and services that were not specifically referenced on Schedule A were categorized as "Non-Standard 15% Items" and were assigned a 15% commission percentage, based upon information provided by Saetec.
- **Attachment E** is a spreadsheet signifying High, Medium, and Low commission percentages for various product/service categories and time periods for accounts that were commissioned to Saetec.¹² **Attachment E** includes a reference to the Agreement year, that determines which Schedule A attached to the Agent Agreement applies. The three periods refer to the first Schedule A, dated April 29, 2000 (SAETEC007632, referred to in **Attachment E** as "2000"), the second Schedule A, signed September 15, 2002 (SAETEC007638, referred to in Attachment E as "2002"), and a third Schedule A dated December 30, 2003 (SAETEC007640, referred to in **Attachment E** as "2003").¹³ The revenue data produced by The Defendants does not specify the rates sold to customers or whether such rates fall into the High, Medium, or Low commission percentage category from Schedule A. Therefore, as indicated in the sections and tables further below, I quantified the commissions which should have been paid based upon three iterations: (1) High commission percentages for the term that is specified in **Attachment C-1** for the "MMB_NAME", (2) Medium commission percentages for a given term, and (3) Low commission percentages for a given term.¹⁴

¹² Schedule A provides for a higher commission percentage, if Saetec sold (1) a longer-term contract (e.g., 3-year term vs. a 1-year term) or (2) a higher product/service rate structure (e.g., a \$0.059 per minute rate vs. a \$0.035 per minute rate).

¹³ Using the original contract signing date and the term of the contract from **Attachment D**, I determined on which date a customer converted from the 2000 Schedule A commission percentages to the 2002 and/or 2003 Schedule A commission structures. For any contract signed or renewed before September 15, 2002, I applied the 2000 Schedule A commission percentages to subsequent sales until the contract was renewed. For any contract signed or renewed between September 15, 2002 and December 30, 2003, I applied the 2002 Schedule A commission percentages to subsequent sales until the contract was renewed. For any contract signed or renewed after December 30, 2003, I applied the 2003 Schedule A commission percentages to subsequent sales.

¹⁴ For the 2002 (SAETEC007638) and 2003 (SAETEC007640) Schedule A documents, there were more than three pricing tiers for dedicated interstate service and switched interstate service. Excluding the individual case basis ("ICB") level for each Schedule A, there were six pricing tiers, which had different corresponding commission percentages. The 2002 dedicated interstate rates ranged from \$0.035 to \$0.059 per minute and the 2003 dedicated interstate rates ranged from \$0.019 to \$0.045 per minute. The revenue spreadsheets produced by The Defendants did not allow me to determine the rate that was ultimately charged to the customer. Accordingly, I have used a High/Medium/Low methodology to determine the commission percentages for dedicated interstate service. I used (1) the highest commission percentages on Schedule A for my "High" rate, (2) the third-highest (i.e., \$0.045 in 2002 and \$0.035 in 2003) commission percentages on Schedule A for my "Medium" rate, and (3) the lowest commission percentages above the ICB line on Schedule A for my "Low" rate. Based upon the foregoing, I reserve the right to amend my report based upon additional information which

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By analyzing the information above, including Saetec's explanation of product categories, I determined what commission percentages should be applied to each product The Defendants sold and compared that to what The Defendants paid to Saetec in aggregate commissions – using High, Medium, and Low Schedule A commission percentages.¹⁵

I have prepared an analysis with three separate commission percentages, which are included in the appendices to my report and reserve the right to amend this report based upon additional documentation that is produced or other information which may require me to amend my opinions.

As I quantified the damages Saetec sustained due to the improper commission percentages paid by The Defendants, I observed that the Low Rates from Schedule A in aggregate resulted in a negative damage figure for a several-year period in the early years of the Agent Agreement. This is an indication that using Low Rates from Schedule A is not a reasonable assessment of damages and further, (1) based upon my understanding of Saetec's position, Saetec was successful at selling High Rates, in the majority of instances,¹⁶ and (2) I understand The Defendants have not made a claim that they overpaid Saetec in aggregate relating to the commission schedules from Schedule A of the Agent Agreement. Therefore, for purposes of Table 2 below (and Table 3 in Opinion #2), I have excluded the damages at Low Rates.

Refer to Table 2 below for the damage to Saetec using High and Medium commission percentages.¹⁷

The Defendants may produce which may allow me to better assign a commission percentage to a product / service for a particular account.

¹⁵ Excluded from the commissions paid are the (1) historical override commissions paid to Saetec, (2) one-time "Spiff", and (3) "CABS" commissions paid to Saetec. For (1) above, The Defendants paid override commissions to Saetec until April 2011. I removed these from the commissions paid for the purposes of my damages calculation in Opinion #1 because override damages did not begin to accrue until after The Defendants terminated the override commission payment on Commissioned Accounts in April 2011. As indicated below in Opinion #3, Saetec has a claim pending for override commissions that The Defendants did not pay from May 2011 to present. For (2) above, I have excluded one-time "Spiff" payments and for (3) above I have excluded "CABS" commissions based upon the description provided in D00012998 (the #3 "COMM_TYPE" were commissions for "CABS Residuals"). The Defendants did not produce revenue data which allowed me to calculate "Spiff" payments or "CABS" commissions that should have been paid. I reserve the right to prepare an additional "Spiff" and/or "CABS" analysis if the information is provided by The Defendants.

¹⁶ While Saetec strove to sell accounts at High Rates and a 3-year term, not all the accounts it sold were at 3-year terms (as indicated in D00026036, D00012982, D00026221, D00026035 and D00025164).

¹⁷ I have amended my November 5, 2018 report to remove \$249,879 in "CABS Residuals" commissions which were included in the commissions paid in my November 5, 2018 report (see footnote 15 above), to more accurately restate the commissions relating to transactions which did not include CABS or SPIFFs. Additionally, as explained in footnote 5 above, I determined that there were 22 accounts in total which were originally included in Opinion #2 as Never Paid Accounts in my November 5, 2018 report. However, these 22 accounts should have been included in Opinion #1 as Commissioned Accounts. The net effect of the damages with the amended report is \$0; however, this more accurately matches accounts to whether they were historically commissioned or not. Refer to **AMENDED Appendix 1C** for a listing of all accounts and a summary of all products and expected commissions for the 22 accounts.

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Table 2: Principal Damages for Incorrect Commission Percentages on Commissioned Accounts

		Inception to April 2011	May 2011 to Oct 2017	Total
High Rates	Commission Should Have Been Paid	\$6,302,507	\$2,893,280	\$9,195,787
	Less: Commission Actually Paid	(\$4,549,331)	(\$1,934,413)	(\$6,483,744)
	Damages	\$1,753,176	\$958,867	\$2,712,043
Medium Rates	Commission Should Have Been Paid	\$5,617,672	\$2,653,338	\$8,271,010
	Less: Commission Actually Paid	(\$4,549,331)	(\$1,934,413)	(\$6,483,744)
	Damages	\$1,068,341	\$718,925	\$1,787,266

Based upon my review of the data before the conversion to a 12.5% flat commission percentage starting in 2013 and information provided by Saetec, High Rates are reasonable commission percentages¹⁸ to apply to sales that The Defendants made to Commissioned Accounts. Therefore, the principal amount of the damages suffered by Saetec relating to improper commission percentages paid by The Defendants to Saetec is \$2,712,043.

2. In addition to the improper commission percentages in Opinion #1, The Defendants failed to pay commissions to Saetec on sales of products and services for the Never Paid Accounts and Saetec was damaged in the principal amount of \$5,621,797 as a result

I constructed a third database in addition to the two that I referenced in Opinion #1 above to determine commissions which were due to Saetec for Related Accounts for which commissions were never paid to Saetec by The Defendants (as referenced above, I refer to these accounts as “Never Paid Accounts”).

The Defendants provided transaction-level detail from October 2000 through May 2018 for sales to 1,002 Never Paid Accounts.¹⁹ Commissionable revenue to these Never Paid Accounts exceeded \$28 million for The Defendants – and this revenue was never commissioned to Saetec for an 18-year period. As with Opinion #1 and the commissioned accounts, I prepared a listing of the Never Paid Accounts in AMENDED Attachment C-2 for reference. It is my understanding that Saetec claims that The Defendants should have paid commissions to Saetec on some or all these Never Paid Accounts. In analyzing the data produced by The Defendants, I have confirmed that for each Never Paid Account, there is a Related Account for which The Defendants paid commissions to Saetec.

To determine the commissions which The Defendants should have paid to Saetec, I applied the commission percentages from Attachment E above to The Defendants’ sales for the Never Paid Accounts. As The

¹⁸ Damage computations using the Medium Rates are included as well for reference.

¹⁹ While there were 1,002 accounts in total, less than 900 of the accounts contained commissionable revenue (others had products, services, or billing charges, which are listed on Attachment D as “Not Commissionable” only).

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Defendants paid no commissions on the Never Paid Accounts, Saetec's damages are equal to the resulting commissions that should have been paid.

Further, in my review of the data provided by The Defendants, I identified customers for which The Defendants initially paid commissions to Saetec but later created Related Accounts on the Never Paid Account list for which The Defendants failed to pay commissions to Saetec. A few representative examples of such inconsistent application of commission treatment are included below:

- **Netsmart Technologies, Inc.**: Beginning in 2001, Saetec was paid commissions on sales to "Net Smart Technologies, Inc." However, beginning in 2007, The Defendants added new accounts with the name "NETSMART TECHNOLOGIES", removing the space between "Net" and "Smart", and never paid Saetec on such accounts. Based upon the revenue data provided by The Defendants and the commission percentages from **Attachment E**, the commissions that should have been paid on such Never Paid Accounts for Net Smart Technologies, Inc. (i.e., damages) equals \$412,467, before applying the override percentage (see Opinion #3 below).
- **Fidelity**: Saetec was paid commissions on sales to Fidelity beginning in 2002. The Defendants subsequently added 14 additional Fidelity accounts, on which Saetec was paid commission. However, beginning in 2010 and continuing until 2017, there were a total of 49 Fidelity accounts that were added as accounts by The Defendants, which were not commissioned to Saetec.²⁰ Based upon the revenue data produced by The Defendants and the commission percentages from **Attachment E**, the commissions that should have been paid for the 49 Never Paid Accounts for Fidelity (i.e., damages) equals \$37,673; refer to **AMENDED Appendix 3**.²¹
- **OnProcess Technology**: Beginning in 2000, Saetec was paid commissions on sales to OnProcess Technology. The Defendants subsequently added four OnProcess Technology accounts, on which Saetec was paid commissions. However, beginning in 2011 and continuing to 2014, there were OnProcess Technology accounts added by The Defendants, which were not commissioned to Saetec. Based upon the revenue data produced by The Defendants and the commission percentages from **Attachment E**, the commissions that should have been paid for the Never Paid Accounts for OnProcess Technology (i.e., damages) equals \$1,386, before applying the override percentage (see Opinion #3 below); refer to **AMENDED Appendix 3**.²²

While these are representative examples, the data provided by The Defendants shows that there was inconsistent application of commission treatment for other accounts, which damaged Saetec. The corresponding damages, in aggregate, are in Table 3 below.

²⁰ This number is amended from my November 5, 2018 to more accurately reflect the 16 Fidelity accounts which were commissioned but were not included in The Defendants' Commissioned Accounts productions (D00012980 and D00012981, or previously, Commissioned Accounts). Rather, these 16 accounts were included in The Defendants' later production (D00023265, or previously, Never Paid Accounts).

²¹ An override was not included on Fidelity sales.

²² Similar to the Fidelity accounts in footnote 20, there were six OnProcess accounts which were commissioned that were not included in the The Defendants' earlier productions (D00012980 and D00012981) but were included in The Defendants' later production (D00023265).

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Table 3: Principal Damages for Revenue Not Commissioned on Never Paid Accounts

		Inception to April 2011	May 2011 to Oct 2017	Total
High Rates	Commission Should Have Been Paid	\$1,029,133	\$4,592,664	\$5,621,797
	Less: Commission Actually Paid	\$0	\$0	\$0
	Damages	\$1,029,133	\$4,592,664	\$5,621,797
Medium Rates	Commission Should Have Been Paid	\$935,608	\$4,295,083	\$5,230,691
	Less: Commission Actually Paid	\$0	\$0	\$0
	Damages	\$935,608	\$4,295,083	\$5,230,691

I applied the same methodology to the Never Paid Accounts revenue and commission percentages as I did in Opinion #1 above. The principal amount of damages suffered by Saetec relating to The Defendants' failure to pay commissions to Saetec on sales of products and services for the Never Paid Accounts is \$5,621,797.

3. In May 2011 The Defendants stopped paying a five percent override percentage to Saetec for sales to the Commissioned Accounts damaging Saetec in the principal amount of \$641,562 and The Defendants never paid an override percentage to Saetec for sales to the Never Paid Accounts damaging Saetec in the principal amount of \$1,404,250 as a result

The Defendants paid Saetec an override commission beginning in May 2001. The override commission was an incremental amount paid in addition to the base commission percentages per Schedule A in the Agent Agreement, and was paid on sales to the Commissioned Accounts as indicated below:

- From May 2001 through January 2002, The Defendants paid an override percentage of two percent on commissionable Saetec revenue
- Starting in February 2002 through April 2011, The Defendants paid an override percentage of five percent on commissionable Saetec revenue
- In total, from May 2001 through April 2011, The Defendants paid Saetec \$1,243,379 in override commissions. However, as I tabulated below and in **AMENDED Appendix 2** to my report, that amount should have been much greater.

I applied the override percentage to commissionable revenues less all amounts to Fidelity and Covista accounts, on which an override commission was historically not paid. I have included the calculations of the revenue applicable for the override in **Appendix 1A**, **Appendix 1B**, and **Appendix 4C** to my report.²³

The Defendants stopped paying a five percent override commission on commissioned sales effective May 2011 and have paid \$0 in override commissions since that date. I quantified the revenue from Opinion #1 from May 2011 to present that Saetec asserts is still subject to the five percent override commission and applied five percent to that revenue. Five percent of that amount, or the damage associated with the Opinion #1 revenue, is \$641,562 (refer to Table 4 below).

²³ In this amended report, I have created an **AMENDED Appendix 1C**, which includes the 22 accounts (16 Fidelity and six OnProcess) that were commissioned that were not produced in The Defendants first series of revenue spreadsheets that were produced (D00012980 and D00012981).

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Additionally, The Defendants did not pay an override commission on revenue from sales for the Never Paid Accounts which were never commissioned to Saetec but should have been (refer to Opinion #2),²⁴ which damaged Saetec. In total, there were over \$28 million in commissionable sales for Opinion #2, which equates to \$1,404,250 in override commissions which should have been paid to Saetec on those sales (refer to Table 4 below and **AMENDED Appendix 2**²⁵).

Table 4: Principal Damages for Override Commissions on Commissioned and Never Paid Accounts

	Inception to April 2011	May 2011 to Present	Total
Opinion #1 Principal Override Damages (Commissioned Accounts)	\$0	\$641,562	\$641,562
Opinion #2 Principal Override Damages (Never Paid Accounts)	\$257,542	\$1,146,708	\$1,404,250
Grand Total Principal Override Damages	\$257,542	\$1,788,270	\$2,045,812

The total damages associated with the override commission which should have been paid to Saetec (A) on Opinion #1 sales between May 2011 to present and (B) all Opinion #2 sales are \$2,045,812.²⁶

4. Prejudgment interest through October 31, 2018 based on the damages in Opinions #1 through #3 equals \$5,847,142 and future prejudgment interest accrues at a rate of \$2,559 per day

As this matter is venued in Monroe County Supreme Court, I have quantified prejudgment interest at the New York statutory rate of nine percent to all damages presented in Opinions #1 through #3 above. I added together the monthly damages for Opinions #1 through #3 and quantified (on a monthly basis) the prejudgment interest for two distinct periods: (1) the entire duration of the relationship between Saetec and The Defendants and (2) from May 2011 to present.²⁷

Based upon the assumption of High Rates, over the period of the entire relationship between Saetec and The Defendants, the total prejudgment interest amount from inception through November 30, 2018 is \$5,847,142 (refer to the red entries in Table 5 below).

²⁴ I applied only a two percent override commission percentage from May 2001 through February 2002, as was historically paid by The Defendants, and a five percent commission percentage for March 2002 to present.

²⁵ In **AMENDED Appendix 2**, I have included a calculation of damages if a two percent override applies as I understand that Saetec has claimed, in the alternative, that if a five percent override does not apply, a two percent override would.

²⁶ I understand that Saetec currently has a motion pending in Monroe County Supreme Court on the issue of the override commissions due on revenue on the Commissioned Accounts. The amount in this motion is \$804,696, which is inclusive of damages and prejudgment interest. If Saetec is awarded damages on this amount, the payment from The Defendants will serve to reduce Saetec's damages and the according per diem prejudgment interest that I have computed in this report.

²⁷ For purposes of this report, I have quantified prejudgment interest through November 30, 2018. The per diem prejudgment interest will apply to all days after November 30, 2018.

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Table 5: Prejudgment Interest Calculated for Various Iterations of Opinions #1 through #3 (see above)

Opinion Ref.	Description	Total Prejudgment Interest	Per Diem Interest
Opinion #1	High Rates	\$2,345,776	\$669
Opinion #1	Medium Rates	\$1,458,613	\$441
Opinion #2	High Rates	\$2,573,090	\$1,386
Opinion #2	Medium Rates	\$2,378,852	\$1,290
Opinion #3	Commissioned Accounts (see Opinion #1 & AMENDED Appendix 2)	\$285,023	\$158
Opinion #3	Never Paid Accounts (see Opinion #2 & AMENDED Appendix 2 & 3)	\$643,252	\$346

I have quantified a total per diem rate of prejudgment interest for the high rates to be \$2,559 per day, which can be applied beginning on December 1, 2018 and every day thereafter.²⁸

COMPENSATION

Mengel Metzger Barr & Co. LLP's engagement with Counsel is provided on a time and materials basis. My firm is engaged at a blended rate of \$185 per hour through the issuance of my amended expert report.

²⁸ The per diem prejudgment interest amount is computed based upon one day of interest at nine percent on a total damage amount of \$10,379,652 (\$10,379,652 x 9% interest = \$934,169 annually; divided by 365 days = \$2,559).

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**ATTACHMENTS TO THE EXPERT REPORT OF BRIAN C. HEDGES
(AMENDMENTS IN ITALICS)**

<u>ATTACHMENT A:</u>	Curriculum Vitae of Brian C. Hedges
<u>ATTACHMENT B:</u>	<i>Documents considered in the formation of my opinions</i>
<u>ATTACHMENT C-1:</u>	Listing of Commissioned Accounts
<u>ATTACHMENT C-2:</u>	<i>Listing of Never Paid Accounts</i>
<u>ATTACHMENT D:</u>	Categories Applied to All The Defendants Products / Services
<u>ATTACHMENT E:</u>	Product / Service Commission Percentages (Per Schedule A)

APPENDICES TO THE EXPERT REPORT OF BRIAN C. HEDGES

<u>APPENDIX 1A:</u>	All Revenue – Opinion #1 – All Periods
<u>APPENDIX 1B:</u>	All Revenue – Opinion #2 – All Periods
<u>APPENDIX 1C:</u>	<i>All Revenue – Amended Accounts switched from Opinion #1 to Opinion #2</i>
<u>APPENDIX 2:</u>	<i>Monthly Principal Damages and Prejudgment Interest</i>
<u>APPENDIX 3:</u>	<i>Opinion #2 – By Customer</i>
<u>APPENDIX 4A:</u>	<i>Commissions Paid (excluding override, SPIFFs, and C.ABS) - By Customer and Month</i>
<u>APPENDIX 4B:</u>	Commissions Paid (SPIFFs and CABS)
<u>APPENDIX 4C:</u>	Covista Revenue Excluded from Override Damages
<u>APPENDIX 5:</u>	Examples of Commission Errors
<u>APPENDIX 6:</u>	<i>Report Tables</i>

Proof of Claim of Saetec, Inc.

Exhibit A

**Summons and Complaint in *Saetec, Inc. v. PaeTec Communications, Inc. and
Windstream Communications Inc.* (Sup. Ct. Monroe County, Index No. 13-11176)**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

SAETEC, INC.,

Plaintiff,

vs.

PAETEC COMMUNICATIONS, INC. and
WINDSTREAM COMMUNICATIONS INC.,

Defendants.

SUMMONS

Index No.: 13-11176

2013 OCT -2 PM 3:11
MONROE COUNTY CLERK

RECEIVED

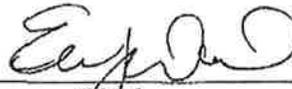
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on the attorneys for all parties in this action within twenty (20) days after service (or within thirty (30) days after service is complete if the Summon is not personally delivered to you within the State of New York) and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Venue is based on a defendant's residence and a written agreement between plaintiff and a defendant, pursuant to CPLR §§ 503 and 501, respectively.

October 2, 2013

WARD GREENBERG HELLER & REIDY LLP

By 
Eric J. Ward
David M. Knapp

300 State Street
Rochester, New York 14614
585-454-0700

Attorneys for Plaintiff Saetec, Inc.

Defendants:

Windstream Communications, Inc.
4001 Rodney Parham Rd.
Little Rock, AR 72212

Paetec Communications, Inc.
One Paetec Plaza
600 Willowbrook Office Park
Fairport, New York 14450

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

SAETEC, INC.,

Plaintiff,

COMPLAINT

vs.

Index No.: 13-11176

PAETEC COMMUNICATIONS, INC. and
WINDSTREAM COMMUNICATIONS INC.,

Defendants.

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MONROE COUNTY CLERK

RECEIVED

Plaintiff Saetec, Inc. ("Saetec"), as and for its complaint, states as follows:

THE PARTIES

1. Plaintiff is a corporation organized under the laws of the State of New Hampshire, with its principal place of business in Lebanon, New Hampshire.
2. Defendant PaeTec Communications, Inc. ("PaeTec") is a corporation organized under the laws of the State of Delaware, with its principal place of business in Monroe County, New York.
3. Defendant Windstream Communications, Inc. ("Windstream") is a corporation organized under the laws of the state of Delaware. Windstream transacts business within the State of New York and has a new corporate office located on the corner of Main Street and Clinton Avenue in Rochester, Monroe County, New York.

BACKGROUND

4. PaeTec was founded in 1998 as a supplier of communications solutions to medium and large businesses and institutions. PaeTec sells a variety of products and services to

its customers, including local and long distance voice services, data and internet services, enterprise communications management software, customer premises equipment, security solutions and managed services.

5. PaeTec uses both an employee sales force and independent sales agents to acquire new customers and to expand the variety of products and services utilized by existing customers.

6. Upon information and belief, in late 2011, PaeTec became a subsidiary of Windstream Corporation, the parent company of Windstream.

7. Saetec was founded in 1995. Saetec is an independent sales agent, which procures customers for telecommunications companies, including PaeTec. Saetec has maintained its own sales force, and also serves as a "master agent," contracting with and coordinating the work of sub-agents to procure additional business for companies like PaeTec.

8. In early 2000, PaeTec was a young company, and it wanted to grow its customer base and revenues aggressively.

9. At that time, Saetec had experience in the telecommunications industry, as well as significant contacts with business customers and institutions that PaeTec wished to attract. Saetec also had relationships with experienced sales agents who could act as sub-agents to procure customers for PaeTec. As a result, Saetec was particularly well situated to help PaeTec expand its customer base.

10. Accordingly, on or about April 29, 2000, Saetec entered into a Sales Agent Agreement with PaeTec (the "Agency Agreement"), by which Saetec agreed to act as a non-exclusive, independent contractor to procure customers for PaeTec's various communications products and services.

11. Under the Agency Agreement, Saetec operates strictly on a commission basis, bearing all of the costs it incurs in connection with its efforts to secure customers for PaeTec.

12. In exchange for its efforts and expenditures on PaeTec's behalf, Saetec is entitled to commissions on sales of products and services to customers Saetec procures ("Saetec Accounts") for PaeTec at agreed-upon rates set forth in Schedule A to the Agency Agreement (the "Scheduled Commissions").

13. In addition, per the Agency Agreement, Saetec is entitled to receive commissions on sales of non-standard products and services at rates separately agreed upon in advance by Saetec and PaeTec, provided that, if they do not agree in advance upon a different rate, Saetec is entitled to commissions on sales of non-standard products and services at rates no less than those set forth in the Agency Agreement (the "Custom Products Commissions").

14. The Agency Agreement also provides that, on top of the Scheduled Commissions and Custom Products Commissions set forth above, Saetec is entitled to an additional commission on all sales to Saetec Accounts (the "Override Commission").

15. The Override Commission initially was set at 2% and subsequently was increased to 5%.

16. Under the Agency Agreement, Saetec is entitled to receive Scheduled Commissions, Custom Products Commissions, and Override Commissions on all sales to Saetec Accounts for as long as they remain customers of PaeTec, regardless of whether an order is placed by Saetec or procured directly by Paetec by any other means.

17. The parties have amended the Agency Agreement several times since it was executed. Except as modified by those amendments, the terms and conditions of the Agency Agreement have remained unchanged, and Saetec continues to be entitled to receive Scheduled

Commissions, Custom Products Commissions and Override Commissions on all sales to Saetec Accounts during the term of the Agency Agreement, in accordance with its terms.

18. On January 25, 2011, however, PaeTec advised Saetec that, effective April 25, 2011, it was terminating Saetec's right to earn Override Commissions on all accounts and that it would pay Scheduled Commissions pursuant to a new, unilaterally modified schedule. PaeTec neither sought nor received Saetec's consent for this adverse alteration. Since April 25, 2011, PaeTec has stopped paying Saetec its Override Commissions and has paid decreased Commissions pursuant the new, unilaterally modified schedule for all accounts.

19. Under the terms of the Agency Agreement, PaeTec does not have the right to unilaterally discontinue payment of the Override Commissions or to change the Scheduled Commission rates for Saetec Accounts. Specifically, paragraph 17 of the Agency Agreement provides that the Agency Agreement, "including its Schedule(s), can only be amended, modified or supplemented by a separate written document duly executed by authorized representatives of both parties."

20. Moreover, paragraph 6(f) of the Agency Agreement provides that any changes to the Scheduled Commissions "shall not retroactively affect any obligation incurred prior to such change." Thus, PaeTec does not have the right to unilaterally modify the Scheduled Commission rates or discontinue payment of the Override Commissions for existing Saetec Accounts.

21. By letter dated July 26, 2013, Windstream advised Saetec that it was terminating Saetec's Agency Agreement with PaeTec "for convenience," effective September 1, 2013. Windstream further advised that it unilaterally was modifying the terms and conditions of the Agency Agreement, including the commissions to which Saetec is entitled pursuant to the Agency Agreement.

22. The Agency Agreement provides that "it shall continue in full force and effect until terminated ... by either party on thirty (30) days prior written notice to the other[.]" Windstream is not a party to the Agency Agreement and, although it apparently purports to have such authority, has no authority to unilaterally modify the terms of, or to terminate, the Agency Agreement.

23. Under the Agency Agreement, neither Windstream nor PaeTec is permitted to unilaterally modify the terms and conditions of the Agency Agreement, including the commission rates to which Saetec is entitled.

24. Saetec has performed, and continues to perform, its obligations under the Agency Agreement, including the procurement of orders for PaeTec products and services from new and existing Saetec Accounts pursuant to its terms.

25. PaeTec has accepted, and continues to accept, orders from Saetec Accounts for products and services, and has generated, and continues to generate, revenue from sales to those Saetec Accounts.

**FIRST CAUSE OF ACTION
(Declaratory Judgment)**

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25, as if fully set forth herein.

27. An actual and justiciable controversy within the meaning of CPLR 3001 exists between the parties concerning PaeTec's and/or Windstream's right to terminate and/or unilaterally modify the terms and conditions of the Agency Agreement, including by changing Scheduled Commissions and ceasing to pay Override Commissions.

28. As a result of this controversy, Saetec seeks and is entitled to a declaration that:

- a. Saetec has fully performed its obligations under the Agency Agreement;

- b. Defendants' purported unilateral termination and/or modifications of the Agency Agreement, including changes to the Scheduled Commissions and elimination of Override Commissions, are void and without effect; and
- c. The Agency Agreement, as amended by mutual agreement of the parties, continues in full force and effect; or
- d. In the alternative, even if PaeTec and/or Windstream's purported termination and/or modifications of the Agency Agreement are effective as to new accounts, the Agency Agreement, as amended by mutual agreement of the parties, remains in full force and effect as to all Saetec business existing as of the date of such termination and/or modification.

**SECOND CAUSE OF ACTION
(Breach of the Agency Agreement)**

29. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1- 28, as if fully set forth herein.

30. Despite its obligations under the Agency Agreement, PaeTec has failed to establish systems and internal controls to accurately track and pay commissions due and owing under the Agency Agreement.

31. PaeTec has failed, and continues to fail, to pay Saetec all commissions to which it is entitled under the Agency Agreement, as amended, for products and services sold to Saetec Accounts.

32. For example, PaeTec has: (i) paid Saetec commissions on certain Saetec Account revenues at rates lower than those required by the Agency Agreement, (ii) failed to report and pay any commissions at all on certain Saetec Account revenues, (iii) failed to report and pay Saetec commissions on certain wholesale revenues, (iv) improperly deducted certain customer

credits and expenses from the Saetec Account revenues on which commissions are based, (v) failed to report and pay Saetec commissions on additional products and services purchased by certain Saetec Accounts; (vi) on Saetec Accounts, failed to report and pay the Override Commission due under the Agency Agreement at the proper rate, or failed to pay the Override Commission at all; and (vii) failed to report and pay Saetec appropriate commissions on certain CABS, 0+ and calling card sales revenue; and (viii) entered into agreements with Saetec Accounts to charge the customers lower rates and lowered Saetec's commission rates and payout without Saetec's knowledge and consent; all of which constitutes a breach of the Agency Agreement.

33. Saetec began bringing commission deficiencies to PaeTec's attention as early as the fall of 2000. Since that time, PaeTec repeatedly has acknowledged that it did not pay all of the commissions due to Saetec, reassured Saetec that it was investigating the deficiencies, and promised to correct the deficiencies and pay all outstanding amounts due to Saetec.

34. For example, in verbal conversations and emails PaeTec assured Saetec that it was working on validating the unpaid commission amounts and ensuring that the problems were corrected going forward.

35. PaeTec has provided Saetec with a copy of an internal PaeTec memorandum summarizing the Saetec commission issue, and acknowledging that, as of the date of the memorandum, PaeTec owed Saetec at least \$506,900, and "if [PaeTec] dug deeper, it would be + 10%" more. In the same memorandum, PaeTec also acknowledged that it also owed Saetec commissions on additional items, including CABS, calling card and O+ sales.

36. Following further discussions regarding PaeTec's outstanding obligations to Saetec and additional analyses of Saetec's claims by PaeTec—at least some of which it provided

to Saetec—Saetec and PaeTec entered into an agreement which tolled any applicable statute of limitations and afforded PaeTec the opportunity to continue to investigate the deficiencies in its commission payments to Saetec.

37. Following termination of the tolling agreement, in an effort to forestall a lawsuit by Saetec, PaeTec continued to represent that it was investigating Saetec's claims and to promise that it would pay all outstanding amounts due to Saetec. In furtherance of those efforts, PaeTec made several "good faith" payments in partial satisfaction of its past-due obligations. These "good faith" payments were applied towards the oldest of the monies owed to Saetec.

38. PaeTec executives stated to Saetec that the commission system was unable to accurately track and properly pay commissions and opined that the system likely never would be corrected. In order to mitigate and avoid the ongoing accrual of underpayments in base commissions Paetec and Saetec agreed that the Schedule A of the Commission Addendum of the Sales Agent Agreement would be set to a flat base-rate commission of 25%.

39. Subsequent to this Agreement, PaeTec did not convert the commission system, explaining to Saetec that it would prevent Paetec from determining and rectifying prior underpayments, which would have to be calculated prior to the system adjustment. PaeTec again assured Saetec that it would continue to address and remedy all underpayments.

40. Saetec reasonably relied upon PaeTec's repeated assurances, both before and after the tolling agreement, that unpaid commissions would be identified and paid. However, despite PaeTec's promises, it has still not paid all commissions due to Saetec.

41. PaeTec has breached the Agency Agreement and Saetec has been damaged as a result of that breach in an unknown amount believed to be not less than \$2,400,000, with the exact amount to be determined at trial.

**THIRD CAUSE OF ACTION
(Breach of the Non-Circumvent Agreement)**

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 – 41, as if fully set forth herein.

43. At the same time Saetec and PaeTec entered into the Agency Agreement, both parties entered into a Non-Circumvent Agreement, also dated April 29, 2000.

44. The Non-Circumvent Agreement is intended to preserve and protect Saetec's relationships with its sub-agents.

45. In the Non-Circumvent Agreement, PaeTec agreed to refrain from dealing directly with identified Saetec sub-agents.

46. Moreover, in the event that PaeTec entered into a direct relationship with an identified Saetec sub-agent, PaeTec agreed to pay Saetec full commissions for any sales procured by that sub-agent, in accordance with the terms of the Agency Agreement.

47. The Non-Circumvent Agreement is still in force and effect today, and continues to be binding on PaeTec.

48. Saetec has performed, and continues to perform, its obligations under the Non-Circumvent Agreement.

49. Upon information and belief, PaeTec has interfered and dealt directly with one or more of Saetec's sub-agents in breach of the Non-Circumvent Agreement.

50. Upon information and belief, as a result of PaeTec's interference, one or more of Saetec's sub-agents has procured accounts for PaeTec directly, instead of through Saetec as contemplated by the Non-Circumvent Agreement (the "Sub-Agent Accounts").

51. Upon information and belief, as a result of PaeTec's interference, one or more of Saetec's sub-agents has been recommended by PaeTec to contract with other Paetec relationships and cease submitting business through Saetec.

52. Upon information and belief, PaeTec has sold products and services to those Sub-Agent Accounts.

53. Upon information and belief, PaeTec has failed to disclose to Saetec the monthly billings to those Sub-Agent accounts and to pay Saetec commissions on sales to the Sub-Agent Accounts, in breach of the Non-Circumvent Agreement.

54. Upon information and belief, Saetec has been damaged as a result of PaeTec's breach of the Non-Circumvent Agreement in an unknown amount believed to be not less than \$250,000, with the exact amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Breach of the SPIF and Custom SPIF Agreements)

55. Saetec repeats and realleges each and every allegation contained in paragraphs 1 – 54, as if fully set forth herein.

56. PaeTec has offered, and continues to offer, sales promotion incentive funds (i.e., payments) for certain products and services ("SPIFs") to its independent sales agents, including Saetec.

57. Such SPIFs are intended to reward independent sales agents when their accounts purchase certain high-margin products and services identified by PaeTec. SPIFs are offered and earned in addition to any other commissions PaeTec has agreed to pay its independent sales agents.

58. Saetec Accounts have ordered, and continue to order, numerous products and services that meet all of the requirements necessary for Saetec to earn the SPIFs offered by PaeTec, which orders PaeTec has accepted and continues to accept.

59. A binding contract is formed between PaeTec and Saetec each time a Saetec Account purchases a product or service in accordance with the SPIF terms offered by PaeTec (each, a "SPIF Agreement").

60. PaeTec has paid some, but not all, of the SPIFs Saetec has earned, in breach of one or more of the SPIF Agreements.

61. PaeTec also has, from time to time, offered to pay to Saetec sales promotion incentive funds for certain products and services, in addition to the SPIFs generally offered to its independent sales agents ("Custom SPIFs").

62. Saetec Accounts have ordered, and continue to order, numerous products and services that meet all of the requirements necessary for Saetec to earn the Custom SPIFs offered by PaeTec, which orders PaeTec has accepted and continues to accept.

63. A binding contract is formed between PaeTec and Saetec each time a Saetec Account purchases a product or service for which PaeTec offered to pay a Custom SPIF (each, a "Custom SPIF Agreement").

64. PaeTec has paid some, but not all, of the Custom SPIFs earned by Saetec, in breach of one or more of the Custom SPIF Agreements.

65. At the same time that it brought other commission deficiencies to PaeTec's attention, Saetec also raised PaeTec's failure to pay all of the SPIFs and Custom SPIFs that Saetec had earned.

66. During the parties' discussions, PaeTec repeatedly promised to investigate and pay any unpaid SPIFs and Custom SPIFs, once it had investigated and resolved the other issues Saetec had raised regarding unpaid commissions.

67. Saetec reasonably relied upon PaeTec's repeated assurances that unpaid SPIFs and Custom SPIFs would be identified and paid once the other outstanding commission issues had been resolved.

68. Despite PaeTec's promises, it has still not paid all of the SPIFs and Custom SPIFs earned by Saetec.

69. As a result of defendant's breach of one or more SPIF Agreements and one or more of the Custom SPIF Agreements, plaintiff has been damaged in an unknown amount believed to be not less than \$150,000, with the exact amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against defendant:

- (a) For a declaration that
 - i. Saetec has fully performed its obligations under the Agency Agreement;
 - ii. Defendants' purported unilateral termination and/or modifications of the Agency Agreement, including changes to the Scheduled Commissions and elimination of Override Commissions, are void and without effect; and
 - iii. The Agency Agreement, as amended by mutual agreement of the parties, continues in full force and effect; or
 - iv. In the alternative, even if PaeTec and/or Windstream's purported termination and/or modifications of the Agency Agreement are effective as to new accounts, the Agency Agreement, as amended by mutual agreement of the

parties, remains in full force and effect as to all Saetec Accounts existing as of
the date of such termination and/or modification.

- (b) For compensatory damages of not less than \$2,400,000 on the second cause of
action;
- (c) For compensatory damages of not less than \$250,000 on the third cause of action;
- (d) For compensatory damages of not less than \$150,000 on the fourth cause of
action;
- (e) For interest from the dates commissions should have been paid on the Second,
third, and fourth causes of action;
- (f) For injunctive relief directing defendant to accurately track and timely pay all
future commissions owed to plaintiff;
- (g) For costs of this action; and
- (h) For such other and further relief as the Court deems just and proper.

October 2, 2013

WARD GREENBERG HELLER & REIDY LLP

By


Eric J. Ward
David M. Knapp

300 State Street
Rochester, New York 14614
585-454-0700

Attorneys for Plaintiff Saetec, Inc.

**SAETEC, INC.'S: (A) RESPONSE TO DEBTORS' NINTH OMNIBUS
CLAIM OBJECTION; AND
(B) CROSS MOTION FOR PERMISSIVE ABSTENTION**

EXHIBIT D

POST-PETITION CLAIM

Fill in this information to identify the case:

Debtor 1 PaeTec Communications, LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Southern District of New York

Case number 19-22311

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both, 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Saetec, Inc.
Name of the current creditor (the person or entity to be paid for this claim) _____
Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?** **Where should notices to the creditor be sent?** **Where should payments to the creditor be sent? (if different)**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>Boylan Code LLP attn: Devin Palmer</u> Name <u>145 Culver Road, Suite 100</u> Number Street <u>Rochester NY 14620</u> City State ZIP Code Contact phone <u>585.232.5300</u> Contact email <u>dpalmer@boylancode.com</u>	_____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____
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Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 365,361.85. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

Outstanding post-petition commissions

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property.

Nature of property:

- Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
- Motor vehicle
- Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____%

- Fixed
- Variable

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check one:

Amount entitled to priority

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ _____

Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

Other. Specify subsection of 11 U.S.C. § 507(a)(2) that applies.

\$ 365,361.85

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/10/2019

MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name Devin Lawton Palmer
First name Middle name Last name

Title Partner

Company Boylan Code LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 145 Culver Road, Suite 100
Number Street

Rochester NY 14620

City State ZIP Code

Contact phone 585.232.5300 Email dpalmer@boylancode.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Chapter 11

PAETEC COMMUNICATIONS, LLC,

Case No. 19-22311 (RDD)

Debtor.

(Jointly Administered)¹

REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM

**THIS FORM IS TO BE USED ONLY FOR
ADMINISTRATIVE EXPENSE CLAIMS, INCLUDING
CLAIMS UNDER SECTION 503(b)(9) OF THE
BANKRUPTCY CODE**

1. Name of administrative expense claimant:

Saetec, Inc. ("Saetec")

2. Name of Debtor administrative expense claim asserted against:

PaeTec Communications, LLC (3453); BK No. 19-22311 (RDD).²

3. Nature and description of the administrative expense claim (you may attach a separate summary):

Saetec's 11 U.S.C. § 503(b)(1)(A) administrative claim, which is entitled to priority under 11 U.S.C. § 507(a)(2) and plan treatment in accordance with 11 U.S.C. § 1129(a)(9), is based upon unpaid commissions earned post-petition. The services underlying those commissions were both necessary and beneficial to the preservation of the estate. The commissions represent post-petition sales and corresponding revenue used to fund Debtors' reorganization efforts and eventual plan of repayment.

¹ Jointly administered under Windstream Holdings, Inc., et al., Case Number 19-22312 (RDD).

² Pursuant to Sections 8(d), 8(e) and 9(i) of this Court's Order (I) Setting Bar Dates for Submitted Proofs of Claim, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof (Doc. 518), Saetec has filed separate administrative claims in the following jointly administered bankruptcies: (a) In re Windstream Holdings, Inc., Case No. 19-22312; (b) In re Windstream Communications, LLC, Case No. 19-22433; and (c) In re PaeTec Communications, LLC, Case No. 19-22311.

4. Date(s) administrative expense claim arose:

February 25, 2019 through July 10, 2019

5. Amount of administrative expense claim:

\$365,361.85* through July 10, 2019

Calculated based on 135 days post-petition at per diem of \$2,706.31. Per diem principal rate continues at \$2,706.31. Summary of per diem is set forth in the Summary Damages Table that is attached hereto.

* The current claim amount does not include: (a) Saetec's Third Cause of Action in the attached Complaint alleging that defendants breached the Non-Circumvent Agreement by entering into direct relationships with Saetec's subagents and failing to pay Saetec full commissions on sales made by such subagents ("Non-Circumvent Claim"); and (b) that portion of Saetec's Second Cause of Action in the attached Complaint for breach of the Agency Agreement that relates to defendants' failure to pay commissions on all sales made to Saetec-procured customers that defendants acquired as part of their purchase of Covista, Inc. ("Covista Claim"), including but not limited to the Non-Circumvent Claim and the Covista Claim.

6. Documentation supporting the administrative expense claim must be attached hereto. Documentation should include evidence of (a) the nature of the administrative expense claim asserted, (b) the date or dates on which the administrative expense claim arose, and (c) for section 503(b)(9) claims, the date or dates any goods were received by the Debtor.

Attached and made a part hereof as Exhibit A is documentation in support of Saetec's administrative claim. Specifically included in Exhibit A is: (a) Summary Damage Table (including Principal Damages after Bankruptcy Filing); (b) Update to Amended Expert Report of Brian C. Hedges; (c) Amended Expert Report of Brian C. Hedges, Mengel Metzger Barr, CPA; (d) Summons and Complaint in *Saetec, Inc. v. PaeTec Communications, Inc. and Windstream Communications Inc.* (Sup. Ct. Monroe County, Index No. 13-11176). Debtor and/or its counsel (Bond, Schoeneck & King PLLC (See Doc. No. 685)) are already in possession of documents provided in the aforementioned state court action that additionally support and describe the instant Claim. Saetec reserves the right to add additional documentation.

7. Reservation of rights.

This Proof of Claim shall not be deemed a consent by Saetec to having any matters relating to any disputed claims heard by the United States Bankruptcy Court for the Southern District of New York, including but not limited to, any dispute presently before any state court, or any administrative, regulatory or arbitral forums, or requiring consideration of laws or regulations other than

the Bankruptcy Code; nor shall Saetec's submission of this Proof of Claim waive any right of Saetec to have final orders in non-core matters entered only after a de novo review by a district court judge, or to have the United States District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal, or any other rights, claims, actions defenses, setoffs or recoupment (whether contingent, unliquidated or otherwise) to which Saetec is or may be entitled under any agreements, in law or equity, all of which rights, claims, actions, defenses, setoffs and recoupments (whether contingent, unliquidated or otherwise) are expressly preserved.

Respectfully submitted,

Dated: Rochester, New York
July 12, 2019

BOYLAN CODE LLP
Attorneys for Saetec, Inc.



Devin Lawton Palmer, Esq.
145 Culver Road, Suite 100
Rochester, New York 1420
Telephone: 585.232.5300
Facsimile: 585.238.9056
E-mail: dpalmer@boylancode.com

Proof of Claim of Saetec, Inc.

Exhibit A

Summary Damage Table (including Principal Damages after Bankruptcy Filing)

Saetec, Inc. v. Paetec Communications, Inc. and Windstream Communications, Inc.
 Summary Damage Tables (including Per Diem Principal Damages after Bankruptcy Filing)

	Amended Report	Updated Figures through Bankruptcy	Total Principal through Bankruptcy	Prejudgment Interest through Bankruptcy	Total Principal and Prejudgment Interest	Per Diem Principal Rate
Opinion #1 Damages	\$2,712,043	\$98,473	\$2,810,516	\$2,673,305	\$5,483,821	\$428.83
Opinion #2 Damages	\$5,621,797	\$302,307	\$5,924,104	\$2,955,462	\$8,879,566	\$1,244.82
Opinion #3 Damages	\$2,045,812	\$123,322	\$2,169,134	\$1,176,744	\$3,345,878	\$409.05
CABS Damages (Opinion #1)	\$0	\$213,343	\$213,343	\$73,843	\$287,186	\$61.29
CABS Damages (Opinion #2)	\$0	\$1,381,145	\$1,381,145	\$1,375,883	\$2,757,028	\$25.15
Fidelity Damages	\$0	\$2,054,059	\$2,054,059	\$1,130,025	\$3,184,084	\$537.18
SPIFF Damages	\$0	\$284,093	\$284,093	\$289,335	\$573,428	N/A
Total Damages	\$10,379,651	\$4,456,743	\$14,836,394	\$9,674,597	\$24,510,991	\$2,706.31

Calculation Key: [A] [B] [C] = [A] + [B] [D] [E] = [C] + [D]

Proof of Claim of Saetec, Inc.

Exhibit A

Update to Amended Expert Report of Brian C. Hedges



MENGEL METZGER BARR & CO. LLP

Certified Public Accountants

July 10, 2019

Mr. David Knapp, Esq.
 Ward Greenberg Heller & Reidy LLP
 1800 Bausch & Lomb Place
 Rochester, NY 14604

Re: *Saetec, Inc., v. Paetec Communications, Inc. and Windstream Communications, Inc.*, (Index #13-11176)

Dear Mr. Knapp:

I submit this letter to update the Amended Expert Report of Brian C. Hedges (“Amended Report”) and supplement Saetec’s claims relating to the ongoing litigation matter, *Saetec, Inc., v. Paetec Communications, Inc. and Windstream Communications, Inc.*, Index No. 13-11176 (hereinafter the “Litigation”). The following sections compute an updated claim through the filing of Windstream Communications, Inc.’s (“Windstream”, together with Paetec, Inc., “The Defendants”) Bankruptcy as of February 25, 2019.

In the Amended Report, I calculated three categories of damages, as referenced in Table 1 below:

Table 1: Amended Report Damages

Damage Category	Amended Report Damages		
	Principal	Prejudgment Interest	Total
Hedges Opinion #1	\$2,712,043	\$2,345,776	\$5,057,819
Hedges Opinion #2	\$5,621,797	\$2,573,090	\$8,194,887
Hedges Opinion #3	\$2,045,812	\$928,275	\$2,974,087
Total	\$10,379,651	\$5,847,141	\$16,226,792

After the filing of the Amended Report, I received updated revenue and commission information from Windstream and used this information to update the figures in the Amended Report. This updated information was available through January 31, 2019 and therefore I updated my analysis using the same assumptions from the Amended Report through January 31, 2019.¹ To update the analysis through the Bankruptcy filing on February 25, 2019, I extrapolated the average damage amounts to determine a per diem damage rate for February 2019 that I applied through February 25, 2019. Refer to Table 2 below for the updated damage categories included in the Amended Report:

Table 2: Amended Report Damages, updated through February 25, 2019

Damage Category	Amended Report Damages		Updated through 2/25/2019		Total	
	Principal	Prejudgment Interest	Principal	Prejudgment Interest	Principal	Prejudgment Interest
Hedges Opinion #1	\$2,712,043	\$2,345,776	\$98,473	\$327,529	\$2,810,516	\$2,673,305
Hedges Opinion #2	\$5,621,797	\$2,573,090	\$302,307	\$382,372	\$5,924,104	\$2,955,462
Hedges Opinion #3	\$2,045,812	\$928,275	\$123,322	\$248,469	\$2,169,134	\$1,176,744
Total	\$10,379,651	\$5,847,141	\$524,102	\$958,370	\$10,903,754	\$6,805,511

¹ Hedges Opinion #1 included 15 months of updated data. Hedges Opinion #2 included 8 months of updated data.

After updating the amended report, I also quantified the following claims that Saetec has as part of the Litigation relating to: (1) Carrier Access Billing System ("CABS") damages, (2) additional Fidelity damages, and (3) SPIFF damages.

[1] CABS Damages

The Defendants owed Saetec 30% of all Carrier Access Billing System ("CABS") charges for all Saetec accounts that The Defendants serviced. During November 2011, The Defendants stopped paying Saetec CABS commissions on all Opinion #1 accounts. For the Opinion #1 accounts (see [1A] in Table #3 below), I applied the percentage of CABS commissions to total revenue for the 15-month period preceding November 2011 to all Opinion #1 revenue for November 2011 through February 25, 2019. The total amount of the CABS Damages (Opinion #1 only) is \$287,186, which includes \$213,343 in principal and \$73,843 in prejudgment interest through February 25, 2019.

By contrast, The Defendants never paid CABS commissions for Opinion #2 accounts.² For the Opinion #2 accounts (see [1B] in Table #3 below), I determined the amount of estimated CABS Damages in two ways, based upon the data available to me:

- From August 2002 through October 2011, I calculated an estimate of CABS revenue as a percentage of total revenue from Opinion #1 and used this as a proxy for determining Opinion #2 CABS revenue (e.g., if total Opinion #1 CABS Commissions were \$300,000 and Opinion #1 total revenue was \$10,000,000, the CABS revenue is assumed to be 10% of revenue).³ I then multiplied the resulting estimated Opinion #2 CABS revenue by the 30% CABS commission rate to determine the CABS commissions that should have been paid for Opinion #2 accounts (and those in footnote 2).
- From November 2011 through February 25, 2019, I applied the same methodology as for the Opinion #1 amounts above for all Opinion #2 accounts (and those in footnote 2).

The total amount of the CABS Damages (Opinion #2 only) is \$2,757,028, which includes \$1,381,145 in principal and \$1,375,883 in prejudgment interest through February 25, 2019.

[2] Additional Fidelity Damages

Saetec sold Fidelity originally as a customer for The Defendants and was commissioned on this account as early as 2002. However, after that time, The Defendants added Fidelity accounts that were not commissioned to Saetec. I received a second listing of accounts (previously not reported to Saetec) produced by The Defendants as part of the Litigation. During the Litigation, a former employee⁴ for Paetec acknowledged that during 2011 Paetec "was billing [Fidelity] at least \$150,000 to \$175,000 a month." By contrast, the revenue amounts for Fidelity that were produced to us during the Litigation for the same period are less than \$50,000 per month, a difference of over \$100,000 per month.

I have computed the difference between the Fidelity revenue amounts from 2011, based upon Mr. Witkowski's testimony, and the revenue for Fidelity accounts which were produced to Saetec as part of the Litigation to compute a difference, which Saetec claims it is owed. Additionally, as Mr. Witkowski left

² As indicated on page 4 of my Amended Report, there were two large accounts in particular (Empire Exec Car and R&R Professional Recovery) for which commissions were not paid after June 2002 and July 2006, respectively. I have added these two accounts to the Opinion #2 revenue for the purposes of the CABS Damages analysis.

³ Step #1 for this representative example: Divide 300,000 by 30% CABS commission, which results in \$1,000,000 in CABS revenue. Step #2: Divided \$1,000,000 in CABS revenue by the \$10,000,000 in total Opinion #1 revenue, which results in CABS Revenue as being 10% of total Opinion #1 revenue. We deemed this to be a reasonable approximation for Opinion #2 CABS revenue, absent additional data.

⁴ Brian T. Witkowski; Mr. Witkowski's deposition was taken during December 2018 during this Litigation.

Paetec in or around May 2011, we have assumed that this amount would have continued in total for all Fidelity accounts through February 25, 2019.

The total amount of the additional Fidelity Damages claim is \$3,184,084, which includes \$2,054,059 in principal and \$1,130,025 in prejudgment interest through February 25, 2019.

[3] SPIFFs Damages

Periodically, The Defendants would offer bonuses (hereinafter, "SPIFFs") to agents in its sales network (including Saetec) which included one-time sales incentives for selling a product, package, or service provided by The Defendants. During the Litigation, Saetec produced several SPIFF offers made by The Defendants.⁵

These SPIFFs offered either a one-time dollar payment (e.g., \$500 per product for a 2-year agreement or \$750 per product for a 3-year agreement) or a percentage of an amount that The Defendants would charge the Saetec customer (e.g., 100% of the Monthly Recurring Commission or 50% of the upfront installation fee). I reviewed the contract, revenue, and SPIFF information available to us to quantify the dollar amount of SPIFFs that The Defendants should have paid to Saetec. This amount that should have been paid to Saetec was approximately \$28,293 (the "SPIFF Offer amount").

Additionally, I reviewed a document produced by The Defendants (D00012936) that indicated that for a 28-month period (December 2004 to March 2007) that The Defendant owed Saetec \$313,000 in total SPIFFs, based on a custom SPIFF agreement between The Defendants and Saetec. Added together with the SPIFF Offer amount above, The Defendants should have paid Saetec a minimum of \$341,293 in SPIFFs.

However, based upon data provided by The Defendants, the total SPIFF payments to Saetec were \$57,200. To calculate damages, I reduced the amounts which The Defendants should have paid to Saetec for SPIFFs by the amount that The Defendants paid Saetec for SPIFFs.

The total amount of the SPIFF Damages claim is \$573,428, which includes \$284,093 in principal and \$289,335 in prejudgment interest through February 25, 2019.

Conclusion

The following table represents my opinion of damages with respect to the legal claims included in my Amended Report and this letter, which I have computed with a reasonable degree of accounting certainty.

Table 3: Total Saetec Damage Claims, updated through February 25, 2019

Damage Category	Amended Report Damages		
	Principal	Prejudgment Interest	Total
Hedges Opinion #1	\$2,810,516	\$2,673,305	\$5,483,821
Hedges Opinion #2	\$5,924,104	\$2,955,462	\$8,879,566
Hedges Opinion #3	\$2,169,134	\$1,176,744	\$3,345,878
[1A] CABS Damages (Hedges Opinion #1)	\$213,343	\$73,843	\$287,186
[1B] CABS Damages (Hedges Opinion #2)	\$1,381,145	\$1,375,883	\$2,757,028
[2] Additional Fidelity Damages	\$2,054,059	\$1,130,025	\$3,184,084
[3] SPIFFs Damages	\$284,093	\$289,335	\$573,428
Total	\$14,836,394	\$9,674,597	\$24,510,991

⁵ The documents I reviewed that were a part of Saetec's production that included SPIFF offers from October 2004 through December 2010 were: SAETEC0001279, 1894, 2008, 4356, 4390, 4457, 4692, 4693, 4847, 4848, 5068, 5116, 5117, 5140, 5918, 5926, 5930, 6107, 6131.

The amounts above are based on all facts and information that has been made available to me as of the date of this letter. Should additional information come to my attention which changes the analyses herein, I reserve the right to amend this letter. This letter does not include an analysis of damages with respect to Saetec's claim for breach of the Non-Circumvent Agreement, or that part of Saetec's claim for breach of the Agency Agreement relating to The Defendants' failure to pay commissions on sales made to certain Covista customers acquired by The Defendants. I reserve the right to amend and/or supplement this letter to provide an analysis of damages with respect to those claims.

Very truly yours,



Brian C. Hedges, CPA, CFE, CVA
Principal | Investigative & Dispute Resolution Services

Proof of Claim of Saetec, Inc.

Exhibit A

Amended Expert Report of Brian C. Hedges, Mengel Metzger Barr, CPA



AMENDED EXPERT REPORT OF BRIAN C. HEDGES

**SAETEC, INC., V. PAETEC COMMUNICATIONS, INC.
and WINDSTREAM COMMUNICATIONS INC.**

(Index No. 13-11176)

BRIAN C. HEDGES, CPA, CFE, CVA

A handwritten signature in black ink, appearing to read 'B. Hedges', is written over a solid horizontal line.

DECEMBER 18, 2018

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*Amended Expert Report of Brian C. Hedges
December 18, 2018*

*Saetec, Inc., v. Paetec Communications, Inc. and Windstream
Communications, Inc. (Index No. 13-11176)*

ASSIGNMENT

Mengel Metzger Barr & Co. LLP (“MMB”) was retained as an expert witness by Ward Greenberg Heller & Reidy (“Counsel”) on behalf of Plaintiffs, Saetec, Inc. (“Saetec” or “Client”) to opine on damages sustained by Saetec due to breaches of contract by Paetec Communications, Inc. (“Paetec”) and Windstream Communications, Inc. (individually, “Windstream”; together with Paetec, “The Defendants”).¹

If I learn other facts (through additional document discovery or on-going fact depositions) or through my on-going quality control review which may change my report or exhibits attached hereto in any way, I reserve the right to amend this report. This report amends figures from my November 5, 2018 report due to new facts I have learned since November 5, 2018 and my review of previously provided discovery from The Defendants.

QUALIFICATIONS

I, Brian C. Hedges, am a Principal in MMB’s Investigative & Dispute Resolution Services division. I am a Certified Public Accountant with 11 years of experience in the fields of public accounting and consulting. In addition, I have my Certified Valuation Analyst and Certified Fraud Examiner designations.²

Throughout my career at MMB, I have prepared expert witness analyses for different purposes, including lost profit computations, economic damages, and rebuttals thereto. In addition to the lost profit (or loss of economic income) analyses, I have provided litigation support services in valuation disputes involving closely held businesses, including dissenting shareholder and minority shareholder oppression cases. My analyses have been utilized at Mediation, Arbitration, in Monroe County Supreme Court, and Federal Court.³ My curriculum vitae is annexed hereto as Attachment A.

DOCUMENTATION REVIEWED

In preparing this report, Mengel Metzger Barr & Co., LLP received the following documents from Counsel:

- Court filings, including the Summons and Complaint, dated October 2, 2013
- The Sales Agent Agreement and corresponding Schedule A attachments, between Saetec and The Defendants, originally dated April 29, 2000 with amendments (“Agent Agreement”)
- An ICB Commission Form for all sales by The Defendants to Fidelity (SAETEC007628)
- Commission data produced by The Defendants, detailing commissions paid to Saetec from December 2000 through October 2017⁴

¹ MMB is not opining on the breach itself. Our work assumes that Saetec prevails on liability.

² The Certified Valuation Analyst designation is governed by the National Association of Certified Valuators and Analysts and the Certified Fraud Examiner credential governed by the Association of Certified Fraud Examiners.

³ At two of my predecessor firms in Chicago, IL, I was part of teams that prepared analyses and expert opinions for state court and Federal Court venues in several Midwestern states.

⁴ As explained in greater detail below, I grouped the actual commissions that The Defendants paid to Saetec into four different categories: (1) base commissions paid, at Schedule A rates that The Defendants calculated, (2) override

*Amended Expert Report of Brian C. Hedges
December 18, 2018*

*Saetec, Inc., v. Paetec Communications, Inc. and Windstream
Communications, Inc. (Index No. 13-11176)*

- Transaction-level data produced by The Defendants, including:
 - o Sales to 963 accounts, each identified by a unique "SUB_ID", for which commissions were paid by The Defendants to Saetec (hereinafter "Commissioned Accounts"); this information was provided from February 2000 through October 2017; should MMB receive updated sales information for these Commissioned Accounts through a more recent period, I reserve the right to amend my report
 - o Sales to 1,002 accounts,⁵ each identified by a unique "SUB_ID", for which commissions were not paid by The Defendants to Saetec (hereinafter "Never Paid Accounts"); this information was provided from October 2000⁶ through May 2018; should MMB receive updated sales information for these 1,002 accounts through a more recent period, I reserve the right to amend my report
- Listing of The Defendants' accounts, including account name, account ID number ("SUB_ID"), parent account ID number ("BILL_PRNT_SUB_ID"), date of signing of original contract, date which billing began, and length of contract

I have included all information that I have reviewed to generate my opinions in AMENDED Attachment B. My opinions are summarized below.

SUMMARY OF MY OPINIONS

Based upon my professional expertise and with a reasonable degree of accounting certainty, I have the following opinions relating to the damages suffered by Saetec.

1. **The Defendants paid improper commission percentages to Saetec from 2000 through October 2017 and Saetec was damaged in the principal amount of \$2,712,043 as a result;**
2. **In addition to the improper commission percentages in Opinion #1, The Defendants failed to pay commissions to Saetec on sales of products and services for the Never Paid Accounts and Saetec was damaged in the principal amount of \$5,621,797 as a result;**
3. **In May 2011 The Defendants stopped paying a five percent override percentage to Saetec for sales to the Commissioned Accounts damaging Saetec in the principal amount of \$641,562 and The Defendants never paid an override percentage to Saetec for sales to the Never Paid Accounts damaging Saetec in the principal amount of \$1,404,250 as a result; and**
4. **Prejudgment interest through October 31, 2018 based on the damages in Opinions #1 through #3 equals \$5,847,142 and future prejudgment interest accrues at a rate of \$2,559 per day**

commissions, which The Defendants stopped paying in April 2011, and (3) one-time "Spiff" payments, and (4) "CABS" commissions. For items (3) and (4), refer to the AMENDED Appendix 4A and Appendix 4B.

⁵ The Defendants' production D00025163 included 1,002 accounts in total. After the writing of my November 5, 2018 Report, I traced 22 accounts which were at one point commissioned by The Defendants. I have amended Opinions #1 and #2, to reflect what occurred, despite The Defendants' exclusion of the 22 commissioned accounts in their D00012982 production (refer to "SQL" tab in the Microsoft Excel file). The overall impact of this finding is \$0, but Opinions #1 and #2 are more properly restated to reflect commissions paid by The Defendants. Refer to AMENDED Appendix 1C for a listing of all accounts and the computation of the expected commissions for the accounts by product and month.

⁶ The data provided relating to the Never Paid Accounts begins in October 2000. This date is later than the information provided relating to the Commissioned Accounts (February 2000).

*Amended Expert Report of Brian C. Hodges
December 18, 2018*

*Saetec, Inc., v. Paetec Communications, Inc. and Windstream
Communications, Inc. (Index No. 13-11176)*

The bases for my opinions are included in more detail in the section below.

BASES FOR MY OPINIONS

I have arrived at my opinions, which are summarized above, through a combination of previously acquired skills, knowledge, expertise, experience, and training as well as a thorough review and an independent analysis of the documents produced by The Defendants and listed in **AMENDED Attachment B**. The bases for my opinions are included in subsections 1 through 4 below.

1. The Defendants paid improper commission percentages to Saetec from 2000 through October 2017 and Saetec was damaged in the principal amount of \$2,712,043 as a result

I constructed separate databases to analyze the damages suffered by Saetec due to improper commission percentages paid on sales to the Commissioned Accounts. Specifically, I compared actual commissions that were paid, based upon the commission spreadsheets produced by The Defendants (refer to D00011294, D00012998, and D00011295) to the commissions that should have been paid by applying the commission percentages from Schedule A in the Agent Agreement (SAETEC007629-7640) to the revenue reflected on the revenue spreadsheets that were produced by The Defendants (refer to D00012980, D00012981, and D00023265). Any shortfall between the two yielded damages to Saetec; conversely, if The Defendants paid a greater amount than should have been paid, that amount was deducted from the damages I computed.

I have presented aggregate damage figures in the tables below; however, throughout my report, I will reference various appendices to my report, which include documents that comprise my working file to quantify damages on a per account, per product/service, per month basis. These appendices are provided with this report and are incorporated herein.

In my review of the revenue and commission data provided by The Defendants, I observed that The Defendants: (A) paid improper commission percentages to Saetec on certain products and services,⁷ (B) began paying a flat 12.5% percentage commission in September 2013, which is not reflected on Schedule A of the Agent Agreement,⁸ and (C) stopped paying commissions entirely on sales to certain accounts for which The Defendants previously had paid commissions.

⁷ Where I agreed with the historical commission percentages that The Defendants paid to Saetec, damages would be zero for that revenue.

⁸ A 12.5% commission percentage was less than all other agreed upon commission percentages, thereby damaging Saetec by the difference between 12.5% and the percentages listed on Schedule A (e.g., \$10,000 in sales on a 20% commissionable item would result in \$750 in damages; $\$10,000 \times 20\% = \$2,000$ compared to a $\$10,000 \times 12.5\% = \$1,250$ in commission paid). It is my understanding that the 12.5% flat commission percentage that was applied beginning in September 2013 included a broader base of revenue; however, even with this broader base of revenue, the 12.5% flat commission percentage paid was less than the commissions which should have been paid during this period. Refer to **AMENDED Appendix 2**.

*Amended Expert Report of Brian C. Hedges
December 18, 2018*

*Saetec, Inc., v. Paetec Communications, Inc. and Windstream
Communications, Inc. (Index No. 13-11176)*

With respect to (A) above, three representative examples are below (refer to Appendix 5):

- OnProcess Technology (“OnProcess”) signed a 3-year agreement with The Defendants (refer to D00026036, D00012982, D00026221, D00026035 & D00025164). I analyzed Dedicated Interstate products/services for OnProcess which were commissioned by The Defendants to Saetec (particularly REV_RATE_PLAN_ID 2826 and 2634). The Defendants paid Saetec a 13% rate beginning in 2007. Upon review of the 2003 Schedule A rates for a 3-year term contract, the minimum rate which should have been paid was 15% (Low Rates) and the maximum rate which may be paid was 25% (High Rates). The Defendants damaged Saetec for the OnProcess Dedicated Interstate products I reviewed specifically by a minimum of 2% of all sales.
- Similarly, I analyzed specific Internet Products, which The Defendants commissioned to Saetec at a 15% rate during 2005 through 2010. Upon review of the commission spreadsheets produced by The Defendants (refer to D00011294, D00012998, & D00011295) there were three different Internet Bandwidth charges that were commissioned (REV_RATE_PLAN_ID 3092, 3094, and 3096) at 15%. Upon further review of the 2003 Schedule A rates, the Internet sales to the accounts were to be commissioned to Saetec at a 20% commission percentage, regardless of the length of the contract term. The Defendants damaged Saetec for the Internet Bandwidth sales for 2006 and after which were commissioned at 15% by a minimum of 5% of all sales.
- Like the Internet Products, I analyzed PRI (Primary Rate Interface) T1 products from 2003 through August 2013 for those Commissioned Accounts which had a 3-year contract term.⁹ The Defendants paid a 13% or 15% rate on many of the PRI T1 products. Upon review of the 2002 and 2003 Schedule A, the minimum percentage which should have been paid was 16% (Low Rates) and the maximum rate which may be paid was 20%. The Defendants damaged Saetec for the PRI T1 3-year term products I reviewed by a minimum amount of 1-3% of all sales.

With respect to (C) above, two representative examples are below:

- Empire Exec Car/Limo DBA Towncar Exec (SUB ID 174300): From June 2001 through May 2002, The Defendants paid commissions to Saetec on all accounts related to Empire Exec Car/Limo DBA Towncar Exec (hereinafter “Towncar”). Starting in June 2002, The Defendants stopped paying commissions on sales to Towncar with no justification that I have seen through my review of information provided to me to date. The damages associated with The Defendants stopping commissions to Saetec relating to Towncar are \$74,626. This amount is included in Table 2 below.
- R&R Professional Recovery (Parent ID 171225): Similarly, from March 2001 through June 2006, The Defendants paid commissions to Saetec on all accounts related to R&R Professional Recovery (hereinafter “R&R”). Starting in July 2006, The Defendants stopped paying commissions on sales to R&R with no justification that I have seen through my review of information provided to me to date. The damages associated with The Defendants stopping commissions to Saetec relating to R&R are \$64,684. This amount is included in Table 2 below.

⁹ Based upon information provided by Saetec, all PRI T1 products / services belong in the Local Dialtone category on Schedule A.

Amended Expert Report of Brian C. Hedges
 December 18, 2018

Saetec, Inc., v. Paetec Communications, Inc. and Windstream
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The key documents in developing the databases used to calculate Saetec's damages are explained in more detail in Table 1 below:

Table 1: Documents Relied Upon to Create Damages Model

Document (Bates reference)	Description	Specific Use(s)
D00026036, D00012982, D00026221, D00026035 & D00025164	List of The Defendants' accounts	1. Categorized Saetec accounts (including Commissioned Accounts and Never Paid Accounts) by a common parent ID number, and/or contract signing date; 2. Identified when certain accounts converted from the 2000 Schedule A to the 2003 Schedule A, upon renewal, for purposes of determining the appropriate commission percentages
D00011294, D00012998, & D00011295	Transaction-level detail for commissions paid to Saetec, including revenue subject to commissions, commission percentage, and a product name (refer to AMENDED Appendix 4A)	Quantified amounts paid monthly to identify amounts actually paid in commissions to Saetec to calculate Saetec's damages
D00012980, D00012981, D00023265, & D00025163	Transaction-level detail for sales transactions relating to Saetec sales, including both Commissioned Accounts and Never Paid Accounts	1. Quantified which products were sold for each parent ID for all Related Accounts (defined below) in aggregate; ¹⁰ 2. Determined which products were commissionable and not commissionable
SAETEC0007629 to SAETEC0007645	Sales Agent Agreement between Saetec and The Defendants, including various Schedule A attachments	The Schedule A attachments to the Agent Agreement allowed me to apply a commission percentage to products which should have been commissioned

In addition to the information above, to the extent I was not able to determine which product or service fell into a category on Schedule A with reasonable certainty based upon the product and service name in The Defendants' spreadsheets, I relied upon Saetec's knowledge of the products and services sold.

I have included the following Attachments, which detail the assumptions I used to calculate Saetec's damages:

- **Attachment C-1¹¹** is a listing of the Commissioned Accounts produced by The Defendants (refer to D00026036, D00012982, D00026221, D00026035 & D00025164 for additional information). This attachment includes account identification information (account name, parent ID numbers, account ID numbers, contract signing dates, etc.). Based upon a review of the information in the original documents, I determined that there were many accounts had that similar characteristics either with a common (1) parent ID number, (2) parent billing number, (3) description in the account name, (4)

¹⁰ As indicated in further detail below, I have aggregated all related accounts by a common "MMB_NAME", which more broadly allowed me to quantify sales to a particular account relationship, sold by Saetec, which may have had a dozen or more Related Accounts.

¹¹ A description of **Attachment C-2** is included in Opinion #2 on page 8 below.

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contract signing date, or (5) a combination thereof (hereinafter "Related Accounts"). I assigned all Related Accounts a unique "MMB_NAME", which allowed me to aggregate revenues and commissions by a Related Account / "MMB_NAME" name. This also allowed me to apply commission percentages from Schedule A of the Sales Agent Agreement (refer to SAETEC007629 to SAETEC007640) in aggregate, or by "MMB_NAME". Finally, the information provided me with a contract term which, as I explain in greater detail below, allowed me to select when the 2000, 2002, or 2003 Schedule A percentages apply.

- **Attachment D** is a schedule of all transaction types from The Defendants' revenue spreadsheets (refer to D00012980, D00012981, D00023265, and D00025163). Based upon the product description from the revenue spreadsheets ("TRANS_NM") and communication with Saetec, I categorized each unique product into a broader MMB_PRODUCT_NAME category. This MMB_PRODUCT_NAME corresponds to the product and/or service types listed on Attachment A of the Agent Agreement (refer to SAETEC007629 to SAETEC007640). If there were certain products, services, or monthly charges or fees (e.g., taxes) which were not commissionable per the Agent Agreement, I assigned these to a "Not Commissionable" category. Certain commissionable products and services that were not specifically referenced on Schedule A were categorized as "Non-Standard 15% Items" and were assigned a 15% commission percentage, based upon information provided by Saetec.

- **Attachment E** is a spreadsheet signifying High, Medium, and Low commission percentages for various product/service categories and time periods for accounts that were commissioned to Saetec.¹² **Attachment E** includes a reference to the Agreement year, that determines which Schedule A attached to the Agent Agreement applies. The three periods refer to the first Schedule A, dated April 29, 2000 (SAETEC007632, referred to in **Attachment E** as "2000"), the second Schedule A, signed September 15, 2002 (SAETEC007638, referred to in Attachment E as "2002"), and a third Schedule A dated December 30, 2003 (SAETEC007640, referred to in **Attachment E** as "2003").¹³ The revenue data produced by The Defendants does not specify the rates sold to customers or whether such rates fall into the High, Medium, or Low commission percentage category from Schedule A. Therefore, as indicated in the sections and tables further below, I quantified the commissions which should have been paid based upon three iterations: (1) High commission percentages for the term that is specified in **Attachment C-1** for the "MMB_NAME", (2) Medium commission percentages for a given term, and (3) Low commission percentages for a given term.¹⁴

¹² Schedule A provides for a higher commission percentage, if Saetec sold (1) a longer-term contract (e.g., 3-year term vs. a 1-year term) or (2) a higher product/service rate structure (e.g., a \$0.059 per minute rate vs. a \$0.035 per minute rate).

¹³ Using the original contract signing date and the term of the contract from **Attachment D**, I determined on which date a customer converted from the 2000 Schedule A commission percentages to the 2002 and/or 2003 Schedule A commission structures. For any contract signed or renewed before September 15, 2002, I applied the 2000 Schedule A commission percentages to subsequent sales until the contract was renewed. For any contract signed or renewed between September 15, 2002 and December 30, 2003, I applied the 2002 Schedule A commission percentages to subsequent sales until the contract was renewed. For any contract signed or renewed after December 30, 2003, I applied the 2003 Schedule A commission percentages to subsequent sales.

¹⁴ For the 2002 (SAETEC007638) and 2003 (SAETEC007640) Schedule A documents, there were more than three pricing tiers for dedicated interstate service and switched interstate service. Excluding the individual case basis ("ICB") level for each Schedule A, there were six pricing tiers, which had different corresponding commission percentages. The 2002 dedicated interstate rates ranged from \$0.035 to \$0.059 per minute and the 2003 dedicated interstate rates ranged from \$0.019 to \$0.045 per minute. The revenue spreadsheets produced by The Defendants did not allow me to determine the rate that was ultimately charged to the customer. Accordingly, I have used a High/Medium/Low methodology to determine the commission percentages for dedicated interstate service. I used (1) the highest commission percentages on Schedule A for my "High" rate, (2) the third-highest (i.e., \$0.045 in 2002 and \$0.035 in 2003) commission percentages on Schedule A for my "Medium" rate, and (3) the lowest commission percentages above the ICB line on Schedule A for my "Low" rate. Based upon the foregoing, I reserve the right to amend my report based upon additional information which

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By analyzing the information above, including Saetec's explanation of product categories, I determined what commission percentages should be applied to each product The Defendants sold and compared that to what The Defendants paid to Saetec in aggregate commissions – using High, Medium, and Low Schedule A commission percentages.¹⁵

I have prepared an analysis with three separate commission percentages, which are included in the appendices to my report and reserve the right to amend this report based upon additional documentation that is produced or other information which may require me to amend my opinions.

As I quantified the damages Saetec sustained due to the improper commission percentages paid by The Defendants, I observed that the Low Rates from Schedule A in aggregate resulted in a negative damage figure for a several-year period in the early years of the Agent Agreement. This is an indication that using Low Rates from Schedule A is not a reasonable assessment of damages and further, (1) based upon my understanding of Saetec's position, Saetec was successful at selling High Rates, in the majority of instances,¹⁶ and (2) I understand The Defendants have not made a claim that they overpaid Saetec in aggregate relating to the commission schedules from Schedule A of the Agent Agreement. Therefore, for purposes of Table 2 below (and Table 3 in Opinion #2), I have excluded the damages at Low Rates.

Refer to Table 2 below for the damage to Saetec using High and Medium commission percentages.¹⁷

The Defendants may produce which may allow me to better assign a commission percentage to a product / service for a particular account.

¹⁵ Excluded from the commissions paid are the (1) historical override commissions paid to Saetec, (2) one-time "Spiff", and (3) "CABS" commissions paid to Saetec. For (1) above, The Defendants paid override commissions to Saetec until April 2011. I removed these from the commissions paid for the purposes of my damages calculation in Opinion #1 because override damages did not begin to accrue until after The Defendants terminated the override commission payment on Commissioned Accounts in April 2011. As indicated below in Opinion #3, Saetec has a claim pending for override commissions that The Defendants did not pay from May 2011 to present. For (2) above, I have excluded one-time "Spiff" payments and for (3) above I have excluded "CABS" commissions based upon the description provided in D00012998 (the #3 "COMM_TYPE" were commissions for "CABS Residuals"). The Defendants did not produce revenue data which allowed me to calculate "Spiff" payments or "CABS" commissions that should have been paid. I reserve the right to prepare an additional "Spiff" and/or "CABS" analysis if the information is provided by The Defendants.

¹⁶ While Saetec strove to sell accounts at High Rates and a 3-year term, not all the accounts it sold were at 3-year terms (as indicated in D00026036, D00012982, D00026221, D00026035 and D00025164).

¹⁷ I have amended my November 5, 2018 report to remove \$249,879 in "CABS Residuals" commissions which were included in the commissions paid in my November 5, 2018 report (see footnote 15 above), to more accurately restate the commissions relating to transactions which did not include CABS or SPIFFs. Additionally, as explained in footnote 5 above, I determined that there were 22 accounts in total which were originally included in Opinion #2 as Never Paid Accounts in my November 5, 2018 report. However, these 22 accounts should have been included in Opinion #1 as Commissioned Accounts. The net effect of the damages with the amended report is \$0; however, this more accurately matches accounts to whether they were historically commissioned or not. Refer to **AMENDED Appendix 1C** for a listing of all accounts and a summary of all products and expected commissions for the 22 accounts.

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Table 2: Principal Damages for Incorrect Commission Percentages on Commissioned Accounts

		Inception to April 2011	May 2011 to Oct 2017	Total
High Rates	Commission Should Have Been Paid	\$6,302,507	\$2,893,280	\$9,195,787
	Less: Commission Actually Paid	(\$4,549,331)	(\$1,934,413)	(\$6,483,744)
	Damages	\$1,753,176	\$958,867	\$2,712,043
Medium Rates	Commission Should Have Been Paid	\$5,617,672	\$2,653,338	\$8,271,010
	Less: Commission Actually Paid	(\$4,549,331)	(\$1,934,413)	(\$6,483,744)
	Damages	\$1,068,341	\$718,925	\$1,787,266

Based upon my review of the data before the conversion to a 12.5% flat commission percentage starting in 2013 and information provided by Saetec, High Rates are reasonable commission percentages¹⁸ to apply to sales that The Defendants made to Commissioned Accounts. Therefore, the principal amount of the damages suffered by Saetec relating to improper commission percentages paid by The Defendants to Saetec is \$2,712,043.

2. In addition to the improper commission percentages in Opinion #1, The Defendants failed to pay commissions to Saetec on sales of products and services for the Never Paid Accounts and Saetec was damaged in the principal amount of \$5,621,797 as a result

I constructed a third database in addition to the two that I referenced in Opinion #1 above to determine commissions which were due to Saetec for Related Accounts for which commissions were never paid to Saetec by The Defendants (as referenced above, I refer to these accounts as “Never Paid Accounts”).

The Defendants provided transaction-level detail from October 2000 through May 2018 for sales to 1,002 Never Paid Accounts.¹⁹ Commissionable revenue to these Never Paid Accounts exceeded \$28 million for The Defendants – and this revenue was never commissioned to Saetec for an 18-year period. As with Opinion #1 and the commissioned accounts, I prepared a listing of the Never Paid Accounts in **AMENDED Attachment C-2** for reference. It is my understanding that Saetec claims that The Defendants should have paid commissions to Saetec on some or all these Never Paid Accounts. In analyzing the data produced by The Defendants, I have confirmed that for each Never Paid Account, there is a Related Account for which The Defendants paid commissions to Saetec.

To determine the commissions which The Defendants should have paid to Saetec, I applied the commission percentages from **Attachment E** above to The Defendants’ sales for the Never Paid Accounts. As The

¹⁸ Damage computations using the Medium Rates are included as well for reference.

¹⁹ While there were 1,002 accounts in total, less than 900 of the accounts contained commissionable revenue (others had products, services, or billing charges, which are listed on **Attachment D** as “Not Commissionable” only).

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Defendants paid no commissions on the Never Paid Accounts, Saetec's damages are equal to the resulting commissions that should have been paid.

Further, in my review of the data provided by The Defendants, I identified customers for which The Defendants initially paid commissions to Saetec but later created Related Accounts on the Never Paid Account list for which The Defendants failed to pay commissions to Saetec. A few representative examples of such inconsistent application of commission treatment are included below:

- **Netsmart Technologies, Inc.**: Beginning in 2001, Saetec was paid commissions on sales to "Net Smart Technologies, Inc." However, beginning in 2007, The Defendants added new accounts with the name "NETSMART TECHNOLOGIES", removing the space between "Net" and "Smart", and never paid Saetec on such accounts. Based upon the revenue data provided by The Defendants and the commission percentages from **Attachment E**, the commissions that should have been paid on such Never Paid Accounts for Net Smart Technologies, Inc. (i.e., damages) equals \$412,467, before applying the override percentage (see Opinion #3 below).
- **Fidelity**: Saetec was paid commissions on sales to Fidelity beginning in 2002. The Defendants subsequently added 14 additional Fidelity accounts, on which Saetec was paid commission. However, beginning in 2010 and continuing until 2017, there were a total of 49 Fidelity accounts that were added as accounts by The Defendants, which were not commissioned to Saetec.²⁰ Based upon the revenue data produced by The Defendants and the commission percentages from **Attachment E**, the commissions that should have been paid for the 49 Never Paid Accounts for Fidelity (i.e., damages) equals \$37,673; refer to **AMENDED Appendix 3**.²¹
- **OnProcess Technology**: Beginning in 2000, Saetec was paid commissions on sales to OnProcess Technology. The Defendants subsequently added four OnProcess Technology accounts, on which Saetec was paid commissions. However, beginning in 2011 and continuing to 2014, there were OnProcess Technology accounts added by The Defendants, which were not commissioned to Saetec. Based upon the revenue data produced by The Defendants and the commission percentages from **Attachment E**, the commissions that should have been paid for the Never Paid Accounts for OnProcess Technology (i.e., damages) equals \$1,386, before applying the override percentage (see Opinion #3 below); refer to **AMENDED Appendix 3**.²²

While these are representative examples, the data provided by The Defendants shows that there was inconsistent application of commission treatment for other accounts, which damaged Saetec. The corresponding damages, in aggregate, are in Table 3 below.

²⁰ This number is amended from my November 5, 2018 to more accurately reflect the 16 Fidelity accounts which were commissioned but were not included in The Defendants' Commissioned Accounts productions (D00012980 and D00012981, or previously, Commissioned Accounts). Rather, these 16 accounts were included in The Defendants' later production (D00023265, or previously, Never Paid Accounts).

²¹ An override was not included on Fidelity sales.

²² Similar to the Fidelity accounts in footnote 20, there were six OnProcess accounts which were commissioned that were not included in the The Defendants' earlier productions (D00012980 and D00012981) but were included in The Defendants' later production (D00023265).

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Table 3: Principal Damages for Revenue Not Commissioned on Never Paid Accounts

		Inception to April 2011	May 2011 to Oct 2017	Total
High Rates	Commission Should Have Been Paid	\$1,029,133	\$4,592,664	\$5,621,797
	Less: Commission Actually Paid	\$0	\$0	\$0
	Damages	\$1,029,133	\$4,592,664	\$5,621,797
Medium Rates	Commission Should Have Been Paid	\$935,608	\$4,295,083	\$5,230,691
	Less: Commission Actually Paid	\$0	\$0	\$0
	Damages	\$935,608	\$4,295,083	\$5,230,691

I applied the same methodology to the Never Paid Accounts revenue and commission percentages as I did in Opinion #1 above. The principal amount of damages suffered by Saetec relating to The Defendants' failure to pay commissions to Saetec on sales of products and services for the Never Paid Accounts is \$5,621,797.

3. In May 2011 The Defendants stopped paying a five percent override percentage to Saetec for sales to the Commissioned Accounts damaging Saetec in the principal amount of \$641,562 and The Defendants never paid an override percentage to Saetec for sales to the Never Paid Accounts damaging Saetec in the principal amount of \$1,404,250 as a result

The Defendants paid Saetec an override commission beginning in May 2001. The override commission was an incremental amount paid in addition to the base commission percentages per Schedule A in the Agent Agreement, and was paid on sales to the Commissioned Accounts as indicated below:

- From May 2001 through January 2002, The Defendants paid an override percentage of two percent on commissionable Saetec revenue
- Starting in February 2002 through April 2011, The Defendants paid an override percentage of five percent on commissionable Saetec revenue
- In total, from May 2001 through April 2011, The Defendants paid Saetec \$1,243,379 in override commissions. However, as I tabulated below and in **AMENDED Appendix 2** to my report, that amount should have been much greater.

I applied the override percentage to commissionable revenues less all amounts to Fidelity and Covista accounts, on which an override commission was historically not paid. I have included the calculations of the revenue applicable for the override in **Appendix 1A, Appendix 1B,** and **Appendix 4C** to my report.²³

The Defendants stopped paying a five percent override commission on commissioned sales effective May 2011 and have paid \$0 in override commissions since that date. I quantified the revenue from Opinion #1 from May 2011 to present that Saetec asserts is still subject to the five percent override commission and applied five percent to that revenue. Five percent of that amount, or the damage associated with the Opinion #1 revenue, is \$641,562 (refer to Table 4 below).

²³ In this amended report, I have created an **AMENDED Appendix 1C**, which includes the 22 accounts (16 Fidelity and six OnProcess) that were commissioned that were not produced in The Defendants first series of revenue spreadsheets that were produced (D00012980 and D00012981).

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Additionally, The Defendants did not pay an override commission on revenue from sales for the Never Paid Accounts which were never commissioned to Saetec but should have been (refer to Opinion #2),²⁴ which damaged Saetec. In total, there were over \$28 million in commissionable sales for Opinion #2, which equates to \$1,404,250 in override commissions which should have been paid to Saetec on those sales (refer to Table 4 below and **AMENDED Appendix 2**²⁵).

Table 4: Principal Damages for Override Commissions on Commissioned and Never Paid Accounts

	Inception to April 2011	May 2011 to Present	Total
Opinion #1 Principal Override Damages (Commissioned Accounts)	\$0	\$641,562	\$641,562
Opinion #2 Principal Override Damages (Never Paid Accounts)	\$257,542	\$1,146,708	\$1,404,250
Grand Total Principal Override Damages	\$257,542	\$1,788,270	\$2,045,812

The total damages associated with the override commission which should have been paid to Saetec (A) on Opinion #1 sales between May 2011 to present and (B) all Opinion #2 sales are \$2,045,812.²⁶

4. Prejudgment interest through October 31, 2018 based on the damages in Opinions #1 through #3 equals \$5,847,142 and future prejudgment interest accrues at a rate of \$2,559 per day

As this matter is venued in Monroe County Supreme Court, I have quantified prejudgment interest at the New York statutory rate of nine percent to all damages presented in Opinions #1 through #3 above. I added together the monthly damages for Opinions #1 through #3 and quantified (on a monthly basis) the prejudgment interest for two distinct periods: (1) the entire duration of the relationship between Saetec and The Defendants and (2) from May 2011 to present.²⁷

Based upon the assumption of High Rates, over the period of the entire relationship between Saetec and The Defendants, the total prejudgment interest amount from inception through November 30, 2018 is \$5,847,142 (refer to the red entries in Table 5 below).

²⁴ I applied only a two percent override commission percentage from May 2001 through February 2002, as was historically paid by The Defendants, and a five percent commission percentage for March 2002 to present.

²⁵ In **AMENDED Appendix 2**, I have included a calculation of damages if a two percent override applies as I understand that Saetec has claimed, in the alternative, that if a five percent override does not apply, a two percent override would.

²⁶ I understand that Saetec currently has a motion pending in Monroe County Supreme Court on the issue of the override commissions due on revenue on the Commissioned Accounts. The amount in this motion is \$804,696, which is inclusive of damages and prejudgment interest. If Saetec is awarded damages on this amount, the payment from The Defendants will serve to reduce Saetec's damages and the according per diem prejudgment interest that I have computed in this report.

²⁷ For purposes of this report, I have quantified prejudgment interest through November 30, 2018. The per diem prejudgment interest will apply to all days after November 30, 2018.

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Table 5: Prejudgment Interest Calculated for Various Iterations of Opinions #1 through #3 (see above)

Opinion Ref.	Description	Total Prejudgment Interest	Per Diem Interest
Opinion #1	High Rates	\$2,345,776	\$669
Opinion #1	Medium Rates	\$1,458,613	\$441
Opinion #2	High Rates	\$2,573,090	\$1,386
Opinion #2	Medium Rates	\$2,378,852	\$1,290
Opinion #3	Commissioned Accounts (see Opinion #1 & AMENDED Appendix 2)	\$285,023	\$158
Opinion #3	Never Paid Accounts (see Opinion #2 & AMENDED Appendix 2 & 3)	\$643,252	\$346

I have quantified a total per diem rate of prejudgment interest for the high rates to be \$2,559 per day, which can be applied beginning on December 1, 2018 and every day thereafter.²⁸

COMPENSATION

Mengel Metzger Barr & Co. LLP's engagement with Counsel is provided on a time and materials basis. My firm is engaged at a blended rate of \$185 per hour through the issuance of my amended expert report.

²⁸ The per diem prejudgment interest amount is computed based upon one day of interest at nine percent on a total damage amount of \$10,379,652 (\$10,379,652 x 9% interest = \$934,169 annually; divided by 365 days = \$2,559).

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December 18, 2018*

*Savtec, Inc., v. Postec Communications, Inc. and Windstream
Communications, Inc. (Index No. 13-11176)*

ATTACHMENTS TO THE EXPERT REPORT OF BRIAN C. HEDGES

(AMENDMENTS IN ITALICS)

<u>ATTACHMENT A:</u>	Curriculum Vitae of Brian C. Hedges
<u>ATTACHMENT B:</u>	<i>Documents considered in the formation of my opinions</i>
<u>ATTACHMENT C-1:</u>	Listing of Commissioned Accounts
<u>ATTACHMENT C-2:</u>	<i>Listing of Never Paid Accounts</i>
<u>ATTACHMENT D:</u>	Categories Applied to All The Defendants Products / Services
<u>ATTACHMENT E:</u>	Product / Service Commission Percentages (Per Schedule A)

APPENDICES TO THE EXPERT REPORT OF BRIAN C. HEDGES

<u>APPENDIX 1A:</u>	All Revenue – Opinion #1 – All Periods
<u>APPENDIX 1B:</u>	All Revenue – Opinion #2 – All Periods
<u>APPENDIX 1C:</u>	<i>All Revenue – Amended Accounts switched from Opinion #1 to Opinion #2</i>
<u>APPENDIX 2:</u>	<i>Monthly Principal Damages and Prejudgment Interest</i>
<u>APPENDIX 3:</u>	<i>Opinion #2 – By Customer</i>
<u>APPENDIX 4A:</u>	<i>Commissions Paid (excluding override, SPIFFs, and CABS) - By Customer and Month</i>
<u>APPENDIX 4B:</u>	Commissions Paid (SPIFFs and CABS)
<u>APPENDIX 4C:</u>	Covista Revenue Excluded from Override Damages
<u>APPENDIX 5:</u>	Examples of Commission Errors
<u>APPENDIX 6:</u>	<i>Report Tables</i>

Proof of Claim of Saetec, Inc.

Exhibit A

**Summons and Complaint in *Saetec, Inc. v. PaeTec Communications, Inc. and
Windstream Communications Inc.* (Sup. Ct. Monroe County, Index No. 13-11176)**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

SAETEC, INC.,

Plaintiff,

SUMMONS

vs.

Index No.: 13-11176

PAETEC COMMUNICATIONS, INC. and
WINDSTREAM COMMUNICATIONS INC.,

Defendants.

2013 OCT -2 PM 3:11
MONROE COUNTY CLERK

RECEIVED

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on the attorneys for all parties in this action within twenty (20) days after service (or within thirty (30) days after service is complete if the Summon is not personally delivered to you within the State of New York) and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Venue is based on a defendant's residence and a written agreement between plaintiff and a defendant, pursuant to CPLR §§ 503 and 501, respectively.

October 2, 2013

WARD GREENBERG HELLER & REIDY LLP

By



Eric J. Ward
David M. Knapp

300 State Street
Rochester, New York 14614
585-454-0700

Attorneys for Plaintiff Saetec, Inc.

Defendants:

Windstream Communications, Inc.
4001 Rodney Parham Rd.
Little Rock, AR 72212

Paetec Communications, Inc.
One Paetec Plaza
600 Willowbrook Office Park
Fairport, New York 14450

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

SAETEC, INC.,

Plaintiff,

COMPLAINT

vs.

Index No.: 13-11176

PAETEC COMMUNICATIONS, INC. and
WINDSTREAM COMMUNICATIONS INC.,

Defendants.

2013 OCT -2 PM 3:11
MONROE COUNTY CLERK

RECEIVED

Plaintiff Saetec, Inc. ("Saetec"), as and for its complaint, states as follows:

THE PARTIES

1. Plaintiff is a corporation organized under the laws of the State of New Hampshire, with its principal place of business in Lebanon, New Hampshire.

2. Defendant PaeTec Communications, Inc. ("PaeTec") is a corporation organized under the laws of the State of Delaware, with its principal place of business in Monroe County, New York.

3. Defendant Windstream Communications, Inc. ("Windstream") is a corporation organized under the laws of the state of Delaware. Windstream transacts business within the State of New York and has a new corporate office located on the corner of Main Street and Clinton Avenue in Rochester, Monroe County, New York.

BACKGROUND

4. PaeTec was founded in 1998 as a supplier of communications solutions to medium and large businesses and institutions. PaeTec sells a variety of products and services to

its customers, including local and long distance voice services, data and internet services, enterprise communications management software, customer premises equipment, security solutions and managed services.

5. PaeTec uses both an employee sales force and independent sales agents to acquire new customers and to expand the variety of products and services utilized by existing customers.

6. Upon information and belief, in late 2011, PaeTec became a subsidiary of Windstream Corporation, the parent company of Windstream.

7. Saetec was founded in 1995. Saetec is an independent sales agent, which procures customers for telecommunications companies, including PaeTec. Saetec has maintained its own sales force, and also serves as a "master agent," contracting with and coordinating the work of sub-agents to procure additional business for companies like PaeTec.

8. In early 2000, PaeTec was a young company, and it wanted to grow its customer base and revenues aggressively.

9. At that time, Saetec had experience in the telecommunications industry, as well as significant contacts with business customers and institutions that PaeTec wished to attract. Saetec also had relationships with experienced sales agents who could act as sub-agents to procure customers for PaeTec. As a result, Saetec was particularly well situated to help PaeTec expand its customer base.

10. Accordingly, on or about April 29, 2000, Saetec entered into a Sales Agent Agreement with PaeTec (the "Agency Agreement"), by which Saetec agreed to act as a non-exclusive, independent contractor to procure customers for PaeTec's various communications products and services.

11. Under the Agency Agreement, Saetec operates strictly on a commission basis, bearing all of the costs it incurs in connection with its efforts to secure customers for PaeTec.

12. In exchange for its efforts and expenditures on PaeTec's behalf, Saetec is entitled to commissions on sales of products and services to customers Saetec procures ("Saetec Accounts") for PaeTec at agreed-upon rates set forth in Schedule A to the Agency Agreement (the "Scheduled Commissions").

13. In addition, per the Agency Agreement, Saetec is entitled to receive commissions on sales of non-standard products and services at rates separately agreed upon in advance by Saetec and PaeTec, provided that, if they do not agree in advance upon a different rate, Saetec is entitled to commissions on sales of non-standard products and services at rates no less than those set forth in the Agency Agreement (the "Custom Products Commissions").

14. The Agency Agreement also provides that, on top of the Scheduled Commissions and Custom Products Commissions set forth above, Saetec is entitled to an additional commission on all sales to Saetec Accounts (the "Override Commission").

15. The Override Commission initially was set at 2% and subsequently was increased to 5%.

16. Under the Agency Agreement, Saetec is entitled to receive Scheduled Commissions, Custom Products Commissions, and Override Commissions on all sales to Saetec Accounts for as long as they remain customers of PaeTec, regardless of whether an order is placed by Saetec or procured directly by PaeTec by any other means.

17. The parties have amended the Agency Agreement several times since it was executed. Except as modified by those amendments, the terms and conditions of the Agency Agreement have remained unchanged, and Saetec continues to be entitled to receive Scheduled

Commissions, Custom Products Commissions and Override Commissions on all sales to Saetec Accounts during the term of the Agency Agreement, in accordance with its terms.

18. On January 25, 2011, however, PaeTec advised Saetec that, effective April 25, 2011, it was terminating Saetec's right to earn Override Commissions on all accounts and that it would pay Scheduled Commissions pursuant to a new, unilaterally modified schedule. PaeTec neither sought nor received Saetec's consent for this adverse alteration. Since April 25, 2011, PaeTec has stopped paying Saetec its Override Commissions and has paid decreased Commissions pursuant the new, unilaterally modified schedule for all accounts.

19. Under the terms of the Agency Agreement, PaeTec does not have the right to unilaterally discontinue payment of the Override Commissions or to change the Scheduled Commission rates for Saetec Accounts. Specifically, paragraph 17 of the Agency Agreement provides that the Agency Agreement, "including its Schedule(s), can only be amended, modified or supplemented by a separate written document duly executed by authorized representatives of both parties."

20. Moreover, paragraph 6(f) of the Agency Agreement provides that any changes to the Scheduled Commissions "shall not retroactively affect any obligation incurred prior to such change." Thus, PaeTec does not have the right to unilaterally modify the Scheduled Commission rates or discontinue payment of the Override Commissions for existing Saetec Accounts.

21. By letter dated July 26, 2013, Windstream advised Saetec that it was terminating Saetec's Agency Agreement with PaeTec "for convenience," effective September 1, 2013. Windstream further advised that it unilaterally was modifying the terms and conditions of the Agency Agreement, including the commissions to which Saetec is entitled pursuant to the Agency Agreement.

22. The Agency Agreement provides that "it shall continue in full force and effect until terminated ... by either party on thirty (30) days prior written notice to the other[.]" Windstream is not a party to the Agency Agreement and, although it apparently purports to have such authority, has no authority to unilaterally modify the terms of, or to terminate, the Agency Agreement.

23. Under the Agency Agreement, neither Windstream nor PaeTec is permitted to unilaterally modify the terms and conditions of the Agency Agreement, including the commission rates to which Saetec is entitled.

24. Saetec has performed, and continues to perform, its obligations under the Agency Agreement, including the procurement of orders for PaeTec products and services from new and existing Saetec Accounts pursuant to its terms.

25. PaeTec has accepted, and continues to accept, orders from Saetec Accounts for products and services, and has generated, and continues to generate, revenue from sales to those Saetec Accounts.

**FIRST CAUSE OF ACTION
(Declaratory Judgment)**

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25, as if fully set forth herein.

27. An actual and justiciable controversy within the meaning of CPLR 3001 exists between the parties concerning PaeTec's and/or Windstream's right to terminate and/or unilaterally modify the terms and conditions of the Agency Agreement, including by changing Scheduled Commissions and ceasing to pay Override Commissions.

28. As a result of this controversy, Saetec seeks and is entitled to a declaration that:

- a. Saetec has fully performed its obligations under the Agency Agreement;

- b. Defendants' purported unilateral termination and/or modifications of the Agency Agreement, including changes to the Scheduled Commissions and elimination of Override Commissions, are void and without effect; and
- c. The Agency Agreement, as amended by mutual agreement of the parties, continues in full force and effect; or
- d. In the alternative, even if PaeTec and/or Windstream's purported termination and/or modifications of the Agency Agreement are effective as to new accounts, the Agency Agreement, as amended by mutual agreement of the parties, remains in full force and effect as to all Saetec business existing as of the date of such termination and/or modification.

**SECOND CAUSE OF ACTION
(Breach of the Agency Agreement)**

29. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1- 28, as if fully set forth herein.

30. Despite its obligations under the Agency Agreement, PaeTec has failed to establish systems and internal controls to accurately track and pay commissions due and owing under the Agency Agreement.

31. PaeTec has failed, and continues to fail, to pay Saetec all commissions to which it is entitled under the Agency Agreement, as amended, for products and services sold to Saetec Accounts.

32. For example, PaeTec has: (i) paid Saetec commissions on certain Saetec Account revenues at rates lower than those required by the Agency Agreement, (ii) failed to report and pay any commissions at all on certain Saetec Account revenues, (iii) failed to report and pay Saetec commissions on certain wholesale revenues, (iv) improperly deducted certain customer

credits and expenses from the Saetec Account revenues on which commissions are based, (v) failed to report and pay Saetec commissions on additional products and services purchased by certain Saetec Accounts; (vi) on Saetec Accounts, failed to report and pay the Override Commission due under the Agency Agreement at the proper rate, or failed to pay the Override Commission at all; and (vii) failed to report and pay Saetec appropriate commissions on certain CABS, 0+ and calling card sales revenue; and (viii) entered into agreements with Saetec Accounts to charge the customers lower rates and lowered Saetec's commission rates and payout without Saetec's knowledge and consent; all of which constitutes a breach of the Agency Agreement.

33. Saetec began bringing commission deficiencies to PaeTec's attention as early as the fall of 2000. Since that time, PaeTec repeatedly has acknowledged that it did not pay all of the commissions due to Saetec, reassured Saetec that it was investigating the deficiencies, and promised to correct the deficiencies and pay all outstanding amounts due to Saetec.

34. For example, in verbal conversations and emails PaeTec assured Saetec that it was working on validating the unpaid commission amounts and ensuring that the problems were corrected going forward.

35. PaeTec has provided Saetec with a copy of an internal PaeTec memorandum summarizing the Saetec commission issue, and acknowledging that, as of the date of the memorandum, PaeTec owed Saetec at least \$506,900, and "if [PaeTec] dug deeper, it would be + 10%" more. In the same memorandum, PaeTec also acknowledged that it also owed Saetec commissions on additional items, including CABS, calling card and O+ sales.

36. Following further discussions regarding PaeTec's outstanding obligations to Saetec and additional analyses of Saetec's claims by PaeTec—at least some of which it provided

to Saetec—Saetec and PaeTec entered into an agreement which tolled any applicable statute of limitations and afforded PaeTec the opportunity to continue to investigate the deficiencies in its commission payments to Saetec.

37. Following termination of the tolling agreement, in an effort to forestall a lawsuit by Saetec, PaeTec continued to represent that it was investigating Saetec's claims and to promise that it would pay all outstanding amounts due to Saetec. In furtherance of those efforts, PaeTec made several "good faith" payments in partial satisfaction of its past-due obligations. These "good faith" payments were applied towards the oldest of the monies owed to Saetec.

38. PaeTec executives stated to Saetec that the commission system was unable to accurately track and properly pay commissions and opined that the system likely never would be corrected. In order to mitigate and avoid the ongoing accrual of underpayments in base commissions PaeTec and Saetec agreed that the Schedule A of the Commission Addendum of the Sales Agent Agreement would be set to a flat base-rate commission of 25%.

39. Subsequent to this Agreement, PaeTec did not convert the commission system, explaining to Saetec that it would prevent PaeTec from determining and rectifying prior underpayments, which would have to be calculated prior to the system adjustment. PaeTec again assured Saetec that it would continue to address and remedy all underpayments.

40. Saetec reasonably relied upon PaeTec's repeated assurances, both before and after the tolling agreement, that unpaid commissions would be identified and paid. However, despite PaeTec's promises, it has still not paid all commissions due to Saetec.

41. PaeTec has breached the Agency Agreement and Saetec has been damaged as a result of that breach in an unknown amount believed to be not less than \$2,400,000, with the exact amount to be determined at trial.

**THIRD CAUSE OF ACTION
(Breach of the Non-Circumvent Agreement)**

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 – 41, as if fully set forth herein.

43. At the same time Saetec and PaeTec entered into the Agency Agreement, both parties entered into a Non-Circumvent Agreement, also dated April 29, 2000.

44. The Non-Circumvent Agreement is intended to preserve and protect Saetec's relationships with its sub-agents.

45. In the Non-Circumvent Agreement, PaeTec agreed to refrain from dealing directly with identified Saetec sub-agents.

46. Moreover, in the event that PaeTec entered into a direct relationship with an identified Saetec sub-agent, PaeTec agreed to pay Saetec full commissions for any sales procured by that sub-agent, in accordance with the terms of the Agency Agreement.

47. The Non-Circumvent Agreement is still in force and effect today, and continues to be binding on PaeTec.

48. Saetec has performed, and continues to perform, its obligations under the Non-Circumvent Agreement.

49. Upon information and belief, PaeTec has interfered and dealt directly with one or more of Saetec's sub-agents in breach of the Non-Circumvent Agreement.

50. Upon information and belief, as a result of PaeTec's interference, one or more of Saetec's sub-agents has procured accounts for PaeTec directly, instead of through Saetec as contemplated by the Non-Circumvent Agreement (the "Sub-Agent Accounts").

51. Upon information and belief, as a result of PaeTec's interference, one or more of Saetec's sub-agents has been recommended by PaeTec to contract with other Paetec relationships and cease submitting business through Saetec.

52. Upon information and belief, PaeTec has sold products and services to those Sub-Agent Accounts.

53. Upon information and belief, PaeTec has failed to disclose to Saetec the monthly billings to those Sub-Agent accounts and to pay Saetec commissions on sales to the Sub-Agent Accounts, in breach of the Non-Circumvent Agreement.

54. Upon information and belief, Saetec has been damaged as a result of PaeTec's breach of the Non-Circumvent Agreement in an unknown amount believed to be not less than \$250,000, with the exact amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Breach of the SPIF and Custom SPIF Agreements)

55. Saetec repeats and realleges each and every allegation contained in paragraphs 1 -- 54, as if fully set forth herein.

56. PaeTec has offered, and continues to offer, sales promotion incentive funds (i.e., payments) for certain products and services ("SPIFs") to its independent sales agents, including Saetec.

57. Such SPIFs are intended to reward independent sales agents when their accounts purchase certain high-margin products and services identified by PaeTec. SPIFs are offered and earned in addition to any other commissions PaeTec has agreed to pay its independent sales agents.

58. Saetec Accounts have ordered, and continue to order, numerous products and services that meet all of the requirements necessary for Saetec to earn the SPIFs offered by PaeTec, which orders PaeTec has accepted and continues to accept.

59. A binding contract is formed between PaeTec and Saetec each time a Saetec Account purchases a product or service in accordance with the SPIF terms offered by PaeTec (each, a "SPIF Agreement").

60. PaeTec has paid some, but not all, of the SPIFs Saetec has earned, in breach of one or more of the SPIF Agreements.

61. PaeTec also has, from time to time, offered to pay to Saetec sales promotion incentive funds for certain products and services, in addition to the SPIFs generally offered to its independent sales agents ("Custom SPIFs").

62. Saetec Accounts have ordered, and continue to order, numerous products and services that meet all of the requirements necessary for Saetec to earn the Custom SPIFs offered by PaeTec, which orders PaeTec has accepted and continues to accept.

63. A binding contract is formed between PaeTec and Saetec each time a Saetec Account purchases a product or service for which PaeTec offered to pay a Custom SPIF (each, a "Custom SPIF Agreement").

64. PaeTec has paid some, but not all, of the Custom SPIFs earned by Saetec, in breach of one or more of the Custom SPIF Agreements.

65. At the same time that it brought other commission deficiencies to PaeTec's attention, Saetec also raised PaeTec's failure to pay all of the SPIFs and Custom SPIFs that Saetec had earned.

66. During the parties' discussions, PaeTec repeatedly promised to investigate and pay any unpaid SPIFs and Custom SPIFs, once it had investigated and resolved the other issues Saetec had raised regarding unpaid commissions.

67. Saetec reasonably relied upon PaeTec's repeated assurances that unpaid SPIFs and Custom SPIFs would be identified and paid once the other outstanding commission issues had been resolved.

68. Despite PaeTec's promises, it has still not paid all of the SPIFs and Custom SPIFs earned by Saetec.

69. As a result of defendant's breach of one or more SPIF Agreements and one or more of the Custom SPIF Agreements, plaintiff has been damaged in an unknown amount believed to be not less than \$150,000, with the exact amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against defendant:

- (a) For a declaration that
- i. Saetec has fully performed its obligations under the Agency Agreement;
 - ii. Defendants' purported unilateral termination and/or modifications of the Agency Agreement, including changes to the Scheduled Commissions and elimination of Override Commissions, are void and without effect; and
 - iii. The Agency Agreement, as amended by mutual agreement of the parties, continues in full force and effect; or
 - iv. In the alternative, even if PaeTec and/or Windstream's purported termination and/or modifications of the Agency Agreement are effective as to new accounts, the Agency Agreement, as amended by mutual agreement of the

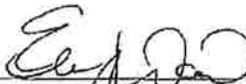
parties, remains in full force and effect as to all Saetec Accounts existing as of
the date of such termination and/or modification.

- (b) For compensatory damages of not less than \$2,400,000 on the second cause of
action;
- (c) For compensatory damages of not less than \$250,000 on the third cause of action;
- (d) For compensatory damages of not less than \$150,000 on the fourth cause of
action;
- (e) For interest from the dates commissions should have been paid on the Second,
third, and fourth causes of action;
- (f) For injunctive relief directing defendant to accurately track and timely pay all
future commissions owed to plaintiff;
- (g) For costs of this action; and
- (h) For such other and further relief as the Court deems just and proper.

October 2, 2013

WARD GREENBERG HELLER & REIDY LLP

By


Eric J. Ward
David M. Knapp

300 State Street
Rochester, New York 14614
585-454-0700

Attorneys for Plaintiff Saetec, Inc.

**SAETEC, INC.'S: (A) RESPONSE TO DEBTORS' NINTH OMNIBUS
CLAIM OBJECTION; AND
(B) CROSS MOTION FOR PERMISSIVE ABSTENTION**

EXHIBIT E

SAETEC'S JURY TRIAL DEMAND

Devin Lawton Palmer, Esq.
BOYLAN CODE LLP
145 Culver Road, Suite 100
Rochester, New York 14620
Telephone: (585) 232-5300
Facsimile: (585) 238-9012

Eric J. Ward, Esq.
**WARD GREENBERG
HELLER & REIDY, LLP**
1800 Bausch & Lomb Place
Rochester, New York 14604
Telephone: (585) 454-0714
Facsimile: (585) 231-1912

Attorneys for Saetec, Inc.

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

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

NOTICE OF DEMAND FOR JURY TRIAL BY SAETEC, INC.

PLEASE TAKE NOTICE, that by notice of *Debtors' Ninth Omnibus Objection to Equity Interest Claims, Insufficient Documentation Claims, Late-Filed Claims, No Liability Claims, Substantively Duplicate Claims, Claims to be Modified, and Wrong Debtor Claim*, filed on September 22, 2020 (the "Saetec Claim Objection"), Debtors objected to certain proof of claims filed by Saetec, Inc. ("Saetec") thereby commencing a contested matter under the Federal Rules of Bankruptcy Procedure 3007 and 9014 (the "Saetec Claim Objection Proceeding").

PLEASE TAKE FURTHER NOTICE, that pursuant to 28 U.S.C. § 157(e), Federal Rules of Civil Procedure 38, 39 and 81, Federal Rules of Bankruptcy Procedure 9015, and Local

¹ The last four digits of Debtor Windstream Holding, 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.

Bankruptcy Rule 9015-1, Saetec, through its attorney Boylan Code LLP and Ward Greenberg Heller & Reidy, LLP, hereby demands a Jury Trial in the Saetec Claim Objections Proceeding.

PLEASE TAKE FURTHER AND FINAL NOTICE that this Notice of Demand is not intended as, nor is it a consent to, jurisdiction of the Bankruptcy Court, specifically but not limited to (i) the right to have final orders in non-core matters entered only after *de novo* review by a district judge, (ii) the right to a trial by jury in any proceeding so triable herein, or in any case, controversy or proceeding related hereto, (iii) the right to have the reference withdrawn by the District Court in any matter subject to mandatory or discretionary withdrawal, or (iv) any other rights, claims, actions, or defenses to which they are or may be entitled under agreement, in law or equity, all of which rights, claims, actions, and defenses they expressly deserve.

Respectfully submitted,

BOYLAN CODE LLP
Attorneys for Saetec, Inc.

Dated: October 14, 2020

/s/ Devin Palmer
Devin Lawton Palmer, Esq.
145 Culver Road, Suite 100
Rochester, New York 14620
Telephone: 585.232.5300
Facsimile: 585.238.9054
dpalmer@boylancode.com

**WARD GREENBERG
HELLER & REIDY, LLP**
Attorneys for Creditor Saetec, Inc
Eric J. Ward, Esq.
1800 Bausch & Lomb Place
Rochester, New York 14604
Telephone: (585) 454-0714
Facsimile: (585) 231-1912

**SAETEC, INC.'S: (A) RESPONSE TO DEBTORS' NINTH OMNIBUS
CLAIM OBJECTION; AND
(B) CROSS MOTION FOR PERMISSIVE ABSTENTION**

EXHIBIT F

PROPOSED ORDER

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

_____)	
In re:)	
)	
WINDSTREAM HOLDING, INC., <i>et al.</i> , ¹)	Case No. 19-22312 (RDD)
)	Chapter 11
)	
Debtors.)	
_____)	

**ORDER PURSUANT TO 28 U.S.C. § 1334(c)(1)
GRANTING CROSS-MOTION OF SAETEC, INC. FOR PERMISSIVE ABSTENTION**

Upon the *Cross-Motion For Permissive Abstention* [Docket No. ____] (the “Cross-Motion”) filed by Saetec, Inc. (“Saetec”), in response to the *Debtors’ Ninth Omnibus Objection to Equity Interest Claims, Insufficient Documentation Claims, Late-Filed Claims, No Liability Claims, Substantively Duplicate Claims, Claims to be Modified, and Wrong Debtor Claim* [Docket No. 2528] (“the Claim Objection”), seeking an order pursuant to 28 U.S.C. § 1334(c)(1), to permissively abstain from hearing the Claim Objection, as it applies to the Saetec Claims², thereby allowing the New York Supreme Court, Monroe County, Commercial Division (the “State Court”) to adjudicate the underlying causes of action in the pending state court action entitled *Saetec, Inc. v. PaeTec Communications, Inc. and Windstream Communications, Inc.*, Index No. 13-11176 (the “State Court Action); and due and proper notice of the Cross-Motion having been provided, and it appearing that no other or further notice need be provided; and hearings having

¹ The last four digits of Debtor Windstream Holding, 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.

² All capitalized terms undefined herein shall have the meanings ascribed to them in the Cross-Motion.

been held to consider the relief requested in the Motion; and after due deliberation and sufficient cause for the relief granted herein under 28 U.S.C. § 1334(c)(1); it is hereby

ORDERED, that the Cross-Motion is GRANTED; and it is further

ORDERED, that this Court shall permissively abstain from hearing the Claim Objection, thereby allowing the State Court to adjudicate the underlying causes of action in the pending State Court Action, and it is further

ORDERED, that this Order shall not be stayed for any period pursuant to Fed. R. Bankr. P. 4001(a)(3); and it is finally

ORDERED, that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: November ____, 2020
White Plains, New York

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Hearing Date: November 19, 2020, at 10:00 a.m. (prevailing Eastern Time)
Opposition Date: November 12, 2020 at 4:00 p.m. (prevailing Eastern time)

Devin Lawton Palmer, Esq.
BOYLAN CODE LLP
145 Culver Road, Suite 100
Rochester, New York 14620
Telephone: (585) 232-5300
Facsimile: (585) 238-9012

Eric J. Ward, Esq.
**WARD GREENBERG
HELLER & REIDY, LLP**
1800 Bausch & Lomb Place
Rochester, New York 14604
Telephone: (585) 454-0714
Facsimile: (585) 231-1912

Attorneys for Saetec, Inc.

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

_____)	
In re:)	
)	
WINDSTREAM HOLDING, INC., <i>et al.</i> , ¹)	Case No. 19-22312 (RDD)
)	Chapter 11
)	
Debtors.)	
_____)	

NOTICE OF CROSS-MOTION FOR PERMISSIVE ABSTENTION

PLEASE TAKE NOTICE, that a hearing on the annexed *Cross-Motion For Permissive Abstention* (the “Motion”) filed by Saetec, Inc., in response to the *Debtors’ Ninth Omnibus Objection to Equity Interest Claims, Insufficient Documentation Claims, Late-Filed Claims, No Liability Claims, Substantively Duplicate Claims, Claims to be Modified, and Wrong Debtor Claim*, will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 118, 300 Quarropas Street, White Plains, New York, 10601-4140 (the “Bankruptcy Court”) on

¹ The last four digits of Debtor Windstream Holding, 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.

Thursday November 19, 2020 at 10:00 a.m. (prevailing Eastern Time) (the “Hearing”), or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections (the “Objections”) to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), to the extent applicable, and shall be served in accordance with General Order M399, so as to be filed and received no later than **Thursday November 12, 2020 at 4:00 p.m. (prevailing Eastern time)** (the “Objections Deadline”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, Saetec may, on or after the Objection Deadline, submit to the Bankruptcy Court and order substantially in the form of the proposed order annexed to the Motion, which order may be entered without further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted upon default.

Respectfully submitted,

BOYLAN CODE LLP
Attorneys for Saetec, Inc.

Dated: October 14, 2020

/s/ Devin Palmer
Devin Lawton Palmer, Esq.
145 Culver Road, Suite 100
Rochester, New York 14620
Telephone: 585.232.5300
Facsimile: 585.238.9054
dpalmer@boylancode.com

WARD GREENBERG

HELLER & REIDY, LLP

Attorneys for Creditor Saetec, Inc

Eric J. Ward, Esq.

1800 Bausch & Lomb Place

Rochester, New York 14604

Telephone: (585) 454-0714

Facsimile: (585) 231-1912