

Objection Deadline: November 19, 2020
Hearing Date: TBD

Thomas R. Slome
Michael Kwiatkowski
CULLEN AND DYKMAN LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Telephone: (516) 357-3700
Facsimile: (516) 357-3792
Email: tslome@cullenllp.com
mkwiatkowski@cullenllp.com

and

Russell R. Johnson III (VSB No. 31468)
John M. Craig (VSB No. 32977)
Law Firm Of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, Virginia 23103
Telephone: (804) 749-8861
Facsimile: (804) 749-8862
E-mail: russell@russelljohnsonlawfirm.com
john@russelljohnsonlawfirm.com

*Co-Counsel for Niagara Mohawk Power Corporation
dba National Grid*

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

IN RE:)	
)	Chapter 11
)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> ,)	Case No. 19-22312 (RDD)
)	(Jointly Administered)
Debtors.)	
)	

**OBJECTION OF NIAGARA MOHAWK POWER CORPORATION TO NOTICE
OF FILING OF TENTH AMENDED PLAN SUPPLEMENT [Docket No. 2661]**

Niagara Mohawk Power Corporation dba National Grid (“NIMO”) hereby asserts its objection (the “Objection”) to the Debtors’ *Notice of Filing of Tenth Amended Plan Supplement* [Docket No. 2661] (the “10th Plan Supplement Notice”) and sets forth the following:



INTRODUCTION

On the eve of the parties' October 27, 2020 mediation, Windstream for the very first time asserted that it had assigned its Right of Occupancy Agreement (defined below) with NIMO to Uniti National LLC pending resolution of NIMO's cure objection concerning that agreement. That assertion is contrary to all of the applicable assumption and cure pleadings on file and the discussions and exchange of documents between the parties concerning which contracts were being assigned to Uniti. Rather than assigning the Right of Occupancy Agreement to Uniti, which the Debtors are now falsely asserting took place, Windstream actually assigned its Conduit Agreement (defined below) with NIMO to Uniti, which is a separate agreement between the parties, as is made abundantly clear by all applicable pleadings on file, the parties' exchange of documents, and the parties' *Stipulation and Agreed Order To Appoint a Mediator* [Docket No. 2574] (the "Mediation Stipulation").

The Right of Occupancy Agreement that the Debtors now assert was assigned to Uniti pursuant to the Debtors' settlement with Uniti Group Inc. and its affiliates (the "Uniti Settlement") had been the subject of: (a) litigation between NIMO and Windstream pending in Onondaga County, New York since November 2015; (b) NIMO's Claim #5197 in the amount of \$9,411,159.42 filed on July 11, 2019 against Windstream Communications, LLC (the "Right of Occupancy Agreement Claim"); and (c) a motion for relief from stay filed by NIMO on November 26, 2019 and denied by the Court on January 21, 2020 upon the Debtors' objection. Thus, it is undeniable that the Debtors and their counsel have at all relevant times been well aware which of the Debtors' agreements with NIMO was the Right of Occupancy Agreement and the claims and cure amounts that NIMO asserts thereunder.

Accordingly, if Windstream had actually intended to assign the Right of Occupancy Agreement (not the Conduit Agreement) to Uniti, as it now claims, they should have had no trouble accurately identifying and describing that agreement in the Uniti Cure Notice (defined below). Moreover, when provided with a copy of the Conduit Agreement and asked whether that was the contract being assigned to Uniti, they should have had no trouble determining that agreement was not the Right of Occupancy Agreement that was the subject of the then-ongoing state court litigation, the Right of Occupancy Agreement Claim, and NIMO's Motion for Relief from Stay. At the very minimum, the Debtors and their counsel should have found it inexplicably odd that after all the litigation the Right of Occupancy Agreement had generated from NIMO, NIMO would nevertheless have agreed in its objection to the Uniti Cure Notice that the proposed cure amount for that agreement was \$0 (which was the accurate cure amount for the Conduit Agreement Debtors' counsel confirmed was being assigned to Uniti). At the very latest, the Debtors should have recognized their purported intention to assign the Right of Occupancy Agreement to Uniti had not been made clear when NIMO did assert the cure amounts arising from the state court litigation and the Right of Occupancy Agreement Claim in its objection to the Debtors' plan supplement notice listing contracts being assumed by the Debtors pursuant to their chapter 11 plan. Yet the Debtors never sought to "clarify" their intention to assign the Right of Occupancy Agreement to Uniti until after their settlement with Uniti had become effective and their confirmed chapter 11 plan had gone effective and been substantially consummated. Hence, the statements made in the 10th Plan Supplement Notice are inaccurate and false. Therefore, this Court should deny the Debtors' attempt to assume and assign the Right of Occupancy Agreement to Uniti and require the Debtors to pay the applicable cure amount to NIMO to assume the Right of Occupancy Agreement pursuant to the Plan.

FACTUAL BACKGROUND

Procedural Facts

1. On February 25, 2019 (the “Petition Date”), each of the Debtors in these bankruptcy proceedings filed a petition for relief under Chapter 11 of the Bankruptcy Code commencing these Chapter 11 Cases.

2. On June 26, 2020, the Court entered an order [Docket No. 2242] (the “Confirmation Order”) confirming the *First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc., et al., Pursuant to Chapter 11 of the Bankruptcy Code* (as subsequently amended, the “Plan”). The Effective Date of the Plan was September 21, 2020. Pursuant to paragraph 123 of the Confirmation Order, the Plan was substantially consummated on the Effective Date.

Facts Regarding National Grid’s Contracts With the Debtors

3. NIMO has the following contracts with the Debtors (collectively, the “NIMO Agreements”), each of which is set forth in the Mediation Stipulation:

- A. CLEC Distribution Pole Attachment Agreement, dated April 10, 2002, between NIMO and Dominion Telecom, Inc. (now Windstream Communications, LLC) (the “**CLEC Agreement**”);
- B. Niagara Mohawk Power Corporation Conduit Occupancy Agreement, dated April 10, 2002, between NIMO and Dominion Telecom, Inc. (now Windstream Communications, LLC) (the “**Conduit Agreement**”);
- C. Grant of Easement from Michael Harris, as Grantor, to NIMO and Windstream Communications, as Grantees, dated June 29, 2017, with respect to certain property located in the Town of Ellery, County of Chautauqua, State of New York (the “**Easement**”);
- D. Right of Occupancy Agreement Authorizing Use of Certain Niagara Mohawk Rights-of-Way, effective April 10, 2002, between NIMO and Dominion Telecom, Inc. (now Windstream Communications, LLC) (the “**Right of Occupancy Agreement**”);

- E. Addendum to Niagara Mohawk Right of Occupancy Agreement in Connection with the Sale of Telergy Assets, entered into March 22, 2002, between NIMO and Dominion Telecom, Inc. (now Windstream Communications, LLC) (the “**Right of Occupancy Addendum**”);
- F. Letter Agreement, dated April 1, 2004, between NIMO and Dominion Telecom, Inc. (now Windstream Communications, Inc.) regarding Niagara Mohawk capacity and dark fiber strands provided by Dominion Telecom under the Right-of-Occupancy Agreement, Conduit Occupancy Agreement, and Addendum to the Right-of-Occupancy Agreement (the “**Letter Agreement**”);
- G. General Joint Use Agreement dated August 14, 1986, between NIMO and Independent Telephone Companies, including Alltel New York, Inc. (now Windstream New York, Inc.), together with several joint use agreements operated thereunder (collectively, the “**Windstream NY Joint Use Agreement**”);
- H. Master Collocation Agreement between NIMO and Elantic Telecom, Inc. (the “**Collocation Agreement**”); and
- I. Agreement Authorizing Attachment of Communications Cable and Facilities on Certain Niagara Mohawk Power Corporation Electric Transmission Poles between NIMO and Windstream New York, Inc. (formerly Alltel New York, Inc.) (the “**Attachment Agreement**”).

4. National Grid USA Service Company (“NG Service”; and together with NIMO and other affiliated companies under the National Grid umbrella, “National Grid”), an affiliate of NIMO, is a party to a Cross Connection License Exhibit A-1 to Cross Connection Agreement Dated September 1, 2015, which was executed as of November 13, 2015, between Windstream KDL, LLC, as Grantor, and National Grid USA Service Company, Inc., as Grantee (the “**NG Service License Agreement**”; and together with the NIMO Agreements, the “National Grid Agreements”).

Relief Of Stay Motion Regarding The Right Of Occupancy Agreement

5. On November 26, 2019, NIMO filed a *Motion By Niagara Mohawk Power Corporation, Pursuant To 11 U.S.C. Section 362(d) And Bankruptcy Rule 4001, For Relief From*

The Automatic Stay And Waiver Of The Stay Imposed By Bankruptcy Rule 4001(a)(3) [Docket No. 1256] (the “Stay Motion”). NIMO filed the Stay Motion seeking relief from the automatic stay to permit NIMO to request the State Of New York Supreme Court, County of Onondaga to restore NIMO’s case to its docket so that the parties could be heard on their fully briefed summary judgment motions regarding damages asserted by NIMO against the Debtors under the Right of Occupancy Agreement (the “State Court Litigation”).

6. On January 9, 2020, the Debtors filed *Debtors’ Objection To Motion By Niagara Mohawk Power Corporation, Pursuant To 11 U.S.C. Section 362(d) And Bankruptcy Rule 4001, For Relief From The Automatic Stay And Waiver Of The Stay Imposed By Bankruptcy Rule 4001(a)(3)* [Docket No. 1398] (“Stay Objection”). On January 14, 2020, NIMO filed a *Reply Of Niagara Mohawk Power Corporation To Debtors’ Objection To Motion By Niagara Mohawk Power Corporation, Pursuant To 11 U.S.C. Section 362(d) And Bankruptcy Rule 4001, For Relief From The Automatic Stay And Waiver Of The Stay Imposed By Bankruptcy Rule 4001(a)(3)* [Docket No. 1412] (the “Reply”). **Attached as Exhibit 1 to the Reply was the Right of Occupancy Agreement and the Right of Occupancy Addendum.**

7. After a hearing, the Bankruptcy Court denied the Stay Motion in an Order dated January 21, 2020 at Docket No. 1441.

Cure Pleadings and Correspondence With Debtors’ Counsel Concerning Same

Uniti Cure Pleadings

8. On March 6, 2020, the Debtors filed a motion [Docket No. 1558] (the “Settlement Motion”) with the Bankruptcy Court seeking approval of the Uniti Settlement. In connection with the Settlement Motion and the Uniti Settlement, on May 12, 2020, the Court entered an Order [Docket No. 1807] (the “Uniti Settlement Order”) approving the Uniti

Settlement, including the assumption and assignment of certain executory contracts (collectively, the “Contracts”) to Uniti Group Inc. and/or one or more of its affiliates and subsidiaries (collectively, “Uniti”) and certain procedures regarding the assumption and assignment of such contracts (collectively, the “Assumption/Assignment Procedures”). The Uniti Settlement became effective on September 21, 2020 (the “Uniti Settlement Effective Date”).

9. Pursuant to the approved Assumption/Assignment Procedures, on May 15, 2020, the Debtors issued a *Notice of (A) the Debtors’ Assumption and Assignment of Certain Executory Contracts to Uniti, (B) Cure Amounts, if Any, and (C) Related Procedures in Connection Therewith* [Docket No. 1821] (the “Uniti Cure Notice”). Exhibit A to the Cure Notice lists each contract to be assumed and assigned to Uniti in connection with the Uniti Settlement and the proposed cure amounts to be paid to counterparties of the contracts in connection therewith.

Page 20 of Exhibit A to the Uniti Cure Notice lists the following contracts with NIMO:

- A. Title: Poles Agreement; Type: Pole Rental; Date: 4/10/02
- B. Title: Poles Agreement; Type: Conduit; Date: 4/10/02
- C. Title: Easement Agreement; Type: Easement; Date: 6/29/17

Page 19 of Exhibit A to the Uniti Cure Notice lists the following contract with NG Service:

- A. Title: Lease Agreement; Type: Dark Fiber IRU Contract; Date: 11/13/15

No other National Grid Agreements are listed in the Uniti Cure Notice.

10. By email dated May 17, 2020, counsel for National Grid sent copies of the CLEC Agreement and the Conduit Agreement to Debtors’ counsel and inquired whether those contracts were the two “Poles Agreements” listed in the Uniti Cure Notice (See Exhibit 1 attached hereto, which includes the email and the Conduit Agreement attached thereto, but omits the CLEC Agreement due to size). By email dated May 18, 2020, Debtors’ counsel (Heidi Hockberger)

confirmed that the CLEC Agreement and the Conduit Agreement were the two “Poles Agreements” listed in the Uniti Cure Notice (See Exhibit 2 attached hereto). By email dated May 27, 2020, Debtors’ counsel attached and identified the Easement Agreement and the NG Service License Agreement as the other two National Grid Agreements listed in the Uniti Cure Notice (See Exhibit 3 attached hereto).

11. On May 28, 2020, National Grid timely filed its *Objection of Niagara Mohawk Power Corporation and National Grid USA Service Company, Inc. to Notice of (A) the Debtors’ Assumption and Assignment of Certain Executory Contracts to Uniti, (B) Cure Amounts, if Any, and (C) Related Procedures in Connection Therewith* [Docket No. 1937] (the “Uniti Cure Objection”). In the Uniti Cure Objection, NIMO listed the full title and date of both the CLEC Agreement and the Conduit Agreement and stated that Debtors’ counsel had confirmed those two agreements were the “Poles Agreement/Pole Rental” agreement with NIMO, dated 4/10/02 and the “Poles Agreement/Conduit” agreement with NIMO, dated 4/10/02, respectively, set forth on page 20 of Exhibit A of the Uniti Cure Notice. With respect to the Conduit Agreement, in paragraphs 13, 20 and 23 of the Uniti Cure Objection, NIMO represented that it agreed there were no unpaid prepetition or post-petition billed charges owing to NIMO under the agreement at that time, but noted that any future charges incurred thereunder through the date of assumption by Uniti would need to be paid as a cure. The Debtors have not incurred any additional charges under the Conduit Agreement since the Uniti Cure Objection was filed.

Plan Supplement Cure Pleadings

12. On May 14, 2020, the Debtors filed their Plan. On June 3, 2020, the Debtors filed their *Notice of Filing of Plan Supplement* [Docket No. 1973] (the “Plan Supplement Cure Notice”), which attached the then-current list of executory contracts and unexpired leases to be

assumed by the Debtors pursuant to the Plan and proposed cure amounts (the “Assumption and Cure List”). Page 291 of 517 of the Assumption and Cure List lists the following contracts with “National Grid”, each with a proposed cure amount of \$0:

- A. “Executory Contract (including all amendments thereto) – L186-NY-1024” with Windstream KDL, LLC
- B. “Executory Contract (including all amendments thereto) – L186-NY-1013” with Windstream KDL, LLC
- C. “Executory Contract (including all amendments thereto) – M186-NY-1041” with Windstream KDL, LLC.

In addition, page 291 of 517 of the Assumption and Cure List lists the following contracts with “National Grid (Niagara Mohawk)”, each with a proposed cure amount of \$0:

- A. “Executory Contract (including all amendments thereto) – PO26-NY-600” with Windstream New York, Inc.;
- B. “Executory Contract (including all amendments thereto) – PO26-NY-009” with Windstream New York, Inc.;
- C. “Executory Contract (including all amendments thereto) – PO46-NY-009” with Windstream New York, Inc.

13. National Grid timely filed its *Objection and Reservation of Rights of Niagara Mohawk Power Corporation dba National Grid, National Grid USA Service Company, Inc., and Other National Grid Companies to Notice of Filing of Plan Supplement* [Docket No. 2079] (the “Plan Supplement Cure Objection”) on June 17, 2020. As the contract descriptions in the Assumption and Cure List were not helpful, and because the default under the Plan was assumption of all contracts not otherwise assumed or rejected, in its Plan Supplement Cure Objection, National Grid listed all of its known contracts with the Debtors (by complete title and date and the applicable parties thereto), including the Right of Occupancy Agreement and the Right of Occupancy Addendum. In addition, National Grid stated in paragraphs 15 and 16 of the

Plan Supplement Cure Objection that it had addressed cure amounts, if any, owing under the CLEC Agreement, the Conduit Agreement, the Easement Agreement, and the NG Service License Agreement in its Uniti Cure Objection, as the Debtors had previously confirmed those were the four National Grid contracts being assumed and assigned to Uniti. Further, National Grid set forth the cure amounts, if any, owing on each of its remaining known contracts with the Debtors, including the charges for protective matting under the Right of Occupancy Agreement in connection with the Lockport-Mortimer Line 111 Project, the Huntley-Lockport Project, and the GE-Geres Lock Project, which were the subject of the State Court Litigation and the Right of Occupancy Agreement Claim NIMO timely filed in the Debtors' bankruptcy proceedings.¹

Subsequent Events and 10th Plan Supplement Notice

14. The Debtors filed multiple amendments to the Assumption and Cure List and the Rejection List between the time that National Grid filed its Plan Supplement Cure Objection and the Effective Date of the Plan (September 21, 2020), but no NIMO contracts were set forth in any of those amendments.

15. On October 26, 2020, the evening before mediation of National Grid's cure objections, Windstream for the first time notified NIMO of its view that the Right of Occupancy Agreement had been assigned to Uniti (See Exhibit 4 attached hereto). In response, NIMO forwarded to Debtors' counsel the May 17 and May 18, 2020 emails in which Debtors' counsel had confirmed that the two 4/10/02 "Pole Agreements" listed in the Uniti Cure Notice were the

¹ Claim No. 5197 attached a copy of the complaint in the State Court Litigation, which identified the Right of Occupancy Agreement (by full title and date) as the subject agreement in paragraph 12 thereof. In addition, Donna J. Urban, Esq, counsel for the Debtors in the State Court Litigation, sent a letter dated May 20, 2020 to Jon Devendorf, Esq., counsel for NIMO in the State Court Litigation, contesting the invoices for the charges for the Huntley-Lockport Project and the GE-Geres Lock Project.

CLEC Agreement and the Conduit Agreement. In response, Debtors' counsel (Heidi Hockberger) again confirmed that the attached CLEC Agreement and Conduit Agreement match the contracts set forth in the May notice (which was the Uniti Cure Notice). (See Exhibits 5A through 5E attached hereto).

16. On November 5, 2020, the Debtors filed their 10th Plan Supplement Notice, which lists the Right of Occupancy Agreement (and all amendments thereto) with a cure amount of \$0 and lists Uniti Group Inc. and/or one or more of its affiliates and subsidiaries as Assignee.

17. In addition to incorrectly listing the Debtor counterparty to the Right of Occupancy Agreement as Intellifiber Networks, LLC (the correct party is Windstream Communications, LLC, as agreed by the Debtors in the Mediation Stipulation), the 10th Plan Supplement Notice falsely states that the Right of Occupancy Agreement was assigned to Uniti pursuant to the Uniti Settlement Order and that the 10th Plan Supplement Notice was being filed simply "to eliminate any uncertainty regarding the effectiveness of such assignment of this agreement." This is inconsistent with all of the assumption and cure pleadings on file and the communications and exchange of documents between the parties confirming the contracts that were being assumed and assigned to Uniti. Notably, the Assumed Executory Contracts/Unexpired Leases Schedule in the 10th Plan Supplement Notice is the first Assumed Executory Contracts/Unexpired Leases Schedule the Debtors have filed that includes an "Assignee" column.

18. Pursuant to Article V.C. of the Plan, the deadline for objecting to the 10th Plan Supplement Notice is November 19, 2020 (14 days following distribution of the applicable Cure Notice).

Cure Amounts Owing Under the Right of Occupancy Agreement

19. With respect to the cure amounts owing to NIMO under the Right of Occupancy Agreement, NIMO hereby adopts and incorporates by reference as if fully set forth herein paragraph 22 of the Plan Supplement Cure Objection.

DISCUSSION

A. The Right of Occupancy Agreement Was Assumed By and Has Vested in Reorganized Windstream Communications, LLC, Subject Only to Payment of the Applicable Cure Amount, and Cannot Now Be Assigned to Uniti Without the Consent of NIMO.

20. Article V.A. of the Plan provides as follows:

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases not otherwise assumed or rejected will be deemed assumed by the applicable Reorganized Debtor in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than: (a) those that are identified on the Rejected Executory Contracts and Unexpired Leases Schedule; (b) those that have been previously rejected by a Final Order; (c) those that have been previously assumed by a Final Order; (d) those that are the subject of a motion to reject Executory Contracts or Unexpired Leases that is pending on the Confirmation Date; or (e) those that are subject to a motion to reject an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such rejection is after the Effective Date....

Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions, assumptions and assignments, or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, the Assumed Executory Contract/Unexpired Lease Schedule or the Rejected Executory Contracts and Unexpired Leases Schedule, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. **Except as otherwise specifically set forth herein, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable**

federal law.... Notwithstanding anything to the contrary in the Plan, the Debtors or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Assumed Executory Contracts and Unexpired Leases Schedule and the Rejected Executory Contracts and Unexpired Leases Schedule at any time up to forty-five (45) days after the Effective Date. (Emphasis added.)

21. Article V.D. of the Plan, concerning resolution of cure disputes, provides:

The Debtors or Reorganized Debtors, as applicable, reserve the right to reject any Executory Contract or Unexpired Lease in resolution of any cure disputes. If the Bankruptcy Court determines that the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is greater than the amount set forth in the applicable Cure Notice, the Debtors or Reorganized Debtors, as applicable, will have the right to add such Executory Contract or Unexpired Lease to the Rejected Executory Contracts and Unexpired Leases Schedule, in which case such Executory Contract or Unexpired Lease will be deemed rejected as of the Effective Date.

22. Paragraph E of the Unit Settlement Order provides that the Assumption and Assignment Notice was reasonably calculated to provide counterparties to the contracts being assigned to Unit thereunder with proper notice of the intended assumption and assignment of their executory contracts and any proposed cure amounts.

23. Paragraph 19 of the Unit Settlement Order, concerning Assumption and Assignment Procedures, provides as follows:

(a) *Assumption and Assignment Notice*. No later than three business days after entry of this Order (the “Assumption and Assignment Service Deadline”), the Debtors shall file and serve via overnight delivery on each counterparty to an IRU Contract a notice of assumption and assignment (the “Assumption and Assignment Notice”). The Assumption and Assignment Notice shall inform each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the IRU Contract, (ii) the name of the counterparty to the IRU Contract, (iii) a description of the type of IRU Contract, (iv) the date of the IRU Contract, (v) the Debtors’ good faith estimate of the amount necessary to cure any default arising under the IRU Contract (as the same may be fixed pursuant to the Assumption and Assignment Procedures, the “Cure Amount”), (vi) the identity of the

assignee, and (vii) the Assumption and Assignment Objection Deadline (as defined below);....

* * * * *

(c) *Additions.* Although the Debtors and Uniti intend to make a good faith effort to identify all IRU Contracts to be assumed and assigned, the Debtors and/or Uniti may discover certain executory contracts inadvertently omitted from the list of IRU Contracts to be assumed and assigned. **Accordingly, the Debtors and Uniti reserve the right, at any time after the Assumption and Assignment Service Deadline and before the Settlement Effective Date, to (i) supplement the list of IRU Contracts with previously omitted executory contracts, (ii) remove executory contracts from the list of IRU Contracts, and/or (iii) modify the previously stated Cure Amount associated with any IRU Contract.** If the Debtors and/or Uniti exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of assumption and assignment (a “Supplemental Assumption and Assignment Notice”) on each of the counterparties to such IRU Contracts and their counsel of record, if any. Each Supplemental Assumption and Assignment Notice will include the same information as was included in the Assumption and Assignment Notice.

(d) *Eliminations.* **The Debtors and Uniti may agree to remove any executory contract to be assumed by the Debtors and assigned to Uniti at any time prior to the Settlement Effective Date.** Upon the removal of any executory contract, the Debtors shall serve a notice on each of the impacted counterparties and their counsel of record, if any, indicating that the Debtors no longer intend to assume and assign the counterparty’s contract to Uniti and such contract shall thereafter not constitute an IRU Contract. (Emphasis added.)

24. The Conduit Agreement, not the Right of Occupancy Agreement, was assumed and assigned to Uniti, as is evident both from (1) the clear record established by the applicable cure pleadings, including the Uniti Cure Objection and Plan Supplement Cure Objection (each of which was duly served upon all notice parties), and (2) the discussions and exchange of documents with Debtors’ counsel concerning the Uniti Cure Notice and the contracts the Debtors were assigning to Uniti pursuant thereto.

25. If the Debtors truly intended to assign the Right of Occupancy Agreement to Uniti rather than the Conduit Agreement, as now asserted in the 10th Plan Supplement Notice, they did not effectively do so. Moreover, their failure to do so was not a mere mistake or scrivener's error. To the contrary, Debtors' counsel was provided a copy of the Conduit Agreement for review and confirmation that it was the contract being assigned to Uniti, and after reviewing it, Debtors' counsel confirmed that it was indeed the applicable contract being assigned to Uniti. In fact, Debtors' counsel re-confirmed the same on October 26, 2020. Further, the Plan Supplement Cure Objection (filed back in June) made it abundantly clear that NIMO understood, based on the Debtors' own representations, that the Conduit Agreement was the contract being assigned to Uniti, and that the Right of Occupancy Agreement, which was the subject of the State Court Litigation and the Right of Occupancy Agreement Claim, was being assumed by the Debtors. Moreover, because the Right of Occupancy Agreement is the contract that was the subject of the Stay Motion and it has been the subject of several years of state court litigation concerning a dispute over protective matting charges, the Debtors have no excuse for waiting until now to claim that the Right of Occupancy Agreement was the contract they had intended to assign to Uniti. Thus, to the extent the failure of the Debtors to correctly identify and effectively assign the Right of Occupancy Agreement to Uniti was an error made by the Debtors or their counsel, as opposed to a recent change of strategy, it was the result of inexcusable neglect and cannot be remedied now that the Uniti Settlement Effective Date and the Plan Effective Date have occurred and rights have vested in Uniti and in Reorganized Windstream pursuant to the Plan, the Confirmation Order, and the Uniti Settlement Order.

26. Pursuant to paragraphs 19(c) and 19(d) of the Uniti Settlement Order, changes to the list of IRU contracts to be assumed and assigned to Uniti could only be made up until the

Settlement Effective Date (September 21, 2020). Accordingly, the deadline to add the Right of Occupancy Agreement to the Uniti assignment list under that final order has passed.

27. Pursuant to Article V.A. of the Plan, all contracts not set forth on the rejection schedule and not previously assumed or rejected by final order of the Bankruptcy Court, were assumed effective as of the Plan Effective Date (September 21, 2020), subject only to cure claims being paid. Further, that section is clear that “[e]ach Executory Contract or Unexpired Lease **assumed pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date** shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms....” (emphasis added).

28. Thus, because the Right of Occupancy Agreement was not the contract actually assigned to Uniti, it was assumed by and re-vested in the Debtors as of the Plan Effective Date, subject only to the Debtors’ payment of the cure amounts owing thereunder. Moreover, it is now too late for the Debtors to assign that agreement to any third party under the express terms of the Plan, which is binding on all parties. While the Debtors had until 45 days after the Effective Date (until November 5) to amend their assumption or rejection schedules, they could not amend those schedules to thwart the clear Plan provision permitting assignment to a third party only before the Effective Date (September 21, 2020) by adding an assignment column to the Assumption Schedule (that previously did not exist) and falsely referring to the 10th Plan Supplement Notice as a mere clarification of a prior assignment.

29. NIMO recognizes that the Debtors could still reject the Right of Occupancy Agreement in settlement of NIMO’s cure claim. However, the only way the Debtors could now assign the Right of Occupancy Agreement to Uniti would be under the terms of the assumed agreement itself, paragraph 33 of which would require NIMO’s consent to the proposed

assignment (as Uniti is not a successor or affiliate of Windstream or owned or controlled by Windstream). NIMO does not consent to any assignment of the Right of Occupancy Agreement to Uniti.

B. Reorganized Windstream Must Cure All Defaults Under the Right of Occupancy Agreement as a Condition to Assumption of the Same.

30. NIMO hereby adopts and incorporates by reference as if fully set forth herein all facts and arguments set forth in the Plan Supplement Cure Objection concerning cure of the Right of Occupancy Agreement.

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WHEREFORE, NIMO respectfully requests that the Court enter an Order:

A. Denying the Reorganized Debtors' untimely attempt to assume and assign the Right of Occupancy Agreement to Uniti under the confirmed and substantially consummated Plan;

B. Requiring, in connection with the Debtors' assumption of the Right of Occupancy Agreement, that the Debtors pay all unpaid prepetition and post-petition amounts accrued thereunder through the effective date of assumption, including the cure amounts set forth in paragraph 22 of the Plan Supplement Cure Objection; and

C. Granting such other and further relief as the Court deems just and proper.

Dated: Garden City, New York
November 13, 2020

CULLEN AND DYKMAN LLP

By: /s/ Michael Kwiatkowski
Thomas R. Slome
Michael Kwiatkowski
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Telephone: (516) 357-3700
Facsimile: (516) 357-3792
Email: tslome@cullenllp.com
mkwiatkowski@cullenllp.com

and

Russell R. Johnson III
John M. Craig
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, Virginia 23103
Telephone: (804) 749-8861
Email: russell@russelljohnsonlawfirm.com
john@russelljohnsonlawfirm.com

*Co-Counsel for Niagara Mohawk Power
Corporation dba National Grid*

Exhibit 1

lkbiggs@verizon.net

From: russell@russelljohnsonlawfirm.com
Sent: Sunday, May 17, 2020 11:24 AM
To: Luze, John R.
Cc: Polansky, Andrew; Lindsay Biggs; Russell Johnson
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)
Attachments: C0002293.pdf; C0002316.pdf

With respect to the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"), I need to confirm that the attached contracts are the following two contracts listed in the Notice:

1. Attachment titled C0002293, CLEC Pole Attachment Agreement dated April 10, 2002 is the "Poles Agreement" "Pole Rental" dated 4/10/02 listed on page 26 of 37; and
2. Attachment titled C0002316 Niagara Mohawk Power Corporation Conduit Occupancy Agreement with Dominion Telecom, Inc. dated April 10, 2020 is the "Poles Agreement" "Conduit" dated 4/10/02 listed on page 26 of 37.

Thank you for your assistance.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com>
Sent: Wednesday, January 15, 2020 11:36am
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Sorry for the delay -- the company would like to go forward with their objection. I will be presenting on behalf of the company. Per our prior emails, think we can limit to oral argument/no witnesses necessary/etc.

Happy to catch up before if helpful.

Thanks,
Jack

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Wednesday, January 15, 2020 9:49 AM
To: Luze, John R. <john.luze@kirkland.com>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Anything further? I need to know shortly, otherwise, I will be traveling to NY.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com>
Sent: Tuesday, January 14, 2020 9:00pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>, "Polansky, Andrew" <andrew.polansky@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I have followed up with the client -- hope to hear back from the morning.

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Tuesday, January 14, 2020 7:59 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com>
Cc: Luze, John R. <john.luze@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Jack,

Following up on our call this evening. Anything further on your end regarding a possible resolution?

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Sent: Tuesday, January 14, 2020 2:26pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

We just wanted to confirm with you that the hearing will take place at 10:00 a.m. on the 16th. It was incorrectly noticed for 2:00 p.m.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Monday, January 13, 2020 10:46 AM
To: Polansky, Andrew <andrew.polansky@kirkland.com>

Cc: Smith, Trudy <trudy.smith@kirkland.com>

Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I do not intend to cross the Debtors' affiant either.

If possible, could you schedule our matter near the front of the contested matters? I do not believe it will take very long to argue.

I will be filing a Reply tomorrow to address several items in the Objection.

Thank you for your assistance.

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com>

Sent: Friday, January 10, 2020 6:09pm

To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>

Cc: "Smith, Trudy" <trudy.smith@kirkland.com>

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

Russell,

We do not intend to cross your affiant.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>

Sent: Thursday, January 9, 2020 4:58 PM

To: Polansky, Andrew <andrew.polansky@kirkland.com>

Subject: [EXT] FW: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

The statement in paragraph 5 of your Objection is not correct as you can see from the email below.

Following up on the questions posed to you this morning regarding the 1/16/20 hearing on the Motion and Objection, which were:

1. Based on the Objection, I presume that the Debtors want to move forward with this based on the Affidavits, but want to confirm.
2. Do the Debtors intend to cross-examine Niagara Mohawak's Affiant, otherwise, I do not believe he will be attending the hearing.

Thank you for your assistance.

-----Original Message-----

From: "Ford, Stephen" <stephen.ford@kirkland.com>
Sent: Wednesday, May 29, 2019 12:17pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "john@russelljohnsonlawfirm.com" <john@russelljohnsonlawfirm.com>, "Luze, John R." <john.luze@kirkland.com>, "Hockberger, Heidi" <heidi.hockberger@kirkland.com>
Subject: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email regarding National Grid automatic stay relief. Our client is not amenable to lifting the automatic stay at this time.

Regards,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022
T +1 212 390 4357
M +1 917 868 4741
F +1 212 446 4900

stephen.ford@kirkland.com

*JD, Admission Pending

-----Original Message-----

From: Ford, Stephen
Sent: Tuesday, May 28, 2019 4:55 PM
To: 'russell@russelljohnsonlawfirm.com' <russell@russelljohnsonlawfirm.com>
Cc: john@russelljohnsonlawfirm.com; Luze, John R. <john.luze@kirkland.com>; Hockberger, Heidi <heidi.hockberger@kirkland.com>
Subject: RE: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email. We will discuss with client and get back to you.

Thanks,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022
T +1 212 390 4357
M +1 917 868 4741
F +1 212 446 4900

stephen.ford@kirkland.com

*JD, Admission Pending

-----Original Message-----

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Tuesday, May 28, 2019 1:47 PM
To: Taousse, Nacif <nacif.taousse@kirkland.com>
Cc: john@russelljohnsonlawfirm.com; Ford, Stephen <stephen.ford@kirkland.com>; Russell Johnson <russell@russelljohnsonlawfirm.com>
Subject: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

My firm has been retained by Niagara Mohawk Power Corporation ("National Grid") to file a Motion for Relief of Stay with respect to the attached state court complaint to have the fully briefed summary judgment motions set for a hearing and a trial date set. National Grid only seeks to have the matter proceed to judgment and would agree that any judgment in its favor would be stayed.

National Grid's state court counsel contacted the Debtor's state court counsel, Donna Urban, Esq. from Flaster Greenberg, PC and she said that the Debtor would not agree to the relief sought. Accordingly, before filing the Motion for Relief of Stay as described above, I am contacting to confirm that the Debtor would not consent to the foregoing relief of stay.

Thank you for your assistance.

Russell R. Johnson III
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, VA 23103
Phone: 804-749-8861
Fax: 804-749-8862
Email: russell@russelljohnsonlawfirm.com

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NIAGARA MOHAWK POWER CORPORATION
CONDUIT OCCUPANCY AGREEMENT

C0002316

THIS AGREEMENT, made as of the 10th day of April 2002 ("Execution Date"), between NIAGARA MOHAWK POWER CORPORATION, a corporation organized and existing under the laws of the State of New York, having its principal office at 300 Erie Boulevard - West, Syracuse, New York 13202 (hereinafter called "Licensor") and Dominion Telecom, Inc. a Virginia public service corporation organized and existing under the laws of the State of Virginia, having its principal office at 4355 Innslake Drive, Glen Allen, VA 23060 (hereinafter called "Licensee").

WITNESSETH:

WHEREAS, Licensee for its own use desires to place and maintain its Facilities in the Conduit System of Licensor; and

WHEREAS, Licensor desires to control access to its Conduit System so as to further the best interests of its core business, and so as to accommodate Licensor's present and future requirements for space in its Conduit System and the needs and requirements dictated by Licensor's principal business as a gas and electric utility; and

WHEREAS, consistent with the foregoing, LICENSOR will review requests for use of portions of its Conduit System from interested persons who seek installation of fiber optic telecommunications facilities, to the extent it may lawfully do so and to the extent Conduit space is available.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

ARTICLE I
SCOPE OF AGREEMENT

Consistent with the above and subject to the following provisions of this Agreement, Licensor will issue to Licensee for its own use, a License, revocable in accordance with the terms and provisions of this Agreement, authorizing the installation of Licensee's Facilities in Licensor's Conduit System. The authorization granted by the License for use of the Conduit System shall also be known as a Right-of-Occupancy.

ARTICLE II DEFINITIONS

1. Agreement

The Conduit Occupancy Agreement entered into herein between Licensor and Licensee.

2. Building Entrance Links (BEL's)

The entrance conduit that runs from manhole or handholes of the Conduit System on a public or private right-of-way across the property line to and into any structure, typically a building.

3. Capacity

Telecommunications service provided to or available to customers by installing electronics, lighting fiber pairs, and provisioning circuits on the lit fiber.

4. Conduit

An individual pipe, tube or duct forming an enclosed raceway for cable and/or conductors (Note: often interchanged with the word "duct").

5. Conduit Bank

An arrangement of Conduits in close formation, usually but not necessarily encased in concrete.

6. Conduit Run

The portion of a Conduit installation, usually in a Conduit Bank formation, between adjacent manholes, handholes, vaults and/or other dividing points.

7. Conduit System

The combination of Licensor-owned Conduit, Innerduct, manholes, handholes and/or vaults joined to form an integrated complete installation system.

8. Dark Fiber Pairs

Sets of two (2) fiber optic strands that are not terminated with electronic equipment capable of sending light down the strands. Dark Fiber Pairs cannot carry Capacity until such time as they are lit with electronic equipment at their ends.

9. Environmental Laws

All federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Clean Air Act, 42 U.S.C. §§ 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. §§ 2701, et seq., and New York State laws or any other comparable federal, state or local laws or ordinances pertaining to the environment or natural resources and all regulations pertaining thereto.

10. Good Utility Practice

Shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any practices, methods and acts which, in the exercise of good judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the Niagara Mohawk. Good Utility Practice shall include conformance to the policies, criteria, practices, guidelines and requirements of the National Electric Reliability Council, the Northeast Power Coordination Council and the NY Independent System Operator.

11. Innerduct

An individual small-diameter polymer duct or pipe, or other Licensor approved device, that is installed inside the Conduit System as protective raceway for communications cables (Note: occasionally referred to as sub-conduit or sub-duct).

12. License

The written instrument (Exhibit A), executed by the Licensor and the Licensee, which authorizes the Licensee to install Facilities in the Licensor's Conduit System. Such authorization is also called Right-to-Use, Right-of-Occupancy, or Conduit Occupancy.

13. Licensee

The person, corporation or other legal entity and its successors and assigns, which applies for and is granted permission by Licensor under this Agreement to place its Facilities in Licensor's Conduit System and which is responsible for compliance with Licensor's regulations regarding such accommodations.

14. Licensee's Facilities, Customer Facilities, or Facilities

The fiber optic cable and splice closures installed in Licensor's Conduit System for the use and benefit of Licensee, and including all personal property or facilities owned or under the possession or control of Licensee.

15. Licensor

Niagara Mohawk Power Corporation.

16. Make-Ready Work or Make-Ready

All work performed to accommodate the installation of Licensee's Facilities in a Conduit or manhole including but not limited to the rearrangement of existing facilities, replacement of cable, rodding of duct, installation of Innerduct, and all other work necessary.

17. Manhole/Handhole

An underground enclosure where Conduits are terminated and which provides ready access to Conduit System.

18. Pre-Construction Survey

The work operations performed by Licensor or its designated contractor in order to process an application for a Conduit occupancy to the point just prior to performing any necessary Make-Ready Work. Three (3) elements of a Pre-Construction Survey are:

- a. engineering (planning) property records search to preliminarily determine if Conduit may be available,
- b. *field inspection of the existing facilities to verify available space and determine Make-Ready Work, and*
- c. administrative effort required to process the application and prepare Make-Ready Work.

19. Property

The infrastructure owned by Licensor including but not limited to Conduit, Innerduct, cabling, manholes, handholes, and vaults.

20. Right-of-Occupancy, or Right-to-Use

Authorization granted by the Licensor to the Licensee through the instrument called the License.

21. Splice Closure

An apparatus containing ends of two fiber optic cables joined together.

**ARTICLE III
GENERAL CONDITIONS**

1. Compliance with Applicable Laws

Licensor and Licensee shall at all times observe and comply with the provisions of this Agreement, and such provisions are subject to all laws, ordinances, contracts and regulations which in any manner affect the rights and obligations of the parties herein.

2. Rights in Licensor's Conduit System

No use, however extended, of a Conduit System or payment of any fee or charge required hereunder shall create or vest in Licensee any ownership or property right in such Conduit System.

3. Requirement to Construct and Maintain a Conduit System

Nothing contained herein shall be construed to compel the Licensor to construct, reconstruct, retain, extend, repair, place, replace or maintain any underground facility or Conduit System not needed for Licensor's own service requirements provided, however, the foregoing provisions shall be subject to Licensee's rights under this Agreement.

4. Other Agreements

Nothing contained herein shall be construed as a limitation, restriction, or prohibition against Licensor with respect to any agreement(s) and arrangement(s) which the Licensor has entered into, or may in the future enter into, with others not covered by this Agreement, except that authorizations for occupancies existing at the time of such future agreements or arrangements shall not be diminished. The rights of Licensee shall at all times be subject to such existing and future agreement(s) or arrangement(s). The Licensor, in negotiating and entering into any such future agreement(s) and/or arrangement(s), shall give due and reasonable regard to Licensee's continued accommodation in the Conduit System.

5. Assignment, Subletting and Other Transfers

- a. Licensee shall not assign, sub-License, sublet or transfer any authorization granted herein, and such authorization shall not inure to the benefit of Licensee's successors or assigns without the prior written consent of the Licensor, and may be subject to the Public Service Commission and other regulatory bodies' review and approval. In the event such consents are granted by the Licensor, the provisions of the Agreement shall apply to and bind the Licensee's successors and assigns. Provided, however, that either party may, without the consent of the other party, assign, sub-License, sublet or transfer any authorization granted herein to any parent or subsidiary corporation or to any corporation or other entity that controls, is controlled by or is under common control with such party, where "control" includes, but is not limited to, the direct

or indirect ownership or voting control of more than fifty percent (50%) of the stock or other equity interest entitled to vote for the election of directors or equivalent governing body. In addition, either party may, without the consent of the other party, assign this Agreement and/or any of its rights hereunder pursuant to any merger, consolidation, or sale or exchange of substantially all of the assets or equity of that party.

- b. Notwithstanding the foregoing, Licensee has authority to sublease, sublicense or use its dark fiber for any purpose otherwise in compliance with this Agreement and applicable laws.

6. Permits and Consents

- a. Licensee shall be responsible for obtaining from private entities and/or public agencies any and all necessary easements, rights of way, licenses, permits, permissions, certifications or franchises to construct, operate and/or maintain its Facilities within Licensor's Conduit System. Licensor agrees that it shall provide reasonable cooperation to Licensee in connection with Licensee's efforts to obtain such necessary permits and consents. The Licensor does not warrant the validity of apportionability of any rights it may hold to place Facilities on private property.

If Licensor's permission or consent in writing is required by a governmental or regulatory agency in conjunction with the processing or application by Licensee for such permits and consents, Licensor shall have the right to review and approve the terms and conditions, if any, that may be required or requested of Licensor by said governmental or regulatory agency. The Licensor will, upon written request by Licensee, provide available information and copies of any documents in its files pertinent to the nature of the rights Licensor possesses over private property. The cost of providing such information and reproducing documents shall be borne by Licensee.

- b. Where Licensor has an easement over a public or private right of way sufficiently broad under New York State law to permit Licensee's occupancy, Licensee shall not be required to obtain an independent easement from the property owner to place its Facilities. In any case where the Licensor seeks to obtain any necessary permission from a property owner for Licensee's Facilities, the fully allocable costs of such efforts shall be paid by the Licensee along with Make-Ready costs, if any.

Nothing herein shall be deemed, however to require Licensor to obtain permission or defend or establish Licensee's License and/or permission for Licensee's Facilities as provided for herein.

7. Notices

- a. Any notice to be given to Licensor under this Agreement shall be sent by certified mail delivery:

(One copy to:)

(1) Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, New York 13202
Attn: Law Department

- b. Any notice given to Licensee under this Agreement shall be sent by certified mail or overnight express delivery:

(One copy each to:)

Manager – Contracts
4355 Innslake Drive
Glen Allen, VA 23060

and

Legal Counsel
Dominion Resources Services, Inc., Law Dept. – PH-1
P. O. Box 26532
Richmond, VA 23261-6532

- c. Notice to such other parties as may be designated in writing to the other party.
- d. Unless otherwise herein set forth, notices shall be sent, postage prepaid, either by registered or certified U.S. Mail, Return Receipt Requested, or delivery service, and shall be deemed served or given when received by the addressee, as evidenced by the date of the Return Receipt or the receipt provided by the delivery service.
- e. Emergency Access Notification. In case of an emergency demanding immediate examination or repairs of the facilities, notice shall be given by either party to the other in person or by telephone to the emergency response center designated in writing by each party. Each party giving such notice shall follow up with written notice within three (3) business days.

- to Licensor - Niagara Mohawk Central Regional Control (315) 460-2421

- to Licensee – NCC Group – 888-472-0751

These are 24-hour, 7-day per week emergency notification numbers. Calls shall be directed to the Supervisor on Duty, and the caller should be able to provide the following information:

1. Name of company making report;
2. Location reporting problem;
3. Name of contact person reporting problem;
4. Telephone number to call back with progress report;
5. Description of the problem in as much detail as possible;
6. Time and date the problem occurred or began; and
7. If appropriate, a statement that "This is an emergency" and that a problem presents a jeopardy situation to persons or the physical plant, as the case may be.

ARTICLE IV PROCEDURES

1. Application for Authorization

- a. Following signing of this Agreement and prior to installation of Licensee's Facilities in any Conduit System, Licensee shall submit a written application to occupy Licensor's Conduit System as specified in Exhibit A. As an attachment to Exhibit A, Licensee shall provide a single-line drawing identifying the proposed fiber route including street addresses for the starting points and end points of each Conduit section of interest.
- b. If Licensee files multiple applications for Conduit Occupancy, it shall designate the desired priority of processing.
- c. Licensor shall accept and process applications for Licenses from Licensee and others on a first come first served basis.
- d. Where multiple applications are filed and pending with the Licensor, from more than one applicant for the same portion of Licensor's Conduit System, and where such multiple use is appropriate, Licensor shall endeavor to prorate, to the extent that it is practical, between the Licensee and the other applicant(s), the costs of Pre-Construction Surveys and Make-Ready Work. If any such applicant withdraws its application(s), Make-Ready costs will be borne by the remaining applicants. Licensee shall be bound by Licensor's determination as to any such portion of expenses.
- e. All costs of whatsoever nature related to the determination of the application as set forth under Article IV and for charges specified under Article IX shall be borne by the Licensee.

2. Specifications

- a. Licensee's Facilities shall be placed, maintained, relocated or removed, subject to Licensor approval and in accordance with the requirements and specifications of the current editions of Niagara Mohawk's Underground Standards for Construction, the National Electric Code (NEC), the National Electrical Safety Code (NESC), Rules and Regulations of the Occupational Safety and Health Act (OSHA) and any governing authority having jurisdiction. Where a difference in specification may exist, the more stringent shall apply. Licensee's Facilities shall not physically, electronically or inductively interfere with Licensor's Conduit System or other facilities.
- b. While many of the standards and technical requirements for Licensee's equipment and Facilities are set forth in (a) above, Licensor reserves the right to specify the construction standards required in situations not otherwise covered. In such cases, Licensor will furnish to Licensee written material which will specify and explain the required construction. Licensee shall have the right to select the type of fiber optic cable to be installed in Licensor's Conduit System, subject to Licensor's review and approval, which shall not be unduly withheld or delayed.
- c. Innerduct shall be installed in accordance with Licensor's standards and Licensor shall specify the individual Conduit in which Innerducts are installed. Innerduct occupied by the Licensee shall be tagged, identifying, at a minimum, Licensee name, cable identification, and the date of installation. Title to said Innerduct shall vest in Licensor upon installation.

3. Pre-Construction Survey, Make-Ready Work

- a. After receipt of an application (Exhibit A) by the Licensor from the Licensee, the following Pre-Construction Survey activities shall be performed for each Conduit section for which an authorization is requested.
 1. Property Records Survey. Licensor shall perform a property records survey, at Licensee's sole expense, of the Conduit sections to determine if Conduit exists in the sections and if there is likely to be a duct available.
 2. Notification of Property Records Survey Results. Licensor shall notify Licensee, in writing, of the property records survey results.
 3. Authorization of Field Survey. If the property records survey indicates that conduit may be available, the Licensee shall notify the Licensor in writing, providing authorization to proceed with a field survey of the Conduit sections.
 4. Field Survey. By means of a field survey, the Licensor shall determine whether the Conduit space is available to accommodate Licensee's Facilities. In determining the availability of space in Licensor's Conduit System, Licensor will also consider its present and foreseeable electric service and maintenance needs for Conduit space (Exhibit B).
 5. Authorization to Occupy. If Licensor determines Conduit space is available, a License to occupy (Exhibit A) the specific section of the Conduit System will be granted to Licensee. Licensor does not warrant the condition of such Conduit System.

- b. The Licensor shall provide pre construction survey results to the Licensee as well as a non-binding estimate for any Make-Ready and Innerduct installation work to be performed by the Licensor. Such estimate shall be supported by estimated linear footage and projected start and completion dates for Licensor's work activities. Licensor shall specify the Conduit System to be occupied by Licensee's Facilities and the location and manner in which Licensee's Facilities will enter and exit Licensor's manholes, pull boxes and handholes.
- c. Upon receipt of the survey results and the non-binding estimate from the Licensor, Licensee shall, within thirty (30) days, provide written authorization to Licensor to proceed with said Make-Ready and Innerduct installation work. In providing such authorization, Licensee agrees to pay Licensor, on a time-and-material basis, for Make-Ready and Innerduct installation work in support of the Licensee's request in accordance with Article IX.
- d. The Licensee may purchase from the Licensor, copies of the relevant Conduit System maps. The cost for such maps shall be consistent with the current non-discriminatory practices and prices established by the Licensor. Prior to receiving copies of the Conduit System maps, Licensee shall sign a License Agreement to Utilize Niagara Mohawk Power Corporation Underground Conduit Maps (Exhibit F).
- e. Licensee shall supply all Innerduct and Innerduct identification tags for installation within the Conduit System. Title to said Innerduct shall vest in Licensor upon installation. All Make-Ready Work on or within Licensor's Conduit System will be performed by Licensor, Licensor's designated contractor, Licensee, or Licensee's designated contractor at Licensee's sole cost and expense and at Licensor's sole discretion and direction.
- f. All required work will be scheduled by Licensor following receipt of written authorization to proceed from the Licensee. The Licensor will provide a project schedule to the Licensee prior to beginning fieldwork. Within 10 days of receipt of the project schedule, the Licensee may revoke authorization for Make-Ready and installation work if the project schedule is insufficient to support the Licensee's business plan.
- g. Following completion of all Make-Ready Work on the Conduit System, Licensor agrees that, under normal conditions, such Conduit System will be and will remain in reasonable satisfactory condition during the term of the License Agreement.

4. Facilities Installation

- a. All entry to Licensor's Conduit System requires prior notification to Licensor and under no conditions shall entry be made by the Licensee or Licensee's contractor without the presence of Licensor's representative.
- b. Facilities installation and splicing work will be performed by Licensor, Licensor's designated contractor, Licensee, or Licensee's designated contractor, at

Licensor's sole discretion and direction, following completion of Make-Ready Work and delivery of Facilities by Licensee to Licensor. In the event that Facilities installation is performed by a contractor or sub-contractor of the Licensor, the Licensee shall have the right to approve such contractor or sub-contractor. Licensee shall have the right to conduct testing of its Facilities in accordance with mutually agreed-upon standards. Licensor shall have the right to approve any Licensee contractor performing work on or within the Conduit System.

- c. Licensor reserves the right to prohibit Licensee Facilities and equipment, other than fiber optic cable from its manholes, pull boxes and handholes. Splices in Licensee's fiber optic cables shall be located only in manholes, pull boxes or handholes.
- d. Where a section of Licensee's duct physically connects with Licensor's manhole, Licensor shall designate the point of entrance. The section of Licensee duct which connects with the manhole shall be installed, at Licensee's expense.
- e. During the course of performing Make-Ready Work, the designated Conduit may be found plugged with dirt or collapsed, making rodding impossible. If in this situation, no other Conduit is available, such plugged Conduits may be repaired at Licensor's option and at Licensee's expense. Ownership of all repaired or replaced Conduit is retained by Licensor.
- f. In the event that either party performs work in or on the Conduit System in support of a Conduit occupancy, said party shall notify the other party in writing within seven (7) working days of the date of completion of construction.
- g. Within sixty (60) days of substantial completion of Facilities installation, Licensee shall provide to Licensor, as-built drawings of the completed installation. As-built drawings shall identify, as a minimum, cable routing, footage, Splice Closures, slack cable coils (loops), cable identification information as noted on Innerduct tags, all manhole numbers and Conduit and Innerduct occupied. In the event Licensee paid for and obtained Conduit System maps from Licensor, upon receipt of as-built drawings, Licensor shall refund, to the Licensee, fifty percent (50%) of the fee paid for Licensor's Conduit System maps in accordance with Article IV, Section 3d.

5. Conduit System Modifications

- a. In an emergency, Licensor may, in accordance with Good Utility Practice, rearrange or if necessary for the protection of the health and safety of workers or the public, or protection of the safety or reliability of Licensor's facilities, remove Licensee's Facilities occupying a Conduit or manhole. Licensee may have an inspector present during such emergency repairs; provided however, that said inspector shall have no supervisory authority to control, direct or interfere with Licensor's work force. Licensor shall not be required to defer emergency action if said inspector is not present. Licensor shall take all reasonable actions to provide prior notification to Licensee of any required rearrangement.

- b. Should Licensor, for its own service requirements, need to install additional Conduit or other facilities or modify such Conduit facilities in any Conduit System which Licensee occupies, and if such service needs could be fulfilled except for Licensee's occupancy, Licensee shall be notified and pay costs thereof for the rearrangement of Licensee's Facilities and/or the installation cost of additional Conduit.
- c. Licensee must notify Licensor in writing of its request for additional Facilities or for relocating, replacing, or otherwise modifying its existing Facilities in a Conduit System. Licensor shall then process such requests for an additional or relocated Licenses in the same manner as provided for herein subject to the same conditions and provisions set forth in this Agreement, and advise Licensee of Licensor's acceptance, rejection or modification of said request. Licensee shall reimburse Licensor for all costs involved for such modifications, upon submission of invoices.

6. Inspections of Licensee's Facilities

- a. In the event that Licensor or Licensor's contractor performs work on Licensee's Facilities, Licensee shall have the right to have its inspector(s) present.
- b. Under no circumstances shall the Licensee or Licensee's contractor perform work in or on the Conduit System in the absence of Licensor's representative. Licensor's representative shall have the right to stop work in or on the Conduit System if work does not comply with any safety regulation or procedure, any standards per Article IV, Section 2, or any specification of the construction drawings. Licensee shall reimburse Licensor for the cost of Licensor's representative and any inspections of Licensee's Facilities as specified in Article IX.
- c. The making of post-construction, subsequent and periodic inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability specified in this Agreement.

7. Maintenance of Licensee's Facilities

Maintenance of Licensee's Facilities shall be performed by Licensor, its designated contractor, or Licensee. Licensor will, upon notification from Licensee, use Good Utility Practice to respond to reported interruptions of Licensee's cable facilities. Restoration of failed facilities will be dictated by investigated findings. At the Licensor's option, Licensor will perform work necessary for restoration for those facilities located in its Conduit System. Licensee shall pay all associated maintenance costs, including costs to access the Conduit System. Notwithstanding the foregoing provision, Licensor agrees if Licensor retains responsibility for maintenance of Licensee Facilities, Licensor will sub-contract maintenance work required to repair and restore service of Licensee's cable facilities to a qualified telecommunications maintenance company, to be selected by Licensee, subject to Licensor's approval. The maintenance company shall be granted access to the Conduit System and Licensee's facilities for the purpose of

restoring service within such fixed period of time as may be agreed upon between Licensee and the selected sub-contractor. Licensor agrees to have supervisory personnel available within such fixed period of time in order to supervise the maintenance work required to repair and restore service, whose time and expenses will be billable to the Licensee.

8. Unauthorized Occupancies

- a. If any Facilities of Licensee or any other third party are found occupying a Conduit System for which authorization has not been granted by Licensor, the Licensor without prejudice to its other rights or remedies under this Agreement, including termination or otherwise, may impose a charge and require Licensee to submit in writing, within ten (10) days after receipt of written notification from Licensor of the unauthorized occupancy, a Conduit Occupancy application (Exhibit A) and as-built drawings per Article IV, Section 4-g. If such application and as-built drawings are not received by Licensor within the specified time period, Licensor may remove Licensee's Facilities without liability, and the cost of such removal shall be borne by Licensee.
- b. For the purpose of determining the applicable charge, the unauthorized Conduit Occupancy shall be treated as having existed for a period of five (5) years prior to its discovery; or for the period beginning with the date of the initial Agreement, whichever period shall be shorter, and the charges, as specified in Article VIII, shall be due and payable forthwith whether or not Licensee is permitted to continue the occupancy of the Conduit System.
- c. No act or failure to act by Licensor with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy and, if any Occupancy should be subsequently authorized said authorization shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement, or otherwise, provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized occupancy from its inception.
- d. Notwithstanding any provisions of this Article IV, Section 8 to the contrary, the foregoing provisions shall not apply to any Facilities of Licensee occupying a Conduit System for which written authorization and approval has been received by Licensee from Licensor.

**ARTICLE V
INSURANCE**

Licensee and, if applicable, its contractors and subcontractors must, during the term of this Agreement, procure and maintain insurance in the kinds and amounts listed below:

Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of \$500,000. When applicable, coverage shall include The United States

Longshoreman's and Harbor Workers' Compensation Act and the Jones Act. Proof of qualification as a self-insurer may be acceptable in lieu of a Workers' Compensation Policy.

Comprehensive or Commercial General Liability, Contractual Liability, and Product/Completed Operations Liability Insurance covering all insurable operations required under the provisions of this Agreement and, where applicable, coverage for damage caused by any explosion or collapse with the following minimum limits of liability:

Bodily Injury Liability \$5,000,000
Property Damage Liability \$5,000,000

If a combined single limit is provided, the limit shall not be less than \$5,000,000 per occurrence.

Each party shall be named as an additional insured on the other party's liability insurance policy(ies) as respects the activities governed by this Agreement, and, if applicable, each contractor's and subcontractor's policy(ies), and the policy endorsed with a cross liability endorsement. Neither party shall be required to name subcontractors as additional insureds on any insurance policy.

Automobile Liability covering all owned, non-owned and hired vehicles used in connection with the work or services to be performed under this Agreement with minimum limits of:

Bodily Injury
Property Damage
Combined Single Limit - \$1,000,000

Property Insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon the Facilities. Licensor and Licensee hereby mutually release each other (and their respective successors or assigns) from liability and waive all right of recovery against the other for any loss or damage of Property resulting from the negligent or other unintentional acts or omissions of the other party covered by their respective first party Property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

Neither Licensee nor any contractor or subcontractor shall commence any work under this Agreement until Licensor has been furnished with a completed Certificate(s) of Insurance showing that Licensee and, if applicable, such contractor or subcontractor has complied with this Article, and that the policies shall not be materially changed, diminished or canceled until at least thirty (30) days prior written notice of such change, diminishment or cancellation has been given to Licensor. Such certificate of insurance, and any renewals or extensions thereof, shall outline the coverages required and limits on each, which shall be for the account of Licensee, and shall be sent to the following address:

Niagara Mohawk Power Corporation
Attn.: Risk Management, Bldg. B-3
300 Erie Boulevard West
Syracuse, NY 13202

Licensee represents that it has full policy limits available and shall notify Licensor's Risk Management Department in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

If any insurance coverage is not secured, maintained or is canceled before final payment by Licensee to Licensor and Licensee fails immediately to procure other insurance as specified, Licensor reserves the right to procure such insurance and to add the cost thereof to any sum due Licensor under this Agreement.

Licensee shall promptly furnish Licensor's Risk Management Department with copies of any accident or incident report(s) sent to Licensee insurance carriers covering accidents/incidents occurring in connection with and/or as a result of the performance of the work under this Agreement.

Nothing contained in these insurance requirements is to be construed as limiting the extent of either party's responsibility for payment of damages resulting from either party's use of the Conduit System or limiting, diminishing or waiving either party's obligation to indemnify, defend and save harmless the other as set forth in Article VI.

It is the intent of both parties that the insurance placed in accordance with the provisions of this Article shall be primary insurance and shall protect both Licensee and Licensor from losses arising from the performance of this Agreement.

ARTICLE VI HOLD HARMLESS

Licensor agrees to release, hold harmless, defend and indemnify Licensee and its partners, employees, agents and assigns from any and all suits, claims, demands, liabilities (including bodily injury and death), damages, costs and reasonable expenses (including legal fees) arising from any negligent act or omission of Licensor or its employees, agents or independent contractors, or the willful misconduct of any thereof, or the breach of this Agreement, except to the extent attributable solely to the negligent or intentional act or omission of Licensee, its agents or independent contractors and except that Licensor shall have no liability for damages arising out of interruption to Licensee' operations or for lost revenue.

Licensee accepts the Conduit System in its present condition, "as is, where is." Licensee agrees to indemnify and save harmless Licensor, its officers, employees, agents and assigns from and against any loss, damage, liability, cost, suit, charge, cause of action, claim and expense, arising out of any damage to the Conduit System or injury to or death of any person as well as from any and all fines, levies, penalties, citations, assessments and fees from any local, state or federal agency, board, court or other governmental authority as a result of any alleged or actual violation of any laws, rules or regulations of such authorities or agencies arising out of, in connection with, or as a consequence of the activities of its agents, servants, employees, contractors or subcontractors, including but not limited to, the use (including ingress and egress) of the Conduit System, the Right-of-Occupancy and the transmission, installation, operation, use and maintenance of Licensee Facilities and the Conduit System, except to the extent attributable solely to the negligent or intentional act or omission of Licensor, its agents or independent contractors.

In the event the claims, damages, losses, judgements or settlements are the result of the negligence of both parties, each party shall be liable to the extent or degree of their respective negligence, as determined by mutual agreement of both parties or, in the absence thereof, as determined by adjudication of comparative negligence.

Each party shall take prompt action to defend and indemnify the other party against claims, actual or threatened, but in no event later than the time to answer the service of a summons, complaint, petition or other party alleging any damage, personal injury, liability, or expenses attributed in any way to the work, acts, fault, negligence, equipment, facilities, personnel, or property, of the party, its agents and employees. Each party shall defend any such claim or threatened claim, including as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim, and may be required to testify, either in court or at a hearing or disposition in connection with the matters covered by this Agreement.

Furthermore, each party understands and agrees it is responsible for any all costs and expenses, including attorneys' fees, incurred by the other party to enforce this indemnification provision, if and to the extent such party, which should have indemnified the other, failed to do so.

The obligations set forth herein shall survive completion of the work and termination of this Agreement for any reason.

ARTICLE VII WAIVER OF CERTAIN DAMAGES

Regardless of any other provision of this Agreement, and with the exception of any third party bodily injury or property damage obligations, under no circumstances will either party be liable, whether in contract, tort (including negligence and strict liability), warranty, or any other legal theory, to the other party for any incidental, indirect, special or consequential damages whatsoever, such as, but not limited to, loss of profits or revenue, cost of capital or of substitute use or performance, interruptions to operations or for claims for damages by or to either party's customers. Furthermore, Licensor will not be held liable for the accuracy or integrity of the transmission signal and/or the accuracy of any data or message communicated over Licensee's Facilities.

In addition, Licensee expressly acknowledges that its Facilities are exposed to many risks beyond the control of Licensor, including, but not limited to, fire, wind, rain, sleet, ice, floods, riots and any other act of God. Except as expressly provided in this Agreement, Licensee shall assume all risk of loss to its Facilities that may arise in connection with these hazards.

ARTICLE VIII TERMINATIONS OF AUTHORIZATIONS

1. In addition to rights of termination provided to Licensor under other provisions of this Agreement, Licensor shall, subject to the stated opportunity for Licensee to cure, if any, have the right to terminate conduit occupancy, manhole occupancy and/or entrance authorizations and rights granted under provisions of this Agreement where:

- a. the Licensee's Facilities are maintained or used in violation of any law or in aid of any unlawful act or undertaking subject to five (5) days to cure;
- b. the Licensee ceases to have authority to construct and operate its Facilities on public or private property at the location of the particular Conduit System covered by the authorization subject to thirty (30) days to cure;
- c. except as otherwise stated herein, the Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its material obligations thereunder subject to thirty (30) days to cure;
- d. the Licensee's Facilities occupy Licensor's Conduit System without having first been issued an authorization therefore;
- e. Licensee should permanently cease to provide its services;
- f. Licensee's Facilities are used by others not a party to this Agreement without the prior written consent of Licensor, provided that such use shall not be construed as including use by Licensee's customers as provided for in Article III.
- g. Licensee sublets or apports part of a Conduit Occupancy to an entity not a party to this Agreement without the prior written consent of Licensor, except as provided in Article III (5) of this Agreement;
- h. Whenever a governmental agency and/or regulating authority requires the same, in which case Licensor will return Licensee's Facilities to Licensee and remove same at Licensee's expense.
- i. Licensee's insurance carrier shall at any time notify Licensor that the policy or policies of insurance as required in Article V will be or have been canceled or amended so those requirements will no longer be satisfied;
- j. Licensee shall fail to pay any sum due or to deposit any sum required under this Agreement, within thirty (30) days following Licensee's receipt of written notice requiring such payment or deposit from Licensor;
- k. Any authorization which may be required by any governmental or private authority for the construction, operation and maintenance of Licensee's Facilities in the Conduit System is denied, revoked or canceled, provided however that Licensee's rights shall not terminate hereunder and Licensee shall not be required to remove its attachments so long as Licensee is diligently pursuing its best efforts to contest such denial or revocation in appropriate judicial and/or administrative proceedings, provided that Licensee further agrees to protect, indemnify and hold harmless Licensor from any and all claims, fines, assessments, liability, demands or causes of action, suits or proceedings resulting from the presence of Licensee's attachments on Licensor's facilities during such period, including reasonable attorneys' fees and disbursements; or

- I. the Public Service Commission of the State of New York makes a determination that Licensee's Occupancy would make Licensor a telephone corporation for purposes of Commission regulation under the Public Service Law.
2. Licensee may at any time request removal of its facilities from a Conduit System by giving the Licensor ninety (90) days written notice of Licensee's intention to so remove its facilities (Exhibit E) at cost to Licensee. Following such notice, in the event Licensee does not remove its facilities within ninety (90) days, Licensor may, at its sole discretion, (a) remove such facilities at Licensee's sole cost and expense, or (b) consider such facilities abandoned in place.
3. In the event of termination of any of the Licensee's authorizations hereunder, the Licensor may remove or leave in place, at Licensor's option and sole discretion, Licensee's Facilities from the Conduit System within ninety (90) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licensor until Licensee's Facilities are actually removed from the Conduit System, and provided further that each party shall be required to perform any and all obligations under this Agreement until the date of actual removal. The Licensor shall have the right to remove such Facilities at the Licensee's expense and without any liability on the part of the Licensor for damage or injury to such Facilities or interruption of Licensee's services except for liability for damage or injury to such Facilities caused by the negligence of Licensor or its agents or employees.
4. When Licensee's Facilities are removed from Licensor's Conduit System, no further occupancy in the same Conduit System shall be permitted until the Licensee has first complied with all the provisions of this Agreement as though no such Conduit System occupancy had been previously made and all outstanding charges due to the Licensor for Conduit System occupancy have been paid in full.

ARTICLE IX RATES AND CHARGES

Licensee is responsible for payment of all actual rates, charges and costs as specified elsewhere in this Agreement and as set forth below. Licensee shall be responsible for payment of all charges relating to the Pre-Construction Survey, Make-Ready Work, and for all other work performed or expenses incurred by Licensor in support of Licensee's Conduit occupancy request, regardless of whether Licensee subsequently withdraws its application for occupancy of the Conduit System as to which such work is performed. When Licensor employs an outside contractor rather than its own workforce in support of Licensee's needs, the Licensee shall pay an amount equal to the contractor fee plus a ten percent (10%) administrative fee. Licensor shall make available upon request, copies of all written contracts, agreements and work orders pertinent to the work performed by such contractors.

Licensee shall make full payment for all fees within thirty (30) days from the date of billing. Licensee agrees that, in the event Licensee fails to pay an amount due and owing within the period of time set forth for payment in this Agreement, late charges or interest shall accrue on

the unpaid balance thereof at the rate of 1-1/2% per month for each month from the expiration of such period until payment is received by Licensor.

Survey, Construction and Maintenance Costs

Unless otherwise agreed upon in writing between the parties, Pre-Construction Survey costs, Make-Ready Work costs, Licensee Facilities installation, maintenance and removal charges shall be based on a time and materials basis in compliance with the Licensor's rate at the time the work is performed and calculated per Electric System Bulletin #120, attached as Exhibit D.

Occupancy Fee:

Licensee shall pay the designated occupancy charges, as specified in Exhibit C, or schedule currently filed with the Public Service Commission of the State of New York. The occupancy rate may be changed upon the filing of thirty (30) days notice of such change with the Public Service Commission of New York. Notice of any such filing will be given Licensee as covered in Article III, Section 7.

The payment initiation date for occupancy fees shall be the date the Make-Ready Work is completed and the Conduit System is ready for cable installation or the start date of fiber optic cable installation, whichever is first.

ARTICLE X TAXES

1. Licensee shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any memoranda or short form of this Agreement describing the Right-of-Occupancy granted to Licensee hereby.
2. Licensee further agrees that if it is determined by any state or local governmental authority that the sale, acquisition, license, grant, transfer or disposition of any part or portion of the Rights-of-Occupancy requires the payment of any taxes, including, but not limited to, sales, use, or tax on the furnishing of utility services, under any statute, regulation or rule, Licensee shall pay the same, to the extent such taxes are attributable to Licensee's use of the Conduit System, plus any penalty or interest thereon, directly to said taxing authority, and shall defend and hold Licensor harmless therefrom; provided, however, Licensee's obligation to hold Licensor harmless shall not apply to any penalty or interest due in respect of the delinquent payment of any such tax where the delinquency is due to Licensor's failure to promptly notify Licensee of any known assessment and/or levy of such tax and/or to send Licensee any invoice or bill in respect thereof.
3. Licensee shall pay all annual or periodic real property, personal property, gross receipts, franchise tax or other taxes levied or assessed upon the Right-of-Occupancy or on account of its existence, including, but not limited to, any taxes resulting from the increase of the assessed valuation of the Conduit System, and shall indemnify, defend

and hold harmless Licensor against the payment thereof. Licensee shall pay all expenses incurred by Licensor in protesting any assessment of the Conduit System which is increased as a result of the Right-of-Occupancy. Said expenses shall include, but not be limited to, reasonable attorney's fees, and disbursements. Licensee shall be responsible for the filing of any and all returns or other filings in respect of such personal property taxes.

4. Licensor shall indemnify, defend and hold harmless Licensee from and against any annual or periodic taxes levied or assessed in respect of the Conduit System, exclusive of the Right-of-Occupancy, including net income taxes, and increases in such taxes. To the extent that Licensor is required to make any kind of submission or filing with any governmental or regulatory authority which could effect the amount of any tax that Licensee must pay pursuant to this Agreement, Licensor shall coordinate such submission or filing, and the information contained therein, with Licensee. The decision to make such a filing will be in the sole discretion of Licensor. Further, Licensor agrees that it shall provide Licensee prompt notice of the receipt of any notice of assessment in respect of the Conduit System, or any portion thereof, which may include as an increment of the amount of such assessment a sum which is attributable to this Agreement.
5. Licensee shall have the right to protest any such levy or assessment, subject to the provisions of paragraph 3 of this Article in respect of any such tax or other fee or charge which Licensee is obligated to pay in accordance with this Agreement, or to make claim for refund, rebate, reduction or abatement of any of said taxes, except where a separate property tax identification number has been assigned to the Right of Occupancy. Licensor shall have the right to protest any assessment of which it has been given notice pursuant to this Article. Each party shall cooperate, where appropriate, with the other party, at the cost and expense of the party requesting such cooperation, including reasonable attorneys' fees, in the prosecution of any protest regarding the assessment and/or levy or any claim for refund, rebate, reduction or abatement of said taxes.

ARTICLE XI INTERFERENCE WORK AND RELOCATION COSTS

Licensor reserves to itself, its successors and assigns, the right to relocate and maintain its Conduit System and to use and operate its Conduit System in such a manner as will best enable it to fulfill its own service requirements.

If Licensor is required by any municipal or public authority to relocate its Conduit System which contains Licensee's Facilities, Licensee shall pay its proportionate share of total relocation costs. Such proportion shall be determined by multiplying such total costs by a fraction, the numerator of which shall be the number of Conduits used by Licensee in the Conduit System and the denominator of which shall be the number of Conduits used by Licensee, Licensor and any other persons or licenses in such System. The cost shall include all relocation costs and tie up costs reasonably incurred under the circumstances at the usual rates recoverable by Licensor in relocation projects.

**ARTICLE XII
EQUAL EMPLOYMENT OPPORTUNITIES**

1. The provisions of the following laws, Executive Orders, and any rules and regulations issued thereunder, are incorporated herein by reference as part of the Agreement:
 - a. Paragraphs one (1) through seven (7) of Section 202 of Executive Order 11246, as amended, relating to equal opportunity in employment under government contracts and subcontracts;
 - b. Section 2012 of Title 38 of the United States Code and Executive Order 11701, as amended, relating to affirmative action obligations of government contractors and subcontractors for disabled veterans and veterans of the Vietnam era;
 - c. Section 503 of the Rehabilitation Act of 1973, and Executive Order 11758, as amended, relating to affirmative action obligations of government contractors and subcontractors for handicapped workers; and
 - d. The Human Rights Law of the State of New York (Article 15 of the Executive Law).
2. The parties agree to fully comply with such provisions, and any amendments thereof. In addition, all subcontractors and agreement that the parties enter into to accomplish the work under the terms of this Agreement shall obligate such subcontractors to comply with such provisions.
3. Federal Subcontracting Requirements
 - a. The provisions of the following laws, Executive Orders, and any rules and regulations issued thereunder, are incorporated herein by reference as part of this Agreement.
 - b. Executive Order 11625, as amended, relating to utilization of minority business enterprises in the performance of government contracts and subcontracts;
 - c. Executive Order 12138, as amended, relating to utilization of women-owned businesses in the performance of government contracts and subcontracts; and
 - d. Section 211 of Public Law 95-507, as amended, relating to utilization of small business concerns and small disadvantaged business concerns in the performance of government contracts and subcontracts.
4. The parties agree to fully comply with such provisions and any amendments thereof. In addition, all subcontracts and agreements the parties enter into to accomplish the work under the terms of this Agreement shall obligate such subcontractors comply with such provisions.

ARTICLE XIII

ENVIRONMENTAL MATTERS

1. Licensors represents and warrants that it has in the past and agrees that it will in the future conduct its activities in full compliance with all applicable Environmental Laws.
2. The Conduit System will not be used by Licensor, its employees, agents or contractors to release, store, dispose of, treat or use any Hazardous Substances, except in compliance with applicable Environmental Laws. Licensor agrees to indemnify, defend and hold harmless Licensee from and against any and all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, sustained or incurred Licensee arising out of, in connection with or as a consequence of Hazardous Substances being released, stored, disposed of, treated or used, or claimed to have been released, stored, disposed of, treated or used, by Licensor or anyone acting under or on behalf of Licensor within the Conduit System.
3. Licensor agrees to promptly inform Licensee of any other uniquely sensitive and protected environmental resources within the Conduit System which are known to Licensor.
4. The Conduit System will not be used by Licensee, its employees, agents or contractors to release, store, dispose of, treat or use any Hazardous Substances, except in compliance with applicable Environmental Laws. Licensee agrees to indemnify, defend and hold harmless Licensor from and against any and all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, sustained or incurred by Licensor arising out of, in connection with, or as a consequence of Hazardous Substances being released, stored, disposed of, treated or used, or claimed to have been released, stored, disposed of, treated or used, by Licensee or anyone acting under or on behalf of Licensee within the Conduit System.
5. Licensee shall not place any material within the Conduit System that is recognized by appropriate governmental authority as hazardous or toxic material or waste, except in compliance with applicable Environmental Laws.
6. In the event Licensee discovers, or has knowledge of hazardous or toxic waste areas, whether or not designated as such by the Environmental Protection Agency or any other similar federal, state or local authority, it shall immediately stop work if discovered during installation and notify the designated representative at Licensor and any appropriate governmental agency if required by applicable Environmental Laws.
7. In the event any such hazardous or toxic waste areas or any other regulated environmental resources (including, but not limited to, regulated wetlands, protected streams, navigable waters, rare, threatened, endangered or protected species or species habitats, sensitive archaeological sites, etc.) are identified with respect to any portion of the Conduit System, the location shall be included on the "As-Built Drawings" furnished to Licensor in accordance with this Agreement.

ARTICLE XIV

CONFIDENTIALITY

1. Licenser and Licensee agree to respect the confidentiality of this Agreement and materials used or prepared in connection herewith, and shall restrict the distribution of this Agreement and all maps, material, documents and information identified in this Agreement as confidential, only to those persons designated to implement the provisions hereof and their respective counsels, consultants and advisers; provided, however that any such disclosure to persons who are not employees and counsel(s) of the parties shall be made only after such persons have executed written agreement and/or been given notice of and agree to be bound by the terms of this Section and to not further disclose confidential information to additional persons absent written agreement from the parties hereto. In the event information furnished to a party by the other party under the terms of this Agreement is considered to be confidential, proprietary information of the providing party, such information shall be so designated and any reproduction shall have a clearly visible stamp or label containing such proprietary information notice. The parties further agree that they shall not disclose or furnish to any third parties copies of this Agreement or any materials referred to herein, without the prior written consent of the other party hereto, except as shall be necessary in order to implement the provisions hereof, including the construction of the System, securing the necessary approvals therefor, and the financing of the System, and except as required by Court order or as otherwise required by law, the New York State Public Service Commission or any other governmental entity or in any legal proceedings relating to this Agreement.
2. Notwithstanding to the contrary, either party shall notify the other, as soon as practicable, in the event that any disclosure request as contemplated in Article XIV, Section 1 would require disclosure of confidential material provided by any one party to the other hereunder and the party so notified shall have the right to formally dispute any such disclosure or such confidential material where such disclosure would unreasonably harm, prejudice, or destroy such party's proprietary interest, the information requested is not rationally related to the purpose for which such information is sought, or such party could submit other non-confidential information that could satisfy the request. Any such party may petition for exemption from Freedom of Information Act or other similar disclosure requirements, for "in camera" inspection of such confidential information, or for other limitations on the disclosure of confidential information.
3. Neither party shall have the right to obtain any information or documents from the other which are not material to the provisions or implementation of this Agreement.
4. The parties recognize that this agreement and the materials and documents referred to herein, may contain information which a reasonably informed person would recognize as confidential, insider information which should be handled accordingly.
5. The parties agree that in distributing copies or portions of these materials to any person necessary to implement the same, such copies shall be clearly marked or indicated as "confidential" and prohibiting further distribution, copy or reproduction of the same.

6. In the event of an actual or threatened disclosure of such information by either party, its agents, employees, or contractors, which might cause irreparable harm to the other party, it is agreed that the monetary remedies available at all may be inadequate and, therefore, the aggrieved or threatened party shall be entitled to receive injunctive relief as an equitable remedy.
7. Notwithstanding the foregoing, confidential information shall not include information that (i) has become public knowledge through legal means without fault by the receiving party, (ii) is already public knowledge prior to the disclosing party's disclosure of the same to the receiving party, or (iii) is known to the receiving party prior to the disclosure of the same pursuant to this Agreement.
8. The obligations of the parties under Article XIV shall survive the expiration date for a period of two (2) years.

ARTICLE XV PROTECTION AGAINST LIENS ON PROPERTY

Licensee shall keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Licensee and shall indemnify, defend and hold Licensor harmless from all claims, demands, costs and liabilities, including attorney's fees and costs, in connection with or arising out of any such lien or claim of lien. Licensee shall cause any such lien imposed on the Property to be released of record by payment or posting of a proper bond within thirty (30) days after written request by Licensor.

ARTICLE XVI WARRANTIES

1. Licensor makes no specific covenant, warranty or representation as to the ownership of complete title and fee simple easement or otherwise for the Property and/or right-of-way subject to this Agreement, but Licensor will make available to Licensee for its review all agreements and other documents in Licensor's possession in respect to the right, title and interest in and to the Property and/or right-of-way to be made subject to this Agreement. Licensor shall at all times following execution of this Agreement and during the term of the Agreement, provide such cooperation and assistance as Licensee may reasonably request in respect of issues or problems regarding the use of rights-of-way for the purposes contemplated under this Agreement.
2. LICENSOR PROVIDES NO GUARANTEES OR WARRANTIES WHATSOEVER EXCEPT AS MAY BE EXPLICITLY PROVIDED HEREIN and Licensor's liability for any warranty obligation whatsoever shall be limited to no more than the sum(s) paid by Licensee to Licensor for the involved location or equipment that is subject to any claim which may arise hereunder for the calendar year during which cause for any such claim arose.
3. Licensor DOES NOT WARRANT TITLE, DESCRIPTION, VALUE, QUALITY, CONDITIONS, WORKS AND ABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ENGINEERING, WORKMANSHIP OR RIGHTS-OF-WAYS

**SUBJECT OF THIS AGREEMENT EXCEPT AS IS EXPLICITLY STATED
OTHERWISE IN THIS AGREEMENT.**

**ARTICLE XVII
MISCELLANEOUS**

1. Licensors, at its sole discretion, shall have the right to remove any Licensee employee, agent or contractor for cause and with notification provided to Licensee upon such removal from the Property.
2. Licensee, its partners, agents, servants, employees, contractors and subcontractors agree to comply with all laws, rules and regulations of local, state and federal agencies which are now, or may in the future become applicable to Licensee, its partners, agents, servants, employees, contractors or subcontractors while engaged in the uses covered by this Agreement or arising out of the performance of such uses.
3. Licensors' activities in approving and/or supporting Licensee's engineering, design, planning, construction, installation and maintenance efforts and any periodic and post-construction inspections, shall not relieve Licensee of any responsibility, obligation or liability specified in this Agreement; and Licensee shall indemnify and hold harmless Licensors from and against any and all claims, suits actions, causes of actions, assessments, losses, penalties, costs, damages, and expenses, including without limitations, attorney's fees sustained or incurred by Licensors arising out of or in connection with the performance of said activities.
4. This Agreement and Exhibits thereto, constitute the entire agreement between the parties, and supersedes all offers, negotiations and other agreements relating to the Licensee's use of Licensors' Conduit System and shall be binding upon and inure to the benefit of the parties, their successors and assigns. There are no representations or understandings of any kind not set forth herein. Any amendments or modifications to this Agreement must be in writing and executed by duly authorized officers or agents of both parties.
5. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, and questions of its validity and interpretation, including any questions regarding performance or default hereunder, shall be construed in accordance with the Law of the State of New York, without regard to conflict of laws principles. Any action at law, suit in equity or judicial proceeding initiated by either party arising out of this Agreement shall be instituted only in the courts of the State of New York.
6. Construction of Agreement. The Section headings in this Agreement and the Table of Contents hereof are for convenience of reference only and shall neither be deemed to be a part of this Agreement nor modify, define, expand or limit any of the terms or provisions hereof. All references to numbered Articles, unless otherwise indicated, are to Articles of this Agreement. Words and definitions in the singular shall be read and construed as though in the plural and vice versa, and words in the masculine, neuter or

feminine gender shall also be read and construed as though in either of the other genders.

7. **Remedies.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to sue on any or all other remedies. Said rights and remedies are given in addition to any other rights such party may have by law, statute, ordinance or otherwise, except as such remedies are expressly limited in this Agreement.
8. **Severability.** Any provision of this Agreement which is invalid, illegal or unenforceable in any manner in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such invalidity, illegality or unenforceability without in any ways affecting the validity, legality or enforceability of the remaining provisions hereof, and any such invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or in any way affect the validity, legality or enforceability of such provision in any other jurisdiction.
9. **No Merger.** There shall be no merger of this Agreement or the Rights-of-Occupancy hereby granted with the fee estate in a right-of-way by reason of the fact that this Agreement, and the Rights-of-Occupancy created by this Agreement, or any interest in this Agreement or in any such Rights-of-Occupancy, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in a right-of-way or any interest in such fee estates, and no such merger shall occur unless and until all persons having an interest in this Agreement, and the Rights-of-Occupancy created by this Agreement, shall join in a written instrument effecting such merger and shall duly record the same.
10. **Acts in Furtherance of Agreement.** Licensee and Licensor each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, not creating any obligations, or imposing any expenses, additional to those otherwise created or imposed by this Agreement, as either party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.
11. **Drug and Alcohol Abuse Policy.** Licensee personnel, its agents and contractors shall be fit for duty at all times during their performance of any activities pursuant to this Agreement, and shall not be under the influence of alcohol or drugs. Licensee' personnel, agents and contractors shall not bring, use, distribute, sell or possess alcoholic beverages or illegal drugs during the performance of any activities on Licensor Property. Licensee shall not assign any individual who is in violation of this policy to perform any activities pursuant to this Agreement, and if Licensee discovers any individual is in violation of these requirements, it shall immediately remove any such person from the performance of activities and/or Licensor Property. Violation of these requirements by Licensee personnel, agents and contractors shall result in denial of access of that individual(s) to Licensor Property, facilities and equipment and, in the case of possession, use or sale of illegal drugs, shall be reported to Licensor's Security Department immediately.

**ARTICLE XVIII
WAIVER OF TERMS AND CONDITIONS**

Any waiver by either party at any time of any of its rights as to anything contained herein shall not be deemed to be a waiver of the same or similar right at a subsequent time. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of any original violation. No course of dealing between parties or any delay on the part of a party to exercise any right it may have under this Agreement will operate as a waiver of any of the rights provided hereunder or by law or equity, nor will any waiver of any prior default operate as the waiver of any subsequent default, and no express waiver shall affect any term or condition other than the one specified in such waiver and the express waiver shall apply only for the time and manner specifically stated.

**ARTICLE XIX
TERM OF AGREEMENT**

If not terminated in accordance with Article VIII, this Agreement shall continue in effect for a term of ten (10) years from its Execution Date. Licensee shall have the right to renew this Agreement for two (2) successive ten (10) year terms upon sixty (60) days prior written notice to Licensor. Thereafter, either party may terminate this Agreement upon One Hundred and Eighty (180) days prior written notice to the other party.

**ARTICLE XX
FORCE MAJEURE**

Neither Licensee nor Licensor shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly from Acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes, labor or transportation or any cause beyond the reasonable control of the affected party. The affected party upon giving written notice of the force majeure condition to the other party shall be excused from the performance to the extent necessitated; provided however, that the Licensee shall use its best efforts to correct such conditions as soon as possible, and the Licensor shall use Good Utility Practice to correct such condition as soon as possible.

**ARTICLE XXI
EXTENT OF LICENSE**

Nothing herein contained shall be construed as a grant by Licensor of any right or privilege to Licensee unless otherwise provided. Licensor shall have the right to grant, renew and extend rights, licenses, and privileges to others not parties to this Agreement, by contract or otherwise, to use any Conduit System covered by this Agreement.

ARTICLE XXII

AMENDMENTS

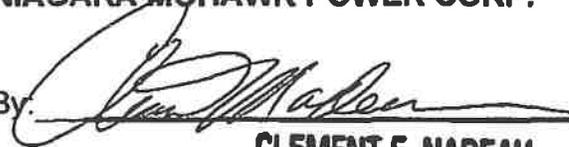
1. Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement.
2. Neither this Agreement nor any term or provision hereof can be amended, waived, modified, supplemented, discharged or terminated, except by an instrument in writing signed by the party against which enforcement thereof is sought.
3. This Agreement and any amendment, modification, waiver or supplement hereto may be executed by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

ARTICLE XXIII PUBLIC SERVICE COMMISSION APPROVAL

This Agreement may be subject to approval by the New York Public Service Commission and/or other State and Federal Regulatory agencies. In the event that such regulatory approvals are required and cannot be obtained, either party shall have the option of terminating this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the date and year first above written.

NIAGARA MOHAWK POWER CORP.

By: _____

**CLEMENT E. NADEAU
SR. VICE PRESIDENT - OPERATIONS**

Title: _____

Date: 3/22/02

DOMINION TELECOM, INC.

By: _____

**CHARLES VASSALLO
Vice President-Strategy,
Finance & Support Services**

Title: _____

Date: March 19, 2002

EXHIBIT A

**Application to Niagara Mohawk
For Conduit System Right-of Occupancy**

Page 1 to be completed by Applicant.

In accordance with the terms and conditions of the Conduit Occupancy Agreement between Niagara Mohawk Power Corporation and _____, dated, _____, application is hereby made for a License to occupy Niagara's Conduit System.

Applicant Information:

Date of Application: _____ Project Name / Reference No.: _____

Company Name: _____

Company Address: _____

Applicant's representative name: _____

Applicant's representative phone #: _____ E-mail: _____

Location (municipality): _____

Route (attach street map with proposed route highlighted)

To and from points:

Facilities to be installed:

Requested fiber "in-service" date: _____

EXHIBIT B

Niagara Mohawk (Licensor) PROCEDURE FOR REVIEW OF CONDUIT SYSTEMS TO ACCOMMODATE REQUESTED RIGHTS-OF-OCCUPANCIES

When an application is submitted for license by Licensee to place its cable, facilities and/or equipment in Licensor's Conduit System, Licensor will advise Licensee whether there is available Conduit space. In determining the availability of space in Licensor's Conduit System, Licensor will consider its present and future system and maintenance needs. If it is determined that Conduit space is available, a License to occupy the Conduit System will be granted to Licensee. Licensor does not warrant the condition of such conduit.

RECORDS

Licensor's Conduit records will be reviewed to determine if Conduits may be available.

LONG RANGE PLANS

Long range plans, projected load growth and existing electrical network studies, will be reviewed to determine core business requirements. Conduit availability for Licensee use shall be determined on the following basis:

- a. When future Conduit requirements indicate that Licensor will have sufficient conduits available to meet its service needs for the next five years, and any municipal obligations.
- b. Conduit(s) shall be retained for emergency maintenance.

FIELD SURVEY

As part of a pre-construction survey, Licensor will conduct a field review along the proposed route to confirm Conduit availability.

OTHER CONSIDERATIONS

Licensor may deny a License for safety, reliability or generally applicable engineering purposes.

EXHIBIT C

**SCHEDULE FOR RATES FOR
NIAGARA MOHAWK POWER CORPORATION
RIGHT-OF-OCCUPANCY**

This Exhibit C is made an integral part of the Conduit Occupancy Agreement between Niagara Mohawk Power Corporation and the Licensee and contains the fees and charges governing the use of Licensor's Conduit System to accommodate Licensee's Facilities (as such term is defined in the Agreement) in the State of New York.

- 1.. Occupancy Fee effective March 1, 2001
\$.19 per month/Innerduct foot occupied
\$16.00 per month/Splice Closure
\$16.00 per month/fiber optic cable slack coil/loop

2. Computation:

Fee shall be computed from the issuance date of the License to the date of termination thereof. For the purpose of computing the total Conduit Occupancy Fee due hereunder, the length of the Conduit or Innerduct shall be measured from the center of the manholes, or from the center of the manhole to the end of the Licensor's Conduit System occupied by Licensee's Facilities.

EXHIBIT D

Electric & Gas System Bulletin 120

Issued: October 1, 1966

Revised: March 31, 1999

EXHIBIT E

**NOTIFICATION TO REMOVE LICENSEE
FACILITIES FROM CONDUIT SYSTEM**

_____ N.Y. _____ 19____

TO: NIAGARA MOHAWK POWER CORPORATION

, New York

In accordance with the terms and conditions of the Conduit Occupancy Agreement between us dated as of _____ 19____, kindly remove from your Conduit System the following Licensee Facilities covered by the Licenses indicated.

License No. _____ Dated _____, 19____

Location _____

From Manhole at	To Manhole at	Municipality	Rental Length
-----------------	---------------	--------------	---------------

Licensee

By _____

Title _____

Ship Facility Removed To

Notification shall be submitted in duplicate.

EXHIBIT F

**1 LICENSE AGREEMENT
TO UTILIZE
NIAGARA MOHAWK POWER CORPORATION
UNDERGROUND CONDUIT MAPS (DRAWINGS)**

THIS AGREEMENT, made this _____ day of _____, 200__, by and between **NIAGARA MOHAWK POWER CORPORATION** (hereinafter called Niagara Mohawk), a New York corporation having its principal offices located at 300 Erie Boulevard West, Syracuse, New York 13202, and _____, a _____ corporation having its principal offices located at _____ (hereinafter called Licensee, collectively referred to as the Parties), for a license to utilize selected Niagara Mohawk underground conduit maps (drawings) for use by the Licensee in the conduct of their business in Niagara Mohawk's service territory.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Niagara Mohawk will license to the Licensee, on a non-exclusive basis, for a fee of two hundred and fifty dollars (\$250) per map or drawing, the use of the maps and drawings attached as Exhibit "A" to this Agreement.

2. Licensee hereby agrees to utilize the information on the maps and drawings solely for the purposes of its primary business of providing communication services to the public, and will return the underground conduit maps and drawings upon the expiration or termination of this License.

3. Niagara Mohawk does not provide any warranty, express or implied, regarding the accuracy or the value of the maps and drawings to the Licensee or any third party, and Licensee accepts receipt of these under such condition.

4. Licensee agrees to keep confidential the information provided to it under this License, and not to share it or the maps and drawings with any third parties whatsoever

without the advance written approval of Niagara Mohawk. Licensee further agrees that these maps and drawings have commercial value and Niagara Mohawk is under no obligation to provide approval to Licensee to permit Licensee to share this information with any third party. In the event Licensee violates this requirement, it agrees to pay Niagara Mohawk liquidated damages in the amount of Five Thousand Dollars (\$5,000.00) per map or drawing provided to a third party in addition to any other rights Niagara Mohawk may have at law.

5. The term of this License shall be indefinite from the date first above written, subject to either party's right to terminate the License upon ten (10) days written notice to the other, or, if there shall be any violation of the conditions contained herein, the License shall end on five (5) days written notice from Niagara Mohawk to Licensee to that effect. If such License shall be terminated by Niagara Mohawk for reasons other than a violation by Licensee of the conditions herein within two (2) years of the commencement of the License, Niagara Mohawk shall refund one half of the fee paid under this Agreement. Otherwise, there will be no refund.

6. Payment of the fee shall be due within thirty (30) days from the date of invoice.

The Parties hereby signify their agreement to these License terms and conditions by executing this Agreement by duly authorized representatives of each.

NIAGARA MOHAWK POWER CORPORATION

LICENSEE

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

COMPANY NAME: _____

DATE: _____

**ADDENDUM TO NIAGARA MOHAWK'S
CONDUIT OCCUPANCY AGREEMENT IN CONNECTION WITH THE SALE OF
TELERGY ASSETS**

1.0 DEFINITIONS

Capitalized terms shall have the meaning defined herein, or if not defined herein, then the meaning defined in the Conduit Occupancy Agreement.

“Conduit Occupancy Agreement” or “Agreement” – shall mean the agreement entered into by and between Niagara Mohawk and Licensee contemporaneous with this Addendum.

“Right of Occupancy Agreement” – shall mean the agreement entered into by and between Niagara Mohawk and Licensee contemporaneous with this Addendum, in connection with Licensee’s proposed use of Niagara Mohawk rights-of-way.

“Addendum to the Right of Occupancy Agreement” – shall mean the addendum to the Right of Occupancy Agreement entered into by and between Niagara Mohawk and Licensee contemporaneous with the Right of Occupancy Agreement.

2.0 SCOPE OF THIS ADDENDUM

2.1 Notwithstanding applicable provisions in the Agreement to the contrary, the compensation Licensee shall pay to Niagara Mohawk for any use or occupancy of Niagara Mohawk’s Conduit System existing on or before the effective date of the Agreement, shall be governed by the terms of the Addendum to the Right of Occupancy Agreement.

2.2 Subsequent to the execution of the Agreement, Niagara Mohawk shall be compensated in accordance with the Agreement and not by reference to this Addendum or the Addendum to the Right of Occupancy Agreement for any expanded or additional use of Niagara Mohawk’s Conduit System, including without limitation, installation and occupancy of additional Innerduct, and use or occupancy of existing Innerduct or Conduit not presently occupied by Licensee.

2.3 Within ninety (90) days of the effective date of the Agreement, at the Licensee’s request, Niagara Mohawk, in its sole and absolute discretion, will entertain discussions to accept the standard occupancy fee (current rate of \$2.24/ft of Innerduct/year) in lieu of Niagara Strands as compensation for Licensee use or occupancy of Niagara Mohawk’s Conduit System existing on or before the effective date of the Agreement.

3.0 PRIORITY

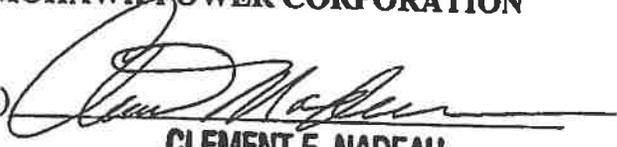
In the event of any conflict between the terms of the Addendum and the Agreement, the terms of this Addendum shall prevail.

**ADDENDUM TO NIAGARA MOHAWK'S
CONDUIT OCCUPANCY AGREEMENT IN CONNECTION WITH THE SALE OF
TELERGY ASSETS (Page 2 of 2)**

ACCEPTED:

NIAGARA MOHAWK POWER CORPORATION

By: (signature)



Name:

CLEMENT E. NADEAU
~~SR. VICE PRESIDENT - OPERATIONS~~

Title:

Date:

3/22/02

ACCEPTED:

(Licensee)

DOMINION TELECOM, INC.

By: (signature)



Name:

CHARLES VASSALLO
~~Vice President Strategy,~~
~~Finance & Support Services~~

Title:

Date:

March 19, 2002

Exhibit 2

lkbiggs@verizon.net

From: Hockberger, Heidi <heidi.hockberger@kirkland.com>
Sent: Monday, May 18, 2020 10:51 AM
To: russell@russelljohnsonlawfirm.com
Cc: Luze, John R.; Polansky, Andrew; Scheffer, Tommy; lindsay@russelljohnsonlawfirm.com
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,
Confirming the below.

Thanks,

Heidi M. Hockberger

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3676 M +1 630 363 5385

heidi.hockberger@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Sunday, May 17, 2020 10:24 AM
To: Luze, John R. <john.luze@kirkland.com>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com>; Lindsay Biggs <lindsay@russelljohnsonlawfirm.com>; Russell Johnson <russell@russelljohnsonlawfirm.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

With respect to the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"), I need to confirm that the attached contracts are the following two contracts listed in the Notice:

1. Attachment titled C0002293, CLEC Pole Attachment Agreement dated April 10, 2002 is the "Poles Agreement" "Pole Rental" dated 4/10/02 listed on page 26 of 37; and
2. Attachment titled C0002316 Niagara Mohawk Power Corporation Conduit Occupancy Agreement with Dominion Telecom, Inc. dated April 10, 2020 is the "Poles Agreement" "Conduit" dated 4/10/02 listed on page 26 of 37.

Thank you for your assistance.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com>
Sent: Wednesday, January 15, 2020 11:36am
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Sorry for the delay -- the company would like to go forward with their objection. I will be presenting on behalf of the company. Per our prior emails, think we can limit to oral argument/no witnesses necessary/etc.

Happy to catch up before if helpful.

Thanks,
Jack

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Wednesday, January 15, 2020 9:49 AM
To: Luze, John R. <john.luze@kirkland.com>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Anything further? I need to know shortly, otherwise, I will be traveling to NY.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com>
Sent: Tuesday, January 14, 2020 9:00pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>, "Polansky, Andrew" <andrew.polansky@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I have followed up with the client -- hope to hear back from the morning.

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Tuesday, January 14, 2020 7:59 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com>
Cc: Luze, John R. <john.luze@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Jack,

Following up on our call this evening. Anything further on your end regarding a possible resolution?

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Sent: Tuesday, January 14, 2020 2:26pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

We just wanted to confirm with you that the hearing will take place at 10:00 a.m. on the 16th. It was incorrectly noticed for 2:00 p.m.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>

Sent: Monday, January 13, 2020 10:46 AM

To: Polansky, Andrew <andrew.polansky@kirkland.com>

Cc: Smith, Trudy <trudy.smith@kirkland.com>

Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I do not intend to cross the Debtors' affiant either.

If possible, could you schedule our matter near the front of the contested matters? I do not believe it will take very long to argue.

I will be filing a Reply tomorrow to address several items in the Objection.

Thank you for your assistance.

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com>

Sent: Friday, January 10, 2020 6:09pm

To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>

Cc: "Smith, Trudy" <trudy.smith@kirkland.com>

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

Russell,

We do not intend to cross your affiant.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>

Sent: Thursday, January 9, 2020 4:58 PM

To: Polansky, Andrew <andrew.polansky@kirkland.com>

Subject: [EXT] FW: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

The statement in paragraph 5 of your Objection is not correct as you can see from the email below.

Following up on the questions posed to you this morning regarding the 1/16/20 hearing on the Motion and Objection, which were:

1. Based on the Objection, I presume that the Debtors want to move forward with this based on the Affidavits, but want to confirm.
2. Do the Debtors intend to cross-examine Niagara Mohawk's Affiant, otherwise, I do not believe he will be attending the hearing.

Thank you for your assistance.

-----Original Message-----

From: "Ford, Stephen" <stephen.ford@kirkland.com>

Sent: Wednesday, May 29, 2019 12:17pm

To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>

Cc: "john@russelljohnsonlawfirm.com" <john@russelljohnsonlawfirm.com>, "Luze, John R." <john.luze@kirkland.com>, "Hockberger, Heidi" <heidi.hockberger@kirkland.com>

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

Russell,

Thank you for your email regarding National Grid automatic stay relief. Our client is not amenable to lifting the automatic stay at this time.

Regards,

Stephen Ford*

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022

T +1 212 390 4357

M +1 917 868 4741

F +1 212 446 4900

stephen.ford@kirkland.com

*JD, Admission Pending

-----Original Message-----

From: Ford, Stephen

Sent: Tuesday, May 28, 2019 4:55 PM

To: 'russell@russelljohnsonlawfirm.com' <russell@russelljohnsonlawfirm.com>

Cc: john@russelljohnsonlawfirm.com; Luze, John R. <john.luze@kirkland.com>; Hockberger, Heidi <heidi.hockberger@kirkland.com>

Subject: RE: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email. We will discuss with client and get back to you.

Thanks,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022
T +1 212 390 4357
M +1 917 868 4741
F +1 212 446 4900

stephen.ford@kirkland.com

*JD, Admission Pending

-----Original Message-----

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Tuesday, May 28, 2019 1:47 PM
To: Taousse, Nacif <naeif.taousse@kirkland.com>
Cc: john@russelljohnsonlawfirm.com; Ford, Stephen <stephen.ford@kirkland.com>; Russell Johnson <russell@russelljohnsonlawfirm.com>
Subject: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

My firm has been retained by Niagara Mohawk Power Corporation ("National Grid") to file a Motion for Relief of Stay with respect to the attached state court complaint to have the fully briefed summary judgment motions set for a hearing and a trial date set. National Grid only seeks to have the matter proceed to judgment and would agree that any judgment in its favor would be stayed.

National Grid's state court counsel contacted the Debtor's state court counsel, Donna Urban, Esq. from Flaster Greenberg, PC and she said that the Debtor would not agree to the relief sought. Accordingly, before filing the Motion for Relief of Stay as described above, I am contacting to confirm that the Debtor would not consent to the foregoing relief of stay.

Thank you for your assistance.

Russell R. Johnson III
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, VA 23103
Phone: 804-749-8861
Fax: 804-749-8862
Email: russell@russelljohnsonlawfirm.com

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Exhibit 3

lkbiggs@verizon.net

From: Scheffer, Tommy <tommy.scheffer@kirkland.com>
Sent: Wednesday, May 27, 2020 1:43 PM
To: lindsay@russelljohnsonlawfirm.com; russell@russelljohnsonlawfirm.com
Cc: Luze, John R.; Hockberger, Heidi; Reiney, Margaret
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)
Attachments: National Grid.zip; E186-
NY-06835.ENY186.ChautauquaCo.NiagaraMohawkPower.2017.06.29.pdf

All -- the attached "National Grid" zip has the relevant National Grid IRU contract and the Niagara Power Easement Agreement is attached. Please let us know of any questions or if we can be of further assistance.

Thank you,

Tommy Scheffer

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022
T +1 212 390 4238
M +1 917 900 2931
F +1 212 446 4900

tommy.scheffer@kirkland.com

From: lindsay@russelljohnsonlawfirm.com <lindsay@russelljohnsonlawfirm.com>
Sent: Wednesday, May 27, 2020 10:41 AM
To: Hockberger, Heidi <heidi.hockberger@kirkland.com>
Cc: Luze, John R. <john.luze@kirkland.com>; Polansky, Andrew <andrew.polansky@kirkland.com>; Scheffer, Tommy <tommy.scheffer@kirkland.com>; russell@russelljohnsonlawfirm.com
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Our client is having trouble locating the following two contracts listed in the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"):

1. National Grid USA Service Company, Inc. – Lease Agreement/Dark Fiber IRU Contract dated 11/13/15 (on p. 25 of 37 of the Notice)
2. Niagara Mohawk Power Corporation – Easement Agreement dated 6/29/17 (on p. 26 of 37 of the Notice)

Could you please provide copies of those contracts?

Thank you for your assistance.

Lindsay K. Biggs
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, Virginia 23103
Direct Dial: (804) 339-9916

From: Hockberger, Heidi <heidi.hockberger@kirkland.com>
Sent: Monday, May 18, 2020 10:51 AM

To: russell@russelljohnsonlawfirm.com

Cc: Luze, John R. <john.luze@kirkland.com>; Polansky, Andrew <andrew.polansky@kirkland.com>; Scheffer, Tommy <tommy.scheffer@kirkland.com>; lindsay@russelljohnsonlawfirm.com

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

Russell,
Confirming the below.

Thanks,

Heidi M. Hockberger

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3676 M +1 630 363 5385

heidi.hockberger@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>

Sent: Sunday, May 17, 2020 10:24 AM

To: Luze, John R. <john.luze@kirkland.com>

Cc: Polansky, Andrew <andrew.polansky@kirkland.com>; Lindsay Biggs <lindsay@russelljohnsonlawfirm.com>; Russell Johnson <russell@russelljohnsonlawfirm.com>

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

With respect to the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"), I need to confirm that the attached contracts are the following two contracts listed in the Notice:

1. Attachment titled C0002293, CLEC Pole Attachment Agreement dated April 10, 2002 is the "Poles Agreement" "Pole Rental" dated 4/10/02 listed on page 26 of 37; and
2. Attachment titled C0002316 Niagara Mohawk Power Corporation Conduit Occupancy Agreement with Dominion Telecom, Inc. dated April 10, 2020 is the "Poles Agreement" "Conduit" dated 4/10/02 listed on page 26 of 37.

Thank you for your assistance.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com>

Sent: Wednesday, January 15, 2020 11:36am

To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>

Cc: "Polansky, Andrew" <andrew.polansky@kirkland.com>

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

Sorry for the delay -- the company would like to go forward with their objection. I will be presenting on behalf of the company. Per our prior emails, think we can limit to oral argument/no witnesses necessary/etc.

Happy to catch up before if helpful.

Thanks,
Jack

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Wednesday, January 15, 2020 9:49 AM
To: Luze, John R. <john.luze@kirkland.com>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Anything further? I need to know shortly, otherwise, I will be traveling to NY.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com>
Sent: Tuesday, January 14, 2020 9:00pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>, "Polansky, Andrew" <andrew.polansky@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I have followed up with the client -- hope to hear back from the morning.

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Tuesday, January 14, 2020 7:59 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com>
Cc: Luze, John R. <john.luze@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Jack,

Following up on our call this evening. Anything further on your end regarding a possible resolution?

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Sent: Tuesday, January 14, 2020 2:26pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

We just wanted to confirm with you that the hearing will take place at 10:00 a.m. on the 16th. It was incorrectly noticed for 2:00 p.m.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Monday, January 13, 2020 10:46 AM
To: Polansky, Andrew <andrew.polansky@kirkland.com>
Cc: Smith, Trudy <trudy.smith@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I do not intend to cross the Debtors' affiant either.

If possible, could you schedule our matter near the front of the contested matters? I do not believe it will take very long to argue.

I will be filing a Reply tomorrow to address several items in the Objection.

Thank you for your assistance.

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Sent: Friday, January 10, 2020 6:09pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

We do not intend to cross your affiant.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Thursday, January 9, 2020 4:58 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com>
Subject: [EXT] FW: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

The statement in paragraph 5 of your Objection is not correct as you can see from the email below.

Following up on the questions posed to you this morning regarding the 1/16/20 hearing on the Motion and Objection, which were:

1. Based on the Objection, I presume that the Debtors want to move forward with this based on the Affidavits, but want to confirm.
2. Do the Debtors intend to cross-examine Niagara Mohawk's Affiant, otherwise, I do not believe he will be attending the hearing.

Thank you for your assistance.

-----Original Message-----

From: "Ford, Stephen" <stephen.ford@kirkland.com>

Sent: Wednesday, May 29, 2019 12:17pm

To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>

Cc: "john@russelljohnsonlawfirm.com" <john@russelljohnsonlawfirm.com>, "Luze, John R." <john.luze@kirkland.com>, "Hockberger, Heidi" <heidi.hockberger@kirkland.com>

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

Russell,

Thank you for your email regarding National Grid automatic stay relief. Our client is not amenable to lifting the automatic stay at this time.

Regards,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022
T +1 212 390 4357
M +1 917 868 4741
F +1 212 446 4900

stephen.ford@kirkland.com

*JD, Admission Pending

-----Original Message-----

From: Ford, Stephen

Sent: Tuesday, May 28, 2019 4:55 PM

To: 'russell@russelljohnsonlawfirm.com' <russell@russelljohnsonlawfirm.com>

Cc: john@russelljohnsonlawfirm.com; Luze, John R. <john.luze@kirkland.com>; Hockberger, Heidi <heidi.hockberger@kirkland.com>

Subject: RE: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email. We will discuss with client and get back to you.

Thanks,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022
T +1 212 390 4357
M +1 917 868 4741
F +1 212 446 4900

stephen.ford@kirkland.com

*JD, Admission Pending

-----Original Message-----

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Tuesday, May 28, 2019 1:47 PM
To: Taousse, Nacif <nacif.taousse@kirkland.com>
Cc: john@russelljohnsonlawfirm.com; Ford, Stephen <stephen.ford@kirkland.com>; Russell Johnson <russell@russelljohnsonlawfirm.com>
Subject: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

My firm has been retained by Niagara Mohawk Power Corporation ("National Grid") to file a Motion for Relief of Stay with respect to the attached state court complaint to have the fully briefed summary judgment motions set for a hearing and a trial date set. National Grid only seeks to have the matter proceed to judgment and would agree that any judgment in its favor would be stayed.

National Grid's state court counsel contacted the Debtor's state court counsel, Donna Urban, Esq. from Flaster Greenberg, PC and she said that the Debtor would not agree to the relief sought. Accordingly, before filing the Motion for Relief of Stay as described above, I am contacting to confirm that the Debtor would not consent to the foregoing relief of stay.

Thank you for your assistance.

Russell R. Johnson III
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, VA 23103
Phone: 804-749-8861
Fax: 804-749-8862
Email: russell@russelljohnsonlawfirm.com

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Exhibit 4

WINDSTREAM SERVICES, LLC

Mailstop B1F03-53A
4001 Rodney Parham Road
Little Rock, Arkansas 72212

Kent Smith
Director – Senior Counsel

501.748.3634
Email: kent.smith@windstream.com



October 26, 2020

VIA EMAIL

David Gentile (david.p.gentile@nationalgrid.com)
David Crandall (david.crandall@nationalgrid.com)
Patricia Bullis (patricia.okay@nationalgrid.com)
Ryan Crandall (ryan.crandall@nationalgrid.com)
John Craner (john.craner@nationalgrid.com)

RE: Lockport-Batavia #112 Transmission Line Corridor

Dear NationalGrid Project Managers:

This letter serves as a formal dispute and response to an email from David Gentile dated Monday, October 19, 2020 at 10:43 a.m. to Larry Goglin regarding the subject “Locating Windstream Fiber Optic Cable in National Grid’s Lockport-Batavia #112 Transmission Line Corridor”. *See*, copy of email attached.

More specifically, Windstream disagrees with the following statement in this email by Mr. Gentile that “National Grid cannot waive its contractual rights under the Right of Occupancy Agreement between National Grid and Windstream and will therefore require Windstream to pay for any costs incurred for incremental protective measures in excess of those we determine National Grid will utilize.”

Windstream disputes not only the above referenced statement but any invoices or attempts by National Grid to require Windstream to pay for any costs pertaining to protective matting or other protective measures for the reasons previously asserted in the “Dispute Letter” dated May 20, 2020. *See*, copy of “Dispute Letter” attached.

Additionally, the Right of Occupancy Agreement has been assigned to Uniti National LLC, pending resolution of National Grid’s cure objection. In connection with that assignment, Uniti has agreed to be responsible for valid post-emergence costs under the Right of Occupancy Agreement. To be clear, Windstream’s position is that these matting costs are not validly owed under the Right of Occupancy Agreement. However, further correspondence on this issue should include Jeff Strenkowski and Kelly McGriff, whom I’ve copied on this letter.

As National Grid is well aware Windstream has repeatedly disputed such invoices and requests and is involved in an ongoing litigation and is on the eve of a mediation with National Grid in a good faith effort to resolve such matters. National Grid’s continued attempts to try and

get Windstream to pay for matters it knows Windstream disputes, does nothing but contaminate the efforts being made by Windstream to reach a reasonable resolution.

We trust that you will forward this dispute notice to the appropriate personnel at National Grid.

Windstream also reserves the right to assert any further bases to dispute these or any attempts to the extent it acquires additional information concerning these. Windstream also reserves all rights to seek any and all relief available in the Bankruptcy Court for National Grid's potential violation of the discharge injunction.

Very truly yours,



Kent Smith
Director – Senior Counsel

cc: Jon P. Devendorf (jdevendorf@barelaydamon.com)
Russell R. Johnson III (russell@russelljohnsonlawfirm.com)
Jeffrey R. Strenkowski (jeffrey.strenkowski@uniti.com)
Kelly McGriff (kelly.mcgriff@uniti.com)
Donna Urban (donna.urban@flastergreenberg.com)
Kent Hayden (kent.hayden@kirkland.com)

Subject: FW: Locating Windstream Fiber Optic Cable in National Grid's Lockport-Batavia #112 Transmission Line Corridor, Confidential, Attorney-Client Privileged

From: Gentile, David P. <David.P.Gentile@nationalgrid.com>

Sent: Monday, October 19, 2020 10:34 AM

To: Goglin, Larry J <Larry.Goglin@windstream.com>

Subject: Locating Windstream Fiber Optic Cable in National Grid's Lockport-Batavia #112 Transmission Line Corridor

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Larry, my name is David Gentile - I am managing a project in Western NY to rebuild the Lockport-Batavia #112 115kV transmission line.

I was given your name by Chris Hughes whom you interacted with previously to locate Windstream underground fiber in the right-of-way for his Huntley-Lockport 36 37 115kV line reconductoring project.

I am requesting Windstream's assistance in marking out your fiber optic cable during the planning phase of my Lockport-Batavia #112 project as well as Windstream providing review and input in determining what protections and locations, if any, are required to protect your fiber optic cable above-and-beyond the protections and locations National Grid will have within its own matting and access plan. To enable you to determine this, you will be sent a copy of our access plans / project schedule, currently in development, and we will detail the protective measures and locations we are planning on installing matting. We will then look to you to advise us what additional protections and locations you consider necessary to protect your underground cable.

National Grid cannot waive its contractual rights under the Right of Occupancy Agreement between National Grid and Windstream and will therefore require Windstream to pay for any costs incurred for incremental protective measures in excess of those we determine National Grid will utilize.

I would like to have all the underground utilities in the Lockport-Batavia #112 right-of-way marked out before the coming winter months to allow me to continue with the development of my project.

Can you please tell me Larry if you are the right contact for this effort to mark Windstream's fiber and if not please direct me to that person so I can move forward with this effort?

Thank you for your attention to this matter, glad to answer any questions you may have.

Sincerely,
David P. Gentile

David P. Gentile

Project Manager

NY Electric Project Development

nationalgrid

1-315-428-3124 (office)

1-315-877-4282 (cell)

david.p.gentile@nationalgrid.com

300 Erie Blvd West, Syracuse, NY 13202 Floor B-2

nationalgridus.com | [Twitter](#) | [LinkedIn](#) | [Facebook](#)

Please consider the environment before printing this email.

David P. Gentile

Project Manager
NY Electric Project Development

nationalgrid

1-315-428-3124 (office)

1-315-877-4282 (cell)

david.p.gentile@nationalgrid.com

300 Erie Blvd West, Syracuse, NY 13202 Floor B-2

nationalgridus.com | [Twitter](#) | [LinkedIn](#) | [Facebook](#)

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Please ensure you have adequate virus protection before you open or detach any documents from this transmission. National Grid plc and its affiliates do not accept any liability for viruses. An e-mail reply to this address may be subject to monitoring for operational reasons or lawful business practices.

For the registered information on the UK operating companies within the National Grid group please use the attached link: <https://www.nationalgrid.com/group/about-us/corporate-registrations>



1810 Chapel Avenue West
Cherry Hill, NJ 08002
(856) 661-1900
Fax: (856) 661-1919
www.flastergreenberg.com

DONNA T. URBAN, ESQUIRE
Member of NJ & PA Bar
Direct Dial (856) 661-2285
E-Mail: donna.urban@flastergreenberg.com
PLEASE RESPOND TO CHERRY HILL

May 20, 2020

Via Email (JDevendorf@barclaydamon.com)

Jon P. Devendorf, Esq.
Barclay Damon LLP
Barclay Damon Tower
125 East Jefferson Street
Syracuse, NY 13202

Re: Windstream Communications LLC – Dispute of New Invoices

Dear Jon:

This letter serves as a formal dispute on behalf of Windstream Communications, LLC (“Windstream”) of the following new invoices recently issued by Niagara Mohawk Power Corporation/National Grid (“National Grid”):

1. Invoice # 800362117 dated 4/17/2020 in the amount of \$2,377,147.24 for the Huntley-Lockport 36/37 T-Line Project
2. Invoice # 800362116 dated 4/17/2020 in the amount of \$457,889.75 for the GE-Geres Lock Line 8 T-Line Project

Although these invoices do not contain any detail or breakdown of the charges, or much information at all for that matter, it is our understanding based on a brief discussion between Paula Anderson, Windstream’s litigation paralegal, and Patricia O’Kay and Chris Hughes, of National Grid, that these invoices supposedly stem from work that National Grid did back in June, July, and August of 2019 for upgrades/repairs to its own transmission line.

We trust that you will forward this dispute notice to the appropriate personnel at National Grid.

National Grid’s Issuance of these Invoices is Improper, Particularly in Light of the Ongoing Dispute Regarding Protective Matting for National Grid’s Lockport-Mortimer 111 Project, the Prior NY State Court Litigation, and the Automatic Stay

Needless to say, Windstream was quite surprised to receive these new invoices for nearly \$3 million, particularly since:

- These new invoices for supposed protective matting concern the very issues in dispute in the New York State Court litigation captioned *Niagara Mohawk Power Corporation v. Windstream Communications, LLC f/k/a Windstream Communications, Inc.*, Index No.: 2015EF4568, State of New York Supreme Court,

Jon P. Devendorf, Esq.
May 20, 2020
Page 2

County of Onondaga (“State Court Litigation”). National Grid’s key personnel, including John Hastings (National Grid’s Assistant General Counsel – Commercial Litigation) and Scott Green (National Grid’s Project Manager), are well aware of the ongoing dispute and Windstream’s position that it is National Grid’s legal responsibility to protect Windstream’s fiber.

- As you know, in February 2019, the State Court Litigation was automatically stayed as a result of Windstream’s Chapter 11 filing in the United States Bankruptcy Court in the Southern District of New York, Case No. 19-22312 (RDD). National Grid’s issuance of these invoices and attempt to collect money from Windstream for the supposed prior installation of protective matting is nothing short of an underhanded end run around the automatic stay. It is causing Windstream to devote substantial time and resources to dispute these charges (*again*), which is in direct violation of the spirit of the automatic stay.
- Also as you know, prior to the automatic stay, the State Court Litigation was stayed and marked off the Court calendar pursuant to New York Consolidated Laws, Civil Practice Law and Rules (“CPLR”) section 3404, to allow the parties to pursue a settlement with respect to that current dispute *as well as any future projects*. Following the CPLR section 3403 stay, I contacted you on multiple occasions requesting the names and contact information of National Grid’s business contacts so that settlement discussions could begin. National Grid did not provide this information and never initiated or pursued settlement discussions.
- Moreover, I recently reached out to you again the week of March 25, 2020, to see if the parties could get together to discuss a business resolution to the ongoing dispute – which, again, involved the Lockport-Mortimer 111 Project, as well as other projects. When we spoke on or about March 27, 2020, you advised you would get back to me the following week, and stated that you would be “surprised” if National Grid is not willing to engage in discussions to try to reach a business resolution that would address both the litigated dispute and the going forward component concerning future projects. I’ve heard nothing from you since that discussion. Instead, National Grid hit Windstream with two invoices for nearly \$3 million.

In light of this history between the parties, and the current Chapter 11 filing, it is entirely inappropriate for National Grid to seek payment from Windstream for these charges. Moreover, given the unresolved dispute at issue in the State Court Litigation, National Grid could not reasonably have expected payment from Windstream for the protective matting associated with these other projects. Moreover, there is no evidence whatsoever concerning these new charges demonstrating any agreement by Windstream that it would pay for protective matting for these other projects.

Jon P. Devendorf, Esq.
May 20, 2020
Page 3

Grounds for the Dispute

For all the reasons set forth in the State Court Litigation, Windstream disputes the April 17, 2020 invoices. These reasons include, but are not limited to:

- The applicable rules require National Grid, as the party contracting the excavation work, and not Windstream, as the operator of the underground facilities, to bear the costs of protecting underground facilities. 16 N.Y.C.R.R. Part 753 (“Part 753”); N.Y. Gen. Bus. § 760 et seq. In particular, National Grid has a duty, among other things, to provide adequate support (for example, matting) to protect underground facilities against traffic and other loads. Part 753-3.12. The purpose of these rules is to establish procedures for contractors performing excavation to assure public safety and prevent damage and disruption of telecommunications services.
- Part 753 and generally accepted practices in the industry require National Grid to do no harm to subsurface utilities, including Windstream’s fiber. This requirement includes taking whatever steps are necessary to protect Windstream’s fiber from damage.
- National Grid has represented and certified to the New York State Public Service Commission (“NYPSC”) in order to obtain approvals for its transmission line projects that it would protect underground facilities, which included Windstream’s cable, and comply with its obligations under Part 753 for protection of underground facilities.
- The Right of Occupancy Agreement (“ROO Agreement”), which generally pertains to the installation, maintenance, and operation of Windstream’s cable within National Grid’s Right-of-Way, does not provide, or in any way contemplate, that Windstream will take on National Grid’s legal responsibility to protect underground facilities during projects to upgrade National Grid’s own transmission lines for National Grid’s sole benefit, or reimburse National Grid for any costs associated with that protection. Rather, the ROO Agreement requires National Grid to comply with all laws, which necessarily includes the laws requiring National Grid to protect Windstream’s underground facilities, and indeed requires National Grid to indemnify Windstream for all costs if National Grid damaged Windstream’s cable or caused any other harm during its own projects.
- The projects were for upgrades to National Grid’s own transmission lines and had nothing to do with maintenance of Windstream’s underground fiber.
- The projects concerning National Grid’s own transmission lines do not involve any maintenance to Windstream’s cable or the Right-of-Way, nor are these projects for Windstream’s benefit in any way. Under the ROO Agreement, National Grid is required to bear the cost of damage avoidance. Accordingly, the ROO Agreement is consistent with the law and requires National Grid to be responsible for protecting Windstream’s facilities.

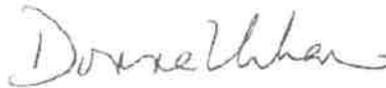
Jon P. Devendorf, Esq.
May 20, 2020
Page 4

- There is no other agreement that would shift National Grid's statutory burden to protect underground facilities to Windstream.
- At all times relevant, National Grid was fully aware that Windstream disputed any and all charges concerning protective matting installed by National Grid as part of National Grid's own projects and, therefore, proceeded with installing protective matting knowing it would need to bear the costs of such matting and with no expectation of payment from Windstream.
- Protective matting used by National Grid provides benefits to National Grid and others, including by protecting other underground cables or facilities, to avoid rutting due to equipment sinking into the ground, and to provide a stable and steady work surface for National Grid's contractors.

Windstream reserves the right to assert any further bases to dispute these invoices to the extent it acquires additional information concerning these charges. Windstream also reserves all rights to seek any and all relief available in the Bankruptcy Court for National Grid's violation of the automatic stay.

Very truly yours,

FLASTER/GREENBERG P.C.



Donna T. Urban

DTU/mbm

Exhibit 5A

lindsay@russelljohnsonlawfirm.com

From: russell@russelljohnsonlawfirm.com
Sent: Monday, October 26, 2020 6:36 PM
To: kent.hayden@kirkland.com; donna.urban@flastergreenberg.com
Cc: jdevendorf@barclaydamon.com; Lindsay Biggs
Subject: FW: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)
Attachments: C0002293.pdf; C0002316.pdf

First of three emails confirming which contracts that the Debtors proposed to assume and assign to Uniti Fiber. The Conduit Occupancy Agreement listed below is not the Right of Occupancy Agreement.

-----Original Message-----

From: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Sent: Sunday, May 17, 2020 11:24am
To: "Luze, John R." <john.luze@kirkland.com>
Cc: "Polansky, Andrew" <andrew.polansky@kirkland.com>, "Lindsay Biggs" <lindsay@russelljohnsonlawfirm.com>, "Russell Johnson" <russell@russelljohnsonlawfirm.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

With respect to the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"), I need to confirm that the attached contracts are the following two contracts listed in the Notice:

1. Attachment titled C0002293, CLEC Pole Attachment Agreement dated April 10, 2002 is the "Poles Agreement" "Pole Rental" dated 4/10/02 listed on page 26 of 37; and
2. Attachment titled C0002316 Niagara Mohawk Power Corporation Conduit Occupancy Agreement with Dominion Telecom, Inc. dated April 10, 2020 is the "Poles Agreement" "Conduit" dated 4/10/02 listed on page 26 of 37.

Thank you for your assistance.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com>
Sent: Wednesday, January 15, 2020 11:36am
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Sorry for the delay -- the company would like to go forward with their objection. I will be presenting on behalf of the company. Per our prior emails, think we can limit to oral argument/no witnesses necessary/etc.

Happy to catch up before if helpful.

Thanks,
Jack

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Wednesday, January 15, 2020 9:49 AM
To: Luze, John R. <john.luze@kirkland.com>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Anything further? I need to know shortly, otherwise, I will be traveling to NY.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com>
Sent: Tuesday, January 14, 2020 9:00pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>, "Polansky, Andrew" <andrew.polansky@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I have followed up with the client -- hope to hear back from the morning.

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Tuesday, January 14, 2020 7:59 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com>
Cc: Luze, John R. <john.luze@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Jack,

Following up on our call this evening. Anything further on your end regarding a possible resolution?

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Sent: Tuesday, January 14, 2020 2:26pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>

Cc: "Smith, Trudy" <trudy.smith@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

We just wanted to confirm with you that the hearing will take place at 10:00 a.m. on the 16th. It was incorrectly noticed for 2:00 p.m.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Monday, January 13, 2020 10:46 AM
To: Polansky, Andrew <andrew.polansky@kirkland.com>
Cc: Smith, Trudy <trudy.smith@kirkland.com>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I do not intend to cross the Debtors' affiant either.

If possible, could you schedule our matter near the front of the contested matters? I do not believe it will take very long to argue.

I will be filing a Reply tomorrow to address several items in the Objection.

Thank you for your assistance.

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com>
Sent: Friday, January 10, 2020 6:09pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

We do not intend to cross your affiant.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP

300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Thursday, January 9, 2020 4:58 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com>
Subject: [EXT] FW: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

The statement in paragraph 5 of your Objection is not correct as you can see from the email below.

Following up on the questions posed to you this morning regarding the 1/16/20 hearing on the Motion and Objection, which were:

1. Based on the Objection, I presume that the Debtors want to move forward with this based on the Affidavits, but want to confirm.
2. Do the Debtors intend to cross-examine Niagara Mohawk's Affiant, otherwise, I do not believe he will be attending the hearing.

Thank you for your assistance.

-----Original Message-----

From: "Ford, Stephen" <stephen.ford@kirkland.com>
Sent: Wednesday, May 29, 2019 12:17pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "john@russelljohnsonlawfirm.com" <john@russelljohnsonlawfirm.com>, "Luze, John R." <john.luze@kirkland.com>, "Hockberger, Heidi" <heidi.hockberger@kirkland.com>
Subject: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email regarding National Grid automatic stay relief. Our client is not amenable to lifting the automatic stay at this time.

Regards,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022 T +1 212 390 4357 M +1 917 868 4741 F +1 212 446 4900

stephen.ford@kirkland.com

*JD, Admission Pending

-----Original Message-----

From: Ford, Stephen

Sent: Tuesday, May 28, 2019 4:55 PM

To: 'russell@russelljohnsonlawfirm.com' <[russell@russelljohnsonlawfirm.com](
mailto:russell@russelljohnsonlawfirm.com)>

Cc: john@russelljohnsonlawfirm.com; Luze, John R. <[
john.luze@kirkland.com](mailto:john.luze@kirkland.com)>; Hockberger, Heidi <[heidi.hockberger@kirkland.com](
mailto:heidi.hockberger@kirkland.com)>

Subject: RE: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email. We will discuss with client and get back to you.

Thanks,

Stephen Ford*

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022 T +1 212 390 4357 M +1 917 868 4741 F +1 212 446 4900

stephen.ford@kirkland.com

*JD, Admission Pending

-----Original Message-----

From: russell@russelljohnsonlawfirm.com <[
russell@russelljohnsonlawfirm.com](mailto:russell@russelljohnsonlawfirm.com)>

Sent: Tuesday, May 28, 2019 1:47 PM

To: Taousse, Nacif <nacif.taousse@kirkland.com>

Cc: john@russelljohnsonlawfirm.com; Ford, Stephen <[
stephen.ford@kirkland.com](mailto:stephen.ford@kirkland.com)>; Russell Johnson <[
russell@russelljohnsonlawfirm.com](mailto:russell@russelljohnsonlawfirm.com)>

Subject: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

My firm has been retained by Niagara Mohawk Power Corporation ("National Grid") to file a Motion for Relief of Stay with respect to the attached state court complaint to have the fully briefed summary judgment motions set for a hearing and a trial date set. National Grid only seeks to have the matter proceed to judgment and would agree that any judgment in its favor would be stayed.

National Grid's state court counsel contacted the Debtor's state court counsel, Donna Urban, Esq. from Flaster Greenberg, PC and she said that the Debtor would not agree to the relief sought. Accordingly, before filing the Motion for Relief of Stay as described above, I am contacting to confirm that the Debtor would not consent to the foregoing relief of stay.

Thank you for your assistance.

Russell R. Johnson III

Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, VA 23103
Phone: 804-749-8861
Fax: 804-749-8862
Email: russell@russelljohnsonlawfirm.com

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The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to postmaster@kirkland.com, and destroy this communication and all copies thereof, including all attachments.

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prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to [postmaster@kirkland.com](<mailto:postmaster@kirkland.com>), and destroy this communication and all copies thereof, including all attachments.

Exhibit 5B

lindsay@russelljohnsonlawfirm.com

From: russell@russelljohnsonlawfirm.com
Sent: Monday, October 26, 2020 6:38 PM
To: Hockberger, Heidi; kent.hayden@kirkland.com
Cc: Luze, John R.; Polansky, Andrew; Scheffer, Tommy; lindsay@russelljohnsonlawfirm.com; jdevendorf@barclaydamon.com
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Second email.

-----Original Message-----

From: "Hockberger, Heidi" <heidi.hockberger@kirkland.com>
Sent: Monday, May 18, 2020 10:51am
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Luze, John R." <john.luze@kirkland.com>, "Polansky, Andrew" <andrew.polansky@kirkland.com>, "Scheffer, Tommy" <tommy.scheffer@kirkland.com>, "lindsay@russelljohnsonlawfirm.com" <lindsay@russelljohnsonlawfirm.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,
Confirming the below.

Thanks,

Heidi M. Hockberger

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3676 M +1 630 363 5385

heidi.hockberger@kirkland.com<mailto:first.last@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Sunday, May 17, 2020 10:24 AM
To: Luze, John R. <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>; Lindsay Biggs <lindsay@russelljohnsonlawfirm.com<mailto:lindsay@russelljohnsonlawfirm.com>>; Russell Johnson <russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

With respect to the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"), I need to confirm that the attached contracts are the following two contracts listed in the Notice:

1. Attachment titled C0002293, CLEC Pole Attachment Agreement dated April 10, 2002 is the "Poles Agreement" "Pole Rental" dated 4/10/02 listed on page 26 of 37; and

2. Attachment titled C0002316 Niagara Mohawk Power Corporation Conduit Occupancy Agreement with Dominion Telecom, Inc. dated April 10, 2020 is the "Poles Agreement" "Conduit" dated 4/10/02 listed on page 26 of 37.

Thank you for your assistance.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Sent: Wednesday, January 15, 2020 11:36am
To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: "Polansky, Andrew" <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Sorry for the delay -- the company would like to go forward with their objection. I will be presenting on behalf of the company. Per our prior emails, think we can limit to oral argument/no witnesses necessary/etc.

Happy to catch up before if helpful.

Thanks,
Jack

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com<mailto:john.luze@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Wednesday, January 15, 2020 9:49 AM
To: Luze, John R. <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Anything further? I need to know shortly, otherwise, I will be traveling to NY.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Sent: Tuesday, January 14, 2020 9:00pm
To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>, "Polansky, Andrew"
<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>

Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) I have followed up with the client -- hope to hear back from the morning.

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com<mailto:john.luze@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Tuesday, January 14, 2020 7:59 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Cc: Luze, John R. <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Jack,

Following up on our call this evening. Anything further on your end regarding a possible resolution?

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Sent: Tuesday, January 14, 2020 2:26pm
To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

We just wanted to confirm with you that the hearing will take place at 10:00 a.m. on the 16th. It was incorrectly noticed for 2:00 p.m.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Monday, January 13, 2020 10:46 AM
To: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Cc: Smith, Trudy <trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I do not intend to cross the Debtors' affiant either.

If possible, could you schedule our matter near the front of the contested matters? I do not believe it will take very long to argue.

I will be filing a Reply tomorrow to address several items in the Objection.

Thank you for your assistance.

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Sent: Friday, January 10, 2020 6:09pm
To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

We do not intend to cross your affiant.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Thursday, January 9, 2020 4:58 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Subject: [EXT] FW: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

The statement in paragraph 5 of your Objection is not correct as you can see from the email below.

Following up on the questions posed to you this morning regarding the 1/16/20 hearing on the Motion and Objection, which were:

1. Based on the Objection, I presume that the Debtors want to move forward with this based on the Affidavits, but want to confirm.
2. Do the Debtors intend to cross-examine Niagara Mohawk's Affiant, otherwise, I do not believe he will be attending the hearing.

Thank you for your assistance.

-----Original Message-----

From: "Ford, Stephen" <stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com>>
Sent: Wednesday, May 29, 2019 12:17pm

To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: "john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com>"
<john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com>>, "Luze, John R."
<john.luze@kirkland.com<mailto:john.luze@kirkland.com>>, "Hockberger, Heidi"
<heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com>>
Subject: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

Thank you for your email regarding National Grid automatic stay relief. Our client is not amenable to lifting the automatic stay at this time.

Regards,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022 T +1 212 390 4357 M +1 917 868 4741 F +1 212 446 4900

stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com>

*JD, Admission Pending

-----Original Message-----

From: Ford, Stephen
Sent: Tuesday, May 28, 2019 4:55 PM
To: 'russell@russelljohnsonlawfirm.com'
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com>; Luze, John R.
<john.luze@kirkland.com<mailto:john.luze@kirkland.com>>; Hockberger, Heidi
<heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com>>
Subject: RE: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email. We will discuss with client and get back to you.

Thanks,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022 T +1 212 390 4357 M +1 917 868 4741 F +1 212 446 4900

stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com>

*JD, Admission Pending

-----Original Message-----

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>

Sent: Tuesday, May 28, 2019 1:47 PM

To: Taousse, Nacif <nacif.taousse@kirkland.com<mailto:nacif.taousse@kirkland.com>>
Cc: john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com>; Ford, Stephen
<stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com>>; Russell Johnson
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Subject: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

My firm has been retained by Niagara Mohawk Power Corporation ("National Grid") to file a Motion for Relief of Stay with respect to the attached state court complaint to have the fully briefed summary judgment motions set for a hearing and a trial date set. National Grid only seeks to have the matter proceed to judgment and would agree that any judgment in its favor would be stayed.

National Grid's state court counsel contacted the Debtor's state court counsel, Donna Urban, Esq. from Flaster Greenberg, PC and she said that the Debtor would not agree to the relief sought. Accordingly, before filing the Motion for Relief of Stay as described above, I am contacting to confirm that the Debtor would not consent to the foregoing relief of stay.

Thank you for your assistance.

Russell R. Johnson III
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, VA 23103
Phone: 804-749-8861
Fax: 804-749-8862
Email: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to postmaster@kirkland.com<mailto:postmaster@kirkland.com<mailto:postmaster@kirkland.com%3cmailto:postmaster@kirkland.com>>, and destroy this communication and all copies thereof, including all attachments.

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to postmaster@kirkland.com<mailto:postmaster@kirkland.com>, and destroy this communication and all copies thereof, including all attachments.

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Exhibit 5C

lindsay@russelljohnsonlawfirm.com

From: russell@russelljohnsonlawfirm.com
Sent: Monday, October 26, 2020 6:40 PM
To: kent.hayden@kirkland.com
Cc: Lindsay Biggs; jdevendorf@barclaydamon.com
Subject: FW: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)
Attachments: National Grid.zip; E186-
NY-06835.ENY186.ChautauquaCo.NiagaraMohawkPower.2017.06.29.pdf

Email 3 of 3

-----Original Message-----

From: "Scheffer, Tommy" <tommy.scheffer@kirkland.com>
Sent: Wednesday, May 27, 2020 1:42pm
To: "lindsay@russelljohnsonlawfirm.com" <lindsay@russelljohnsonlawfirm.com>, "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Luze, John R." <john.luze@kirkland.com>, "Hockberger, Heidi" <heidi.hockberger@kirkland.com>, "Reiney, Margaret" <margaret.reiney@kirkland.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

All -- the attached "National Grid" zip has the relevant National Grid IRU contract and the Niagara Power Easement Agreement is attached. Please let us know of any questions or if we can be of further assistance.

Thank you,

Tommy Scheffer

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022 T +1 212 390 4238 M +1 917 900 2931 F +1 212 446 4900

tommy.scheffer@kirkland.com<mailto:tommy.scheffer@kirkland.com>

From: lindsay@russelljohnsonlawfirm.com <lindsay@russelljohnsonlawfirm.com>
Sent: Wednesday, May 27, 2020 10:41 AM
To: Hockberger, Heidi <heidi.hockberger@kirkland.com>
Cc: Luze, John R. <john.luze@kirkland.com>; Polansky, Andrew <andrew.polansky@kirkland.com>; Scheffer, Tommy <tommy.scheffer@kirkland.com>; russell@russelljohnsonlawfirm.com
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Our client is having trouble locating the following two contracts listed in the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"):

1. National Grid USA Service Company, Inc. – Lease Agreement/Dark Fiber IRU Contract dated 11/13/15 (on p. 25 of 37 of the Notice)
2. Niagara Mohawk Power Corporation – Easement Agreement dated 6/29/17 (on p. 26 of 37 of the Notice)

Could you please provide copies of those contracts?

Thank you for your assistance.

Lindsay K. Biggs
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, Virginia 23103
Direct Dial: (804) 339-9916

From: Hockberger, Heidi <heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com>>
Sent: Monday, May 18, 2020 10:51 AM
To: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
Cc: Luze, John R. <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>; Polansky, Andrew
<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>; Scheffer, Tommy
<tommy.scheffer@kirkland.com<mailto:tommy.scheffer@kirkland.com>>;
lindsay@russelljohnsonlawfirm.com<mailto:lindsay@russelljohnsonlawfirm.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,
Confirming the below.

Thanks,

Heidi M. Hockberger

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3676 M +1 630 363 5385

heidi.hockberger@kirkland.com<mailto:first.last@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Sunday, May 17, 2020 10:24 AM
To: Luze, John R. <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>; Lindsay Biggs
<lindsay@russelljohnsonlawfirm.com<mailto:lindsay@russelljohnsonlawfirm.com>>; Russell Johnson
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

With respect to the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"), I need to confirm that the attached contracts are the following two contracts listed in the Notice:

1. Attachment titled C0002293, CLEC Pole Attachment Agreement dated April 10, 2002 is the "Poles Agreement" "Pole Rental" dated 4/10/02 listed on page 26 of 37; and

2. Attachment titled C0002316 Niagara Mohawk Power Corporation Conduit Occupancy Agreement with Dominion Telecom, Inc. dated April 10, 2020 is the "Poles Agreement" "Conduit" dated 4/10/02 listed on page 26 of 37.

Thank you for your assistance.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Sent: Wednesday, January 15, 2020 11:36am
To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: "Polansky, Andrew" <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Sorry for the delay -- the company would like to go forward with their objection. I will be presenting on behalf of the company. Per our prior emails, think we can limit to oral argument/no witnesses necessary/etc.

Happy to catch up before if helpful.

Thanks,
Jack

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com<mailto:john.luze@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Wednesday, January 15, 2020 9:49 AM
To: Luze, John R. <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Anything further? I need to know shortly, otherwise, I will be traveling to NY.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Sent: Tuesday, January 14, 2020 9:00pm
To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>, "Polansky, Andrew"
<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) I have followed up with the client -- hope to hear back from the morning.

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com<mailto:john.luze@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Tuesday, January 14, 2020 7:59 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Cc: Luze, John R. <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Jack,

Following up on our call this evening. Anything further on your end regarding a possible resolution?

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Sent: Tuesday, January 14, 2020 2:26pm
To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

We just wanted to confirm with you that the hearing will take place at 10:00 a.m. on the 16th. It was incorrectly noticed for 2:00 p.m.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Monday, January 13, 2020 10:46 AM
To: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Cc: Smith, Trudy <trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I do not intend to cross the Debtors' affiant either.

If possible, could you schedule our matter near the front of the contested matters? I do not believe it will take very long to argue.

I will be filing a Reply tomorrow to address several items in the Objection.

Thank you for your assistance.

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To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

We do not intend to cross your affiant.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Thursday, January 9, 2020 4:58 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>
Subject: [EXT] FW: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

The statement in paragraph 5 of your Objection is not correct as you can see from the email below.

Following up on the questions posed to you this morning regarding the 1/16/20 hearing on the Motion and Objection, which were:

1. Based on the Objection, I presume that the Debtors want to move forward with this based on the Affidavits, but want to confirm.
2. Do the Debtors intend to cross-examine Niagara Mohawk's Affiant, otherwise, I do not believe he will be attending the hearing.

Thank you for your assistance.

-----Original Message-----

From: "Ford, Stephen" <stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com>>
Sent: Wednesday, May 29, 2019 12:17pm
To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>

Cc: "john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com>"
<john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com>>, "Luze, John R."
<john.luze@kirkland.com<mailto:john.luze@kirkland.com>>, "Hockberger, Heidi"
<heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com>>
Subject: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

Thank you for your email regarding National Grid automatic stay relief. Our client is not amenable to lifting the automatic stay at this time.

Regards,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022 T +1 212 390 4357 M +1 917 868 4741 F +1 212 446 4900

stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com>

*JD, Admission Pending

-----Original Message-----

From: Ford, Stephen
Sent: Tuesday, May 28, 2019 4:55 PM
To: 'russell@russelljohnsonlawfirm.com'
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com>; Luze, John R.
<john.luze@kirkland.com<mailto:john.luze@kirkland.com>>; Hockberger, Heidi
<heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com>>
Subject: RE: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email. We will discuss with client and get back to you.

Thanks,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022 T +1 212 390 4357 M +1 917 868 4741 F +1 212 446 4900

stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com>

*JD, Admission Pending

-----Original Message-----

From: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Sent: Tuesday, May 28, 2019 1:47 PM
To: Taousse, Nacif <nacif.taousse@kirkland.com<mailto:nacif.taousse@kirkland.com>>

Cc: john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com>; Ford, Stephen
<stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com>>; Russell Johnson
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Subject: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

My firm has been retained by Niagara Mohawk Power Corporation ("National Grid") to file a Motion for Relief of Stay with respect to the attached state court complaint to have the fully briefed summary judgment motions set for a hearing and a trial date set. National Grid only seeks to have the matter proceed to judgment and would agree that any judgment in its favor would be stayed.

National Grid's state court counsel contacted the Debtor's state court counsel, Donna Urban, Esq. from Flaster Greenberg, PC and she said that the Debtor would not agree to the relief sought. Accordingly, before filing the Motion for Relief of Stay as described above, I am contacting to confirm that the Debtor would not consent to the foregoing relief of stay.

Thank you for your assistance.

Russell R. Johnson III
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, VA 23103
Phone: 804-749-8861
Fax: 804-749-8862
Email: russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>

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Exhibit 5D

lindsay@russelljohnsonlawfirm.com

From: Hockberger, Heidi <heidi.hockberger@kirkland.com>
Sent: Monday, October 26, 2020 8:23 PM
To: russell@russelljohnsonlawfirm.com; Hayden, Kent J.
Cc: Luze, John R.; Polansky, Andrew; Scheffer, Tommy; lindsay@russelljohnsonlawfirm.com; jdevendorf@barclaydamon.com
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

I confirmed that the contracts you sent match the contracts in the notice back in May. Do you need anything else here?

Thanks,

Heidi M. Hockberger

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3676 M +1 630 363 5385

heidi.hockberger@kirkland.com

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Monday, October 26, 2020 5:38 PM
To: Hockberger, Heidi <heidi.hockberger@kirkland.com>; Hayden, Kent J. <kent.hayden@kirkland.com>
Cc: Luze, John R. <john.luze@kirkland.com>; Polansky, Andrew <andrew.polansky@kirkland.com>; Scheffer, Tommy <tommy.scheffer@kirkland.com>; lindsay@russelljohnsonlawfirm.com; jdevendorf@barclaydamon.com
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Second email.

-----Original Message-----

From: "Hockberger, Heidi" <heidi.hockberger@kirkland.com>
Sent: Monday, May 18, 2020 10:51 am
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>
Cc: "Luze, John R." <john.luze@kirkland.com>, "Polansky, Andrew" <andrew.polansky@kirkland.com>, "Scheffer, Tommy" <tommy.scheffer@kirkland.com>, "lindsay@russelljohnsonlawfirm.com" <lindsay@russelljohnsonlawfirm.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Confirming the below.

Thanks,

Heidi M. Hockberger

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3676 M +1 630 363 5385

heidi.hockberger@kirkland.com<<mailto:heidi.hockberger@kirkland.com>>

From: russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>

Sent: Sunday, May 17, 2020 10:24 AM

To: Luze, John R. <john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>>

Cc: Polansky, Andrew <andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>; Lindsay Biggs <lindsay@russelljohnsonlawfirm.com<<mailto:lindsay@russelljohnsonlawfirm.com>>>; Russell Johnson <russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>

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

With respect to the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"), I need to confirm that the attached contracts are the following two contracts listed in the Notice:

1. Attachment titled C0002293, CLEC Pole Attachment Agreement dated April 10, 2002 is the "Poles Agreement" "Pole Rental" dated 4/10/02 listed on page 26 of 37; and

2. Attachment titled C0002316 Niagara Mohawk Power Corporation Conduit Occupancy Agreement with Dominion Telecom, Inc. dated April 10, 2020 is the "Poles Agreement" "Conduit" dated 4/10/02 listed on page 26 of 37.

Thank you for your assistance.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>>

Sent: Wednesday, January 15, 2020 11:36am

To: "russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>"
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>

Cc: "Polansky, Andrew" <andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>

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

Sorry for the delay -- the company would like to go forward with their objection. I will be presenting on behalf of the company. Per our prior emails, think we can limit to oral argument/no witnesses necessary/etc.

Happy to catch up before if helpful.

Thanks,
Jack

John R. Luze

KIRKLAND & ELLIS LLP

300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>

From: russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>
Sent: Wednesday, January 15, 2020 9:49 AM
To: Luze, John R. <john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>>
Cc: Polansky, Andrew <andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Anything further? I need to know shortly, otherwise, I will be traveling to NY.

-----Original Message-----

From: "Luze, John R." <john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>>
Sent: Tuesday, January 14, 2020 9:00pm
To: "russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>"
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>, "Polansky, Andrew"
<andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)
I have followed up with the client -- hope to hear back from the morning.

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>

From: russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>
Sent: Tuesday, January 14, 2020 7:59 PM
To: Polansky, Andrew <andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>
Cc: Luze, John R. <john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Jack,

Following up on our call this evening. Anything further on your end regarding a possible resolution?

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>
Sent: Tuesday, January 14, 2020 2:26pm
To: "russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>"
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com<<mailto:trudy.smith@kirkland.com>>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

We just wanted to confirm with you that the hearing will take place at 10:00 a.m. on the 16th. It was incorrectly noticed for 2:00 p.m.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>

From: russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>
Sent: Monday, January 13, 2020 10:46 AM
To: Polansky, Andrew <andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>
Cc: Smith, Trudy <trudy.smith@kirkland.com<<mailto:trudy.smith@kirkland.com>>>
Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I do not intend to cross the Debtors' affiant either.

If possible, could you schedule our matter near the front of the contested matters? I do not believe it will take very long to argue.

I will be filing a Reply tomorrow to address several items in the Objection.

Thank you for your assistance.

-----Original Message-----

From: "Polansky, Andrew" <andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>
Sent: Friday, January 10, 2020 6:09pm
To: "russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>"
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>
Cc: "Smith, Trudy" <trudy.smith@kirkland.com<<mailto:trudy.smith@kirkland.com>>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)
Russell,

We do not intend to cross your affiant.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3998 M +1 773 610 3498
F +1 312 862 2200

andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>

From: russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>

Sent: Thursday, January 9, 2020 4:58 PM

To: Polansky, Andrew <andrew.polansky@kirkland.com<<mailto:andrew.polansky@kirkland.com>>>

Subject: [EXT] FW: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

The statement in paragraph 5 of your Objection is not correct as you can see from the email below.

Following up on the questions posed to you this morning regarding the 1/16/20 hearing on the Motion and Objection, which were:

1. Based on the Objection, I presume that the Debtors want to move forward with this based on the Affidavits, but want to confirm.
2. Do the Debtors intend to cross-examine Niagara Mohawk's Affiant, otherwise, I do not believe he will be attending the hearing.

Thank you for your assistance.

-----Original Message-----

From: "Ford, Stephen" <stephen.ford@kirkland.com<<mailto:stephen.ford@kirkland.com>>>

Sent: Wednesday, May 29, 2019 12:17pm

To: "russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>"
<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>

Cc: "john@russelljohnsonlawfirm.com<<mailto:john@russelljohnsonlawfirm.com>>"
<john@russelljohnsonlawfirm.com<<mailto:john@russelljohnsonlawfirm.com>>>, "Luze, John R."
<john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>>, "Hockberger, Heidi"
<heidi.hockberger@kirkland.com<<mailto:heidi.hockberger@kirkland.com>>>

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

Russell,

Thank you for your email regarding National Grid automatic stay relief. Our client is not amenable to lifting the automatic stay at this time.

Regards,

Stephen Ford*

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022
T +1 212 390 4357
M +1 917 868 4741
F +1 212 446 4900

stephen.ford@kirkland.com<<mailto:stephen.ford@kirkland.com>>

*JD, Admission Pending

-----Original Message-----

From: Ford, Stephen

Sent: Tuesday, May 28, 2019 4:55 PM

To: 'russell@russelljohnsonlawfirm.com'

<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>

Cc: john@russelljohnsonlawfirm.com<<mailto:john@russelljohnsonlawfirm.com>>; Luze, John R.

<john.luze@kirkland.com<<mailto:john.luze@kirkland.com>>>; Hockberger, Heidi

<heidi.hockberger@kirkland.com<<mailto:heidi.hockberger@kirkland.com>>>

Subject: RE: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email. We will discuss with client and get back to you.

Thanks,

Stephen Ford*

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022

T +1 212 390 4357

M +1 917 868 4741

F +1 212 446 4900

stephen.ford@kirkland.com<<mailto:stephen.ford@kirkland.com>>

*JD, Admission Pending

-----Original Message-----

From: russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>

<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>

Sent: Tuesday, May 28, 2019 1:47 PM

To: Taousse, Nacif <nacif.taousse@kirkland.com<<mailto:nacif.taousse@kirkland.com>>>

Cc: john@russelljohnsonlawfirm.com<<mailto:john@russelljohnsonlawfirm.com>>; Ford, Stephen

<stephen.ford@kirkland.com<<mailto:stephen.ford@kirkland.com>>>; Russell Johnson

<russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>>

Subject: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

My firm has been retained by Niagara Mohawk Power Corporation ("National Grid") to file a Motion for Relief of Stay with respect to the attached state court complaint to have the fully briefed summary judgment motions set for a hearing and a trial date set. National Grid only seeks to have the matter proceed to judgment and would agree that any judgment in its favor would be stayed.

National Grid's state court counsel contacted the Debtor's state court counsel, Donna Urban, Esq. from Flaster Greenberg, PC and she said that the Debtor would not agree to the relief sought. Accordingly, before filing the Motion for Relief of Stay as described above, I am contacting to confirm that the Debtor would not consent to the foregoing relief of stay.

Thank you for your assistance.

Russell R. Johnson III
Law Firm of Russell R. Johnson III, PLC
2258 Wheatlands Drive
Manakin-Sabot, VA 23103
Phone: 804-749-8861
Fax: 804-749-8862
Email: russell@russelljohnsonlawfirm.com<<mailto:russell@russelljohnsonlawfirm.com>>

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Exhibit 5E

lindsay@russelljohnsonlawfirm.com

From: russell@russelljohnsonlawfirm.com
Sent: Monday, October 26, 2020 8:40 PM
To: Hockberger, Heidi
Cc: Hayden, Kent J.; Luze, John R.; Polansky, Andrew; Scheffer, Tommy;
lindsay@russelljohnsonlawfirm.com; jdevendorf@barclaydamon.com
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)
Attachments: C0002318.pdf; C0002319.pdf

Thank you. The reason for the emails is that we received a letter from Kent Smith, Esq. stating that the Right of Occupancy Agreement (which is attached to this email) was assumed and assigned to Uniti Fiber. That is not consistent with our communications and the pleadings on file and is problematic in connection with the mediation scheduled for tomorrow morning.

-----Original Message-----

From: "Hockberger, Heidi" <heidi.hockberger@kirkland.com>
Sent: Monday, October 26, 2020 8:22pm
To: "russell@russelljohnsonlawfirm.com" <russell@russelljohnsonlawfirm.com>, "Hayden, Kent J." <kent.hayden@kirkland.com>
Cc: "Luze, John R." <john.luze@kirkland.com>, "Polansky, Andrew" <andrew.polansky@kirkland.com>, "Scheffer, Tommy" <tommy.scheffer@kirkland.com>, "lindsay@russelljohnsonlawfirm.com" <lindsay@russelljohnsonlawfirm.com>, "jdevendorf@barclaydamon.com" <jdevendorf@barclaydamon.com>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

I confirmed that the contracts you sent match the contracts in the notice back in May. Do you need anything else here?

Thanks,

Heidi M. Hockberger

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3676 M +1 630 363 5385

heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com>

From: russell@russelljohnsonlawfirm.com <russell@russelljohnsonlawfirm.com>
Sent: Monday, October 26, 2020 5:38 PM
To: Hockberger, Heidi <heidi.hockberger@kirkland.com>; Hayden, Kent J. <kent.hayden@kirkland.com>
Cc: Luze, John R. <john.luze@kirkland.com>; Polansky, Andrew <andrew.polansky@kirkland.com>; Scheffer, Tommy <tommy.scheffer@kirkland.com>; lindsay@russelljohnsonlawfirm.com; jdevendorf@barclaydamon.com
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Second email.

-----Original Message-----

From: "Hockberger, Heidi" <heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com>>
Sent: Monday, May 18, 2020 10:51am

To: "russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>"
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com>>
Cc: "Luze, John R." <john.luze@kirkland.com<mailto:john.luze@kirkland.com>>, "Polansky, Andrew"
<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com>>, "Scheffer, Tommy"
<tommy.scheffer@kirkland.com<mailto:tommy.scheffer@kirkland.com>>,
"lindsay@russelljohnsonlawfirm.com<mailto:lindsay@russelljohnsonlawfirm.com>"
<lindsay@russelljohnsonlawfirm.com<mailto:lindsay@russelljohnsonlawfirm.com>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,
Confirming the below.

Thanks,

Heidi M. Hockberger

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3676 M +1 630 363 5385

heidi.hockberger@kirkland.com<mailto:first.last@kirkland.com<mailto:heidi.hockberger@kirkland.com%3cmailto:first.last@kirkland.com>>

From:
russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>
Sent: Sunday, May 17, 2020 10:24 AM
To: Luze, John R.
<john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cmailto:john.luze@kirkland.com>>>
Cc: Polansky, Andrew
<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cmailto:andrew.polansky@kirkland.com>>>; Lindsay Biggs
<lindsay@russelljohnsonlawfirm.com<mailto:lindsay@russelljohnsonlawfirm.com<mailto:lindsay@russelljohnsonlawfirm.com%3cmailto:lindsay@russelljohnsonlawfirm.com>>>; Russell Johnson
<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>
Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

With respect to the Notice of Assumption and Assignment of Contracts to Uniti Fiber [Docket No. 1821] (the "Notice"), I need to confirm that the attached contracts are the following two contracts listed in the Notice:

1. Attachment titled C0002293, CLEC Pole Attachment Agreement dated April 10, 2002 is the "Poles Agreement" "Pole Rental" dated 4/10/02 listed on page 26 of 37; and

2. Attachment titled C0002316 Niagara Mohawk Power Corporation Conduit Occupancy Agreement with Dominion Telecom, Inc. dated April 10, 2020 is the "Poles Agreement" "Conduit" dated 4/10/02 listed on page 26 of 37.

Thank you for your assistance.

-----Original Message-----

From: "Luze, John R."

<john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cmailto:john.luze@kirkland.com>>>

Sent: Wednesday, January 15, 2020 11:36am

To:

"russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com><mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com%3e>"

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>

Cc: "Polansky, Andrew"

<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cmailto:andrew.polansky@kirkland.com>>>

Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Sorry for the delay -- the company would like to go forward with their objection. I will be presenting on behalf of the company. Per our prior emails, think we can limit to oral argument/no witnesses necessary/etc.

Happy to catch up before if helpful.

Thanks,
Jack

John R. Luze

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 3369 M +1 319 504 4006
F +1 312 862 2200

john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cmailto:john.luze@kirkland.com>>

From:

russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>

Sent: Wednesday, January 15, 2020 9:49 AM

To: Luze, John R.

<john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cmailto:john.luze@kirkland.com>>>

Cc: Polansky, Andrew

<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cm
ailto:andrew.polansky@kirkland.com>>>

Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Anything further? I need to know shortly, otherwise, I will be traveling to NY.

-----Original Message-----

From: "Luze, John R."

<john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cm
ailto:john.luze@kirkland.com>>>

Sent: Tuesday, January 14, 2020 9:00pm

To:

"russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com><mailto:russell@russelljohnsonlawfirm.
.com%3cm
ailto:russell@russelljohnsonlawfirm.com%3e>"

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.
com%3cm
ailto:russell@russelljohnsonlawfirm.com>>>, "Polansky, Andrew"

<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cm
ailto:andrew.polansky@kirkland.com>>>

Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) I have followed up with the client --
hope to hear back from the morning.

John R. Luze

KIRKLAND & ELLIS LLP

300 North LaSalle, Chicago, IL 60654

T +1 312 862 3369 M +1 319 504 4006

F +1 312 862 2200

john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cm
ailto:john.luze@kirkland.com>>>

From:

russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.c
om%3cm
ailto:russell@russelljohnsonlawfirm.com>>>

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.
com%3cm
ailto:russell@russelljohnsonlawfirm.com>>>

Sent: Tuesday, January 14, 2020 7:59 PM

To: Polansky, Andrew

<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cm
ailto:andrew.polansky@kirkland.com>>>

Cc: Luze, John R.

<john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cm
ailto:john.luze@kirkland.com>>>

Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Jack,

Following up on our call this evening. Anything further on your end regarding a possible resolution?

-----Original Message-----

From: "Polansky, Andrew"

<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cm
ailto:andrew.polansky@kirkland.com>>>

Sent: Tuesday, January 14, 2020 2:26pm

To:

"russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com><mailto:russell@russelljohnsonlawfirm
.com%3cmmailto:russell@russelljohnsonlawfirm.com%3e>"

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.
com%3cmmailto:russell@russelljohnsonlawfirm.com>>>

Cc: "Smith, Trudy"

<trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com%3cmmailto:trudy.smith
@kirkland.com>>>

Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

We just wanted to confirm with you that the hearing will take place at 10:00 a.m. on the 16th. It was incorrectly noticed
for 2:00 p.m.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP

300 North LaSalle, Chicago, IL 60654

T +1 312 862 3998 M +1 773 610 3498

F +1 312 862 2200

andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cma
ilto:andrew.polansky@kirkland.com>>

From:

russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.c
om%3cmmailto:russell@russelljohnsonlawfirm.com>>

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.
com%3cmmailto:russell@russelljohnsonlawfirm.com>>>

Sent: Monday, January 13, 2020 10:46 AM

To: Polansky, Andrew

<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cm
ailto:andrew.polansky@kirkland.com>>>

Cc: Smith, Trudy

<trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com%3cmmailto:trudy.smith
@kirkland.com>>>

Subject: [EXT] RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

I do not intend to cross the Debtors' affiant either.

If possible, could you schedule our matter near the front of the contested matters? I do not believe it will take very long
to argue.

I will be filing a Reply tomorrow to address several items in the Objection.

Thank you for your assistance.

-----Original Message-----

From: "Polansky, Andrew"

<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cm
ailto:andrew.polansky@kirkland.com>>>

Sent: Friday, January 10, 2020 6:09pm

To:

"russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com><mailto:russell@russelljohnsonlawfirm
.com%3cm
mailto:russell@russelljohnsonlawfirm.com%3e>"

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.
com%3cm
mailto:russell@russelljohnsonlawfirm.com>>>

Cc: "Smith, Trudy"

<trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com<mailto:trudy.smith@kirkland.com%3cm
mailto:trudy.smith
@kirkland.com>>>

Subject: RE: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

We do not intend to cross your affiant.

Best,

Andrew Polansky

KIRKLAND & ELLIS LLP

300 North LaSalle, Chicago, IL 60654

T +1 312 862 3998 M +1 773 610 3498

F +1 312 862 2200

andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cm
ailto:andrew.polansky@kirkland.com>>

From:

russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.c
om%3cm
mailto:russell@russelljohnsonlawfirm.com>>

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.
com%3cm
mailto:russell@russelljohnsonlawfirm.com>>>

Sent: Thursday, January 9, 2020 4:58 PM

To: Polansky, Andrew

<andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com<mailto:andrew.polansky@kirkland.com%3cm
ailto:andrew.polansky@kirkland.com>>>

Subject: [EXT] FW: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

The statement in paragraph 5 of your Objection is not correct as you can see from the email below.

Following up on the questions posed to you this morning regarding the 1/16/20 hearing on the Motion and Objection, which were:

1. Based on the Objection, I presume that the Debtors want to move forward with this based on the Affidavits, but want to confirm.
2. Do the Debtors intend to cross-examine Niagara Mohawk's Affiant, otherwise, I do not believe he will be attending the hearing.

Thank you for your assistance.

-----Original Message-----

From: "Ford, Stephen"

<stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com%3cmailto:stephen.ford@kirkland.com>>>>

Sent: Wednesday, May 29, 2019 12:17pm

To:

"russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com><mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com%3e>"

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>

Cc:

"john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com><mailto:john@russelljohnsonlawfirm.com%3cmailto:john@russelljohnsonlawfirm.com%3e>"

<john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com%3cmailto:john@russelljohnsonlawfirm.com>>>, "Luze, John R."

<john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cmailto:john.luze@kirkland.com>>>, "Hockberger, Heidi"

<heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com%3cmailto:heidi.hockberger@kirkland.com>>>

Subject: RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD) Russell,

Thank you for your email regarding National Grid automatic stay relief. Our client is not amenable to lifting the automatic stay at this time.

Regards,

Stephen Ford*

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022 T +1 212 390 4357 M +1 917 868 4741 F +1 212 446 4900

stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com%3cmailto:stephen.ford@kirkland.com>>>

*JD, Admission Pending

-----Original Message-----

From: Ford, Stephen

Sent: Tuesday, May 28, 2019 4:55 PM

To: 'russell@russelljohnsonlawfirm.com'

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>

Cc:

john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com%3cmailto:john@russelljohnsonlawfirm.com>>>; Luze, John R.

<john.luze@kirkland.com<mailto:john.luze@kirkland.com<mailto:john.luze@kirkland.com%3cmailto:john.luze@kirkland.com>>>; Hockberger, Heidi

<heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com<mailto:heidi.hockberger@kirkland.com%3cmailto:heidi.hockberger@kirkland.com>>>

Subject: RE: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

Russell,

Thank you for your email. We will discuss with client and get back to you.

Thanks,

Stephen Ford*

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022 T +1 212 390 4357 M +1 917 868 4741 F +1 212 446 4900

stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com%3cmailto:stephen.ford@kirkland.com>>>

*JD, Admission Pending

-----Original Message-----

From:

russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>>

Sent: Tuesday, May 28, 2019 1:47 PM

To: Taousse, Nacif

<nacif.taousse@kirkland.com<mailto:nacif.taousse@kirkland.com<mailto:nacif.taousse@kirkland.com%3cmailto:nacif.taousse@kirkland.com>>>>

Cc:

john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com<mailto:john@russelljohnsonlawfirm.com%3cmailto:john@russelljohnsonlawfirm.com>>>>; Ford, Stephen

<stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com<mailto:stephen.ford@kirkland.com%3cmailto:stephen.ford@kirkland.com>>>>; Russell Johnson

<russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmailto:russell@russelljohnsonlawfirm.com>>>>

Subject: [EXT] RE: In re Windstream Holdings, Inc., et al., Case No. 19-22312 (RDD)

My firm has been retained by Niagara Mohawk Power Corporation ("National Grid") to file a Motion for Relief of Stay with respect to the attached state court complaint to have the fully briefed summary judgment motions set for a hearing and a trial date set. National Grid only seeks to have the matter proceed to judgment and would agree that any judgment in its favor would be stayed.

National Grid's state court counsel contacted the Debtor's state court counsel, Donna Urban, Esq. from Flaster Greenberg, PC and she said that the Debtor would not agree to the relief sought. Accordingly, before filing the Motion for Relief of Stay as described above, I am contacting to confirm that the Debtor would not consent to the foregoing relief of stay.

Thank you for your assistance.

Russell R. Johnson III

Law Firm of Russell R. Johnson III, PLC

2258 Wheatlands Drive

Manakin-Sabot, VA 23103

Phone: 804-749-8861

Fax: 804-749-8862

Email:

russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com<mailto:russell@russelljohnsonlawfirm.com%3cmmailto:russell@russelljohnsonlawfirm.com>>>

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postmaster@kirkland.com<mailto:postmaster@kirkland.com<mailto:postmaster@kirkland.com%3cmmailto:postmaster@kirkland.com<mailto:postmaster@kirkland.com%3cmmailto:postmaster@kirkland.com%3cmmailto:postmaster@kirkland.com%3cmmailto:postmaster@kirkland.com>>>>>, and destroy this communication and all copies thereof, including all attachments.

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postmaster@kirkland.com<mailto:postmaster@kirkland.com<mailto:postmaster@kirkland.com%3cmmailto:postmaster@kirkland.com>>>, and destroy this communication and all copies thereof, including all attachments.

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postmaster@kirkland.com<mailto:postmaster@kirkland.com<mailto:postmaster@kirkland.com%3cmmailto:postmaster@kirkland.com>>>, and destroy this communication and all copies thereof, including all attachments.

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postmaster@kirkland.com<mailto:postmaster@kirkland.com<mailto:postmaster@kirkland.com%3cmmailto:postmaster@kirkland.com>>>, and destroy this communication and all copies thereof, including all attachments.

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The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to postmaster@kirkland.com<<mailto:postmaster@kirkland.com><<mailto:postmaster@kirkland.com>%3c<mailto:postmaster@kirkland.com>>>>, and destroy this communication and all copies thereof, including all attachments.

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