

U.S. Bank National Association, solely in its capacities as indenture trustee (“U.S. Bank” or the “Unsecured Trustee”) for certain Windstream Services, LLC (“Services”) unsecured notes,² by and through its undersigned counsel, hereby submits this limited objection to the *Reorganized Debtors’ Motion for Entry of an Order (I) Closing the Chapter 11 Case, (II) Entering a Final Decree, (III) Terminating Services of Claims and Noticing Agent, and (IV) Granting Related Relief* [Docket No. 241] (the “Motion”)³ and respectfully states as follows:

LIMITED OBJECTION

1. In their Motion seeking to close the Remaining Case, the Reorganized Debtors incorrectly state that “substantially all motions, claims objections, contested matters, and adversary proceedings have been finally resolved” except for one pending claim objection (Mot. ¶ 25). In fact, the Unsecured Trustee’s appeals from this Court’s orders approving the settlement agreement between the Reorganized Debtors and Uniti [Docket No. 1807] and confirming the Reorganized Debtors’ plan of reorganization [Docket No. 2243] remain pending as well. Those consolidated appeals from the district court’s dismissal on equitable mootness grounds are fully briefed and scheduled for oral argument before the United States Court of Appeals for the Second Circuit on October 12, 2022.

2. It appears that the timing of the Motion may be driven by an intent to influence these pending appeals. The Reorganized Debtors fail to address why they are seeking to close the Remaining Case now. Having waited nearly two years since the Plan Effective Date, the

² U.S. Bank is indenture trustee for (i) that certain indenture dated as of October 6, 2010 between it and Services as issuer of 7.75% Senior Notes due 2020, (ii) that certain indenture dated as of March 28, 2011 between it and Services as issuer of 7.75% Senior Notes due 2021, (iii) that certain indenture dated as of November 22, 2011 between it and Services as issuer of 7.50% Senior Notes due 2022, (iv) that certain indenture dated as of March 16, 2011 between it and Services as issuer of 7.50% Senior Notes due 2023, and (v) that certain indenture dated as of January 23, 2013 between it and Services as issuer of 6.375% Senior Notes due 2023.

³ Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

Reorganized Debtors filed the Motion one week after the Second Circuit scheduled oral argument in the Unsecured Trustee’s appeals.⁴ The Motion was not precipitated by any new development or accomplishment in the Chapter 11 Cases—the Reorganized Debtors state that they reconciled claims, resolved disputes, and made distributions to creditors months ago. It argues that the Plan has been substantially consummated and seeks an order that would prevent the Unsecured Trustee from reopening the Chapter 11 Cases if it prevails in the Second Circuit. It appears designed not to facilitate the efficient administration of a bankruptcy estate, but rather to advance the Reorganized Debtors’ mootness argument, confuse the issues on appeal, and thwart the Unsecured Trustee’s efforts to obtain meaningful relief.

3. To preserve the status quo and avoid this potential prejudice, the Court should defer its decision on the Motion until the Second Circuit decides the appeals.⁵ This would also avoid unnecessary motion practice to reopen the Chapter 11 Cases if the Second Circuit reverses the district court following oral argument. Alternatively, if the Court is inclined to close the Remaining Case at this time, the Court’s order should provide that the closing of the Remaining Case (i) is not intended to affect any appellate court’s jurisdiction over any pending appeal, (ii) is not intended to affect any relief an appellate court may grant in connection with any pending appeal, (iii) shall not be used by the Reorganized Debtors in support of their arguments on appeal,

⁴ See Notice of Hearing Date, *U.S. Bank National Association v. Windstream Holdings, Inc. (In re Windstream Holdings, Inc.)*, 21-1754 (2d Cir. 2021) [August 12, 2022, Docket No. 115].

⁵ Of course, the Court may in its discretion deny the Motion on the basis of the pending appeals as well. See, e.g., *In re SLI, Inc.*, No. 02-12608 (WS), 2005 Bankr. LEXIS 1322, at *6-7 (Bankr. D. Del. June 24, 2005) (determining case cannot be considered “fully administered,” and cannot be closed, while an appeal of a confirmation order is pending); *Wells Fargo Bank, N.A. v. Nicolaysen (In re Nicolaysen)*, 228 B.R. 252, 258 n.26 (Bankr. E.D. Cal. 1998) (explaining reason for two-year gap between final accounting and when cases were closed was “the pendency of appeals by the Debtors from the order confirming the Joint Plan”); *In re 1095 Commonwealth Ave. Corp.*, 213 B.R. 794, 795-96 (Bankr. D. Mass. 1997) (holding that “[t]he Court cannot enter a final decree before the appeals are resolved” and explaining that “pending appeals represent contested matters that have not been finally resolved”).

and (iv) is without prejudice to the rights of the Unsecured Trustee to seek to reopen the Chapter 11 Cases if the Second Circuit grants any relief in connection with the appeals.

CONCLUSION

For the foregoing reasons, the Unsecured Trustee respectfully requests the Court deny the Motion or condition its approval on the terms set forth herein and grant such other relief as it deems just and proper.

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