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

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

**DECLARATION OF TONY THOMAS, CHIEF EXECUTIVE  
OFFICER AND PRESIDENT OF WINDSTREAM HOLDINGS, INC.,  
(I) IN SUPPORT OF DEBTORS’ CHAPTER 11 PETITIONS AND FIRST  
DAY MOTIONS AND (II) PURSUANT TO LOCAL BANKRUPTCY RULE 1007-2**

I, Tony Thomas, hereby declare under penalty of perjury:

1. I am the Chief Executive Officer and President of Windstream Holdings, Inc. (“Windstream Holdings”), a publicly traded, FORTUNE 500 company organized under the laws of Delaware and a debtor and debtor in possession in the above-captioned chapter 11 cases. Windstream Holdings’ common shares trade on the Nasdaq Global Select Market (“NASDAQ”) under the ticker symbol “WIN.” I have served as Windstream Holdings’ Chief Executive Officer

<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



and President since 2014. Previously, I was Windstream Holdings' Chief Financial Officer from August 2009 through September 2014, and was responsible for overseeing the company's accounting, finance, capital planning, tax, procurement, audit, investor relations and treasury teams. I have held numerous other leadership roles within Windstream Holdings, including Controller and President of the Real Estate Investment Trust Operations. Prior to joining Windstream Holdings in 2006, I served in various management roles at Alltel. Before entering the communications industry, I was a senior auditor with Ernst & Young, where I worked in the telecommunications practice. I hold a master's degree in business administration from Wake Forest University and a bachelor's degree in accountancy from the University of Illinois.

2. I am generally familiar with the day-to-day operations, business and financial affairs, and books and records Windstream Holdings and its direct and indirect debtor subsidiaries (collectively, "Windstream"). I submit this declaration to assist the Court and parties in interest in understanding the circumstances that compelled the commencement of these chapter 11 cases and in support of (a) Windstream's petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and (b) the relief that Windstream has requested from the Court pursuant to the emergency motions and applications filed with this declaration (collectively, the "First Day Motions").

3. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my discussions with other members of Windstream's management team and advisors, my review of relevant documents and information concerning Windstream's operations, financial affairs, and restructuring initiatives, or my opinions based upon my experience and knowledge. If called as a witness, I could and would testify competently to the

facts set forth in this declaration. I am authorized to submit this declaration on behalf of Windstream.

### **Introduction**

4. Windstream is a leading provider of advanced network communications, technology, broadband, entertainment, security, and core transport solutions to both consumer and business customers across the United States, with a national footprint spanning approximately 150,000 fiber miles. Windstream offers broadband, entertainment and security solutions to consumers and small businesses, primarily in rural areas, in 18 states. Central to Windstream's growth is a focused operational strategy for each of its business segments with the overall objective of generating strong financial returns for its stakeholders. Windstream's operational performance is on an upward trajectory—throughout 2018, Windstream added over 14,000 new broadband subscribers and improved strategic sales revenue. As of the petition date, Windstream had approximately 11,600 employees.

5. Windstream did not arrive in chapter 11 due to operational failures and, currently, does not anticipate the need to restructure material operational obligations. Instead, as set forth in the First Day Motions, Windstream hopes and anticipates that its operations will continue uninterrupted and its employees will be able to continue to focus on providing best-in-class service to all of Windstream's valued customers, in each case largely unaffected by these chapter 11 cases. The primary aim of these chapter 11 cases is to serve as a foundation for a financial restructuring necessitated by an adverse ruling in the United States District Court for the Southern District of New York by Judge Jesse Furman, which found a default under an indenture governing certain of Windstream's unsecured notes. Through these chapter 11 cases, Windstream hopes to protect its business as a going concern, ensure long-term financial stability, and secure a sustainable go-forward capital structure.

6. Windstream operates in the highly competitive telecommunications industry. Since its formation in 2006 through a spinoff and merger transaction involving telecommunications companies Alltel and VALOR Communications Group, Windstream has sought to maximize its competitive advantage through geographical expansion (both acquisition-based and organic) and technological innovation, including upgrading its network presence and expanding its portfolio of next-generation technology solutions. Historically, Windstream's growth was funded in large part by debt. As of February 2019, Windstream had approximately \$5.6 billion in funded debt, including approximately \$800 million in first-lien revolving loan obligations, approximately \$1.8 billion in first-lien term loan obligations and notes (including \$100 million of secured notes issued by an indirect subsidiary of Windstream Holdings) and approximately \$2.9 billion of second-lien secured notes and unsecured notes.

7. Over the past several years, Windstream has consummated a number of refinancings, exchanges, and similar transactions. Additionally, in April 2015, Windstream Services and related debtor subsidiaries spun off certain telecommunications network, real estate, and other assets through a transaction involving a real estate investment trust now known as Uniti Group Inc. ("Uniti"). Subsequent to the Uniti spin-off, Windstream Holdings entered into a master lease agreement with certain subsidiaries of Uniti, pursuant to which it leases the assets (as further described below). As recently as mid-2018, Windstream had consummated certain exchange offers and was considering additional out-of-court transactions to manage its capital structure. But those plans were derailed due to an extreme, and sudden, liquidity crisis Windstream now faces as a consequence of Judge Furman's findings and attendant impact under Windstream's debt agreements.

8. In November 2017, U.S. Bank National Association (“U.S. Bank”), as indenture trustee (and at the behest of Aurelius Capital Master, Ltd. (“Aurelius”)), commenced litigation in the District Court for the Southern District of New York alleging a default under the indenture governing Windstream’s 6 3/8% senior unsecured notes due 2023 (the “6 3/8% Notes”). U.S. Bank and Aurelius asserted—more than two years after the transaction occurred—that the Uniti spin-off constituted a prohibited “Sale and Leaseback Transaction” under the indenture governing the 6 3/8% Notes (the “6 3/8% Notes Indenture”), even though Aurelius did not own any 6 3/8% Notes at the time of the Uniti spin-off and no other noteholder objected to the transaction. Additionally, on December 7, 2017, Aurelius issued a notice of acceleration to Windstream related to the 6 3/8% Notes.

9. Throughout 2017 and early 2018, Windstream consummated a series of exchange transactions and consent solicitations. The goal of these transactions was to extend near-term maturities, reduce interest expense, and obtain the requisite consents to waive any alleged default related to the Uniti spin-off. A significant majority of unsecured noteholders supported Windstream in its position that the Uniti spin-off did not violate the 6 3/8% Notes Indenture or any other applicable indenture, and agreed to waive the Aurelius-alleged defaults, but Aurelius and U.S. Bank nonetheless contested these exchange transactions in the litigation.

10. Despite overwhelming support from Windstream’s noteholders, on February 15, 2019, Judge Furman issued a decision in favor of one noteholder—Aurelius—finding that the Uniti spin-off constituted a prohibited Sale and Leaseback Transaction under the 6 3/8% Notes Indenture, that the late 2017 exchange and consent transactions did not cure the default, and that the December 2017 Aurelius notice of acceleration was valid.

11. Windstream respectfully disagrees with the court's findings of fact and conclusions of law and believes that the Uniti spin-off did not violate any provision of the 6 3/8% Notes Indenture. Furthermore, even if the Uniti spin-off was in violation, Windstream believes that the subsequent consent and exchange transactions addressed any alleged defaults. The findings found that an event of default under the 6 3/8% Notes Indenture had occurred and had not been cured or waived. As Judge Furman noted, such an event of default had the effect of validating Aurelius's 2017 notice of acceleration and opened the door for Aurelius to exercise remedies against Windstream and its assets. Moreover, the findings would give rise to a cross default under the credit agreement governing Windstream's secured term and revolving loan obligations and the valid acceleration of the 6 3/8% Notes by Aurelius would give rise to a cross-acceleration event of default under the indentures governing Windstream's other series of secured and unsecured notes..

12. Windstream historically has not retained significant amounts of excess cash on its balance sheet and instead has used excess cash to repay outstanding revolver borrowings. Therefore, the cross default under Windstream's term loan and revolving facilities meant that, in the absence of a waiver from a majority of its revolver lenders, Windstream suddenly found itself without access to the remaining approximately \$450 million in availability under its revolving credit facility, which it relies upon to smooth its cash flows and fund day-to-day cash needs. On February 15, 2019, the day Judge Furman issued his findings, Windstream had approximately \$6 million in cash on hand and limited access to additional liquidity.

13. During this time period, Windstream and its advisors explored a range of comprehensive out-of-court financing options in hopes of obviating the need for a chapter 11 filing. For the reasons described below, none of these options were actionable, and over the

following days, Windstream faced a significant liquidity shortfall and no access to further out-of-court financing.

14. Accordingly, on February 25, 2019, (the “Petition Date”), Windstream commenced these chapter 11 cases to both obtain the benefit of the automatic stay to enjoin Aurelius and other parties from taking collection action and to gain access to critical debtor-in-possession financing—the only financing available to Windstream at this time. Windstream intends to utilize the chapter 11 process to preserve and maximize value and as expediently as possible, negotiate and implement a financial restructuring for the benefit of all stakeholders, while maintaining existing operations.

15. Windstream’s business operations remain strong and its reorganizational prospects are promising. Notwithstanding the fact that Windstream arrived in chapter 11 without a pre-negotiated deal in place due to a sudden liquidity crisis, Windstream is optimistic that its creditor body as a whole is supportive of the company and its management team and will be supportive of an efficient reorganization. During the interim period between the court’s findings and the Petition Date, there has been a competitive process among many of Windstream’s stakeholders to provide DIP financing, allowing the company to obtain financing on market terms and indicating the strong interest among its creditors for an efficient and value maximizing restructuring. Windstream intends to engage with all stakeholders postpetition and use the chapter 11 process as to build consensus around a value-maximizing result that will inure to the benefit of stakeholders enterprise wide.

16. To familiarize the Court with Windstream, its business, the circumstances leading to these chapter 11 cases, and the relief Windstream is seeking in the First Day Motions, the declaration covers the following:

- **Part I** provides an overview of Windstream’s corporate structure and business operations.
- **Part II** provides an overview of Windstream’s capital structure.
- **Part III** describes the circumstances leading to these chapter 11 cases.
- **Part IV** sets forth the evidentiary basis for the relief requested in each of the First Day Motions.
- **Part V** describes Windstream’s pursuit of out-of-court financing alternatives and the proposed debtor-in-possession financing.
- **Part VI** sets forth certain additional information about Windstream, as required by rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

**I. Background.**

**A. Windstream’s Corporate History and Structure.**

17. Windstream traces its roots back to 1943, when Allied Telephone Company was founded in Little Rock, Arkansas to serve rural communities in Arkansas, Oklahoma, and Missouri. Over time Allied Telephone Company (subsequently re-branded as Alltel) grew into one of the country’s largest telephone companies. In 2006, Windstream Corporation was formed through the spinoff of Alltel’s landline business and merger with VALOR Communications Group. The new business initially served 3.4 million access lines in 16 states.<sup>2</sup> Windstream continued Alltel’s legacy of growth and innovation, expanding significantly both organically and through acquisitions. Most recently, in 2017, Windstream acquired EarthLink and Broadview Networks.

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<sup>2</sup> Windstream’s business generates revenue by delivering voice and data services over channels known as “access lines”.

18. Windstream Holdings, Windstream’s publicly-traded holding company, was incorporated in the state of Delaware on May 23, 2013, and is the parent of Windstream Services, LLC (“Windstream Services”), formerly a Delaware corporation and now a Delaware limited liability company organized on March 1, 2004. Windstream Holdings’ only material asset is a 100 percent interest in Windstream Services. Windstream Services and its guarantor subsidiaries are the sole obligors of all of Windstream’s outstanding debt obligations. Windstream Holdings is not a guarantor of nor subject to the restrictive covenants included in any of Windstream Services’ debt agreements. Windstream’s complete corporate organization chart is attached hereto as **Exhibit A**.

**B. Windstream’s Business Operations.**

19. Windstream is a leading provider of advanced network communications and related technology that increase the network communication abilities for businesses across the United States, including in the banking, content and media, education, government, healthcare, hospitality, and retail spaces. Windstream also offers broadband, entertainment and security solutions to consumers and small businesses, primarily in rural areas, in 18 states. Additionally, Windstream supplies core transport solutions<sup>3</sup> on a local and long-haul fiber network spanning approximately 150,000 miles. The market for the telecommunications services Windstream offers is highly competitive and continued industry-wide merger and acquisition activity has resulted in fewer customers and intensified pricing pressure. To maintain its competitive edge, Windstream keeps a sharp focus on providing a top of the line customer experience and continued technological innovation—objectives it has successfully pursued to date.

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<sup>3</sup> In Windstream’s industry, the term “core network” refers to the highly functional communication facilities that interconnect primary nodes. The core network delivers routes to exchange information among various sub-networks.

20. Windstream primarily conducts its operations through two business units: (i) the Consumer & Small Business business unit, which serves customers located in service areas in which Windstream is the incumbent local exchange carrier (“ILEC”);<sup>4</sup> and (ii) the Enterprise & Wholesale business unit, which serves customers located in service areas in which Windstream is a competitive local exchange carrier (“CLEC”).<sup>5</sup> Each unit is described in greater detail below.

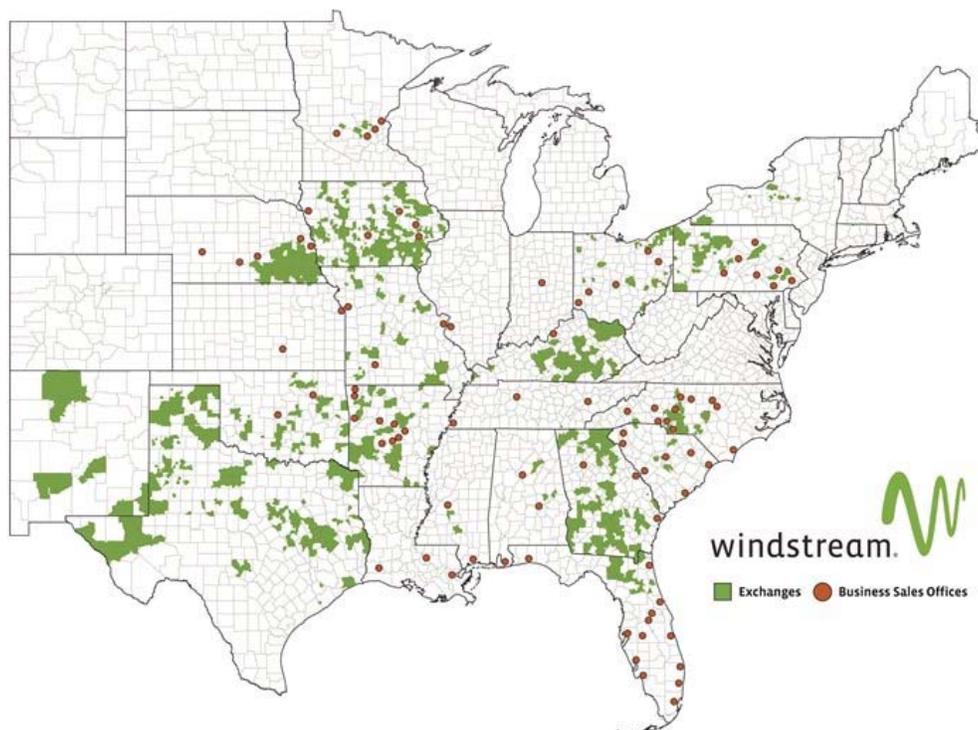
21. ***Consumer & Small Business.*** The Consumer & Small Business unit includes approximately 1.4 million residential and small business customers. Windstream’s consumer services primarily consist of high-speed internet and traditional voice and video services, including 911 services. Windstream is also committed to providing high-speed broadband and additional value-added services to its consumer base, as well as bundling its service offerings to provide a comprehensive solution to meet its customers’ needs at a competitive value. During 2017, the Consumer & Small Business unit generated \$2 billion in revenue. The map below shows the coverage area for the residential customers in this segment.

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<sup>4</sup> An incumbent local exchange carrier is local telecommunications company (or its corporate successor) that held the regional monopoly on landline service in an area before regulation opened the market to competitive local exchange carriers. In much of the United States, ILECs trace their roots back to Bell Telephone Company (later AT&T), which at one time operated as a monopoly offering telephone services in the United States.

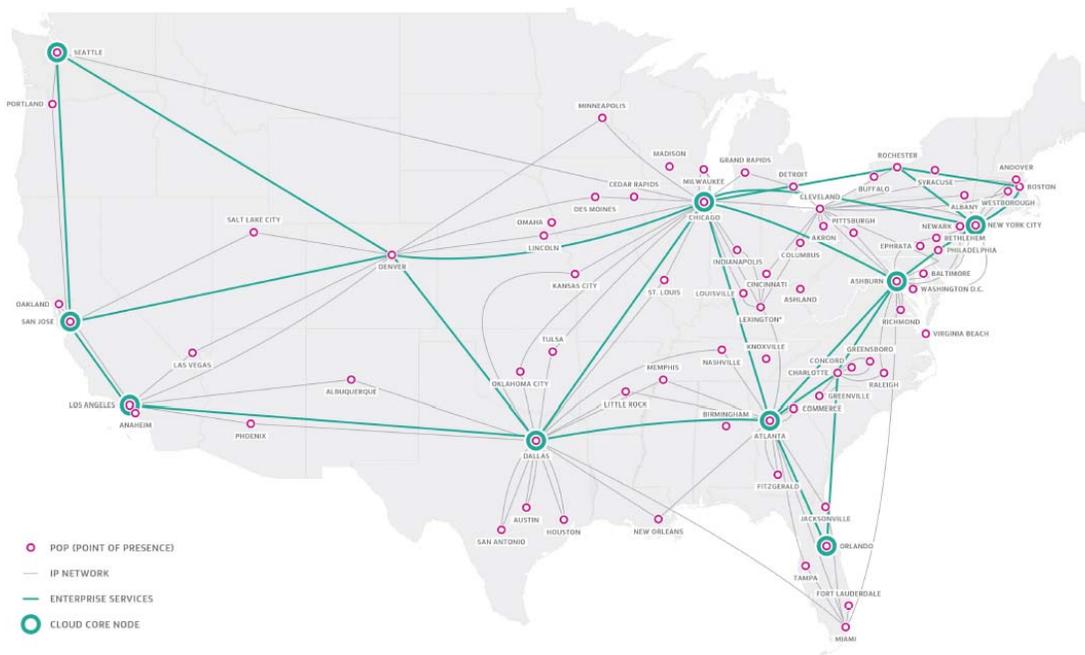
<sup>5</sup> A competitive local exchange carrier is a telecommunications company that, through regulation, is allowed to compete in territories where ILECs had historically had a monopoly.

### Residential Coverage



22. ***Enterprise & Wholesale.*** Windstream’s Enterprise business segment provides advanced network communications and technology solutions, including software defined wide area networking (SD-WAN) and unified communications as a service (UCaaS), to businesses across the United States and offers solutions to enable businesses to compete more effectively in the digital economy, as well as a variety of other data services including cloud computing as an alternative to traditional technology infrastructure. Windstream’s Enterprise segment supports some of the most demanding IT organizations within the retail, healthcare, financial services, manufacturing, government and education sectors. Throughout 2017, the Enterprise segment generated \$2.9 billion in revenue. The below map reflects Windstream’s connection points for their cloud-computing and data transmission services.

### Cloud Computing and Data Transmission Footprint



23. The Wholesale segment leverages its nationwide network to provide 100 Gbps<sup>6</sup> bandwidth and transport services to wholesale customers, including telecom companies, content providers, and cable and other network operators. In addition, Windstream offers voice and data carrier services to other communications providers and to larger-scale purchasers of network capacity. During 2017, the Wholesale segment generated \$757 million in revenue. Today, Windstream’s fiber network spans approximately 150,000 route miles of fiber, as depicted below.

<sup>6</sup> Gbps stands for billions of bits per second and is a measure of bandwidth on a digital data transmission medium such as optical fiber.



Windstream Services of approximately \$2.5 billion of Uniti debt, consisting of term loans and secured and unsecured notes. Services then distributed approximately 80.4% of the outstanding shares of Uniti common stock to Windstream Holdings. Windstream Holdings, in turn, distributed the shares of Uniti common stock pro rata to holders of Windstream Holdings common stock in a tax free spin-off. In two separate transactions completed in June 2016, Windstream Services transferred the remaining 19.6% of Uniti's common stock to its secured bank creditors in exchange for the retirement of \$672.0 million of aggregate borrowings outstanding under its revolver and to satisfy transaction-related expenses.

25. Windstream Holdings and Uniti entered into multiple further agreements to implement portions of and govern the relationship after the Uniti spin-off. One such agreement was the master lease by and among subsidiaries of Uniti on the one hand, and Windstream Holdings on the other hand (the "Master Lease"). Pursuant to the Master Lease, Windstream Holdings leased (and still leases) the assets contributed to Uniti.

26. The Uniti spin-off necessitated securing a private letter ruling from the Internal Revenue Service, a review of accounting matters from the Securities and Exchange Commission, and the advice of numerous attorneys and advisors. The transaction had many benefits for Windstream and created the opportunity to unlock value for shareholders through the creation of two independent public companies with distinct investment characteristics. The spin-off enhanced the credit profile of the Windstream business, providing Windstream with greater financial and strategic flexibility and reduced the actual or perceived competition for capital resources within Windstream. The spin-off transaction accelerated network investments to deliver faster internet speeds to consumers and further provided Uniti with increased flexibility to pursue its plan to expand its communications real estate platform (including through acquisitions that were unlikely

to be available absent the spin-off) and allowed Uniti's real property business to optimize its leverage. Windstream completed the Uniti spin-off, thereby creating significant value by reducing debt and increasing opportunities for investment in Windstream's network, which was then better positioned to better serve consumers, first responders, large enterprises, and small businesses.

## II. Windstream's Prepetition Capital Structure.

27. As of the Petition Date, Windstream had approximately \$5.6 billion in aggregate funded-debt obligations. These obligations arise under a revolving credit facility, two tranches under Windstream's term loan facility, one series of secured first lien notes, two series of secured second lien notes and six series of unsecured notes, and one issuance of secured subsidiary notes. Windstream Holdings is not party to Windstream's debt obligations. All debt has been incurred by Windstream Services and its guarantor subsidiaries. The table below summarizes Windstream's capital structure as of the Petition Date.

| <b><i>First Lien Debt Obligations</i></b>                     | <b><i>Principal Amount</i></b><br><b><i>(in US\$ millions)</i></b> |
|---|--|
| Term Loan, Tranche B6 – variable rates, due March 29, 2021    | 1,180.6  |
| Term Loan, Tranche B7 – variable rates, due February 17, 2024 | 568.4  |
| Revolver – variable rates, due April 24, 2020                 | 802.0  |
| 2025 First Lien Notes – 8.625%, due October 31, 2025          | 600.0  |
| <br>  |  |
| <b><i>Secured Subsidiary Notes</i></b>                        |  |
| Subsidiary First Lien Notes – 6.75%, due April 1, 2028        | 100.0 <sup>8</sup>   |
| <br>  |  |
| <b><i>Second Lien Debt Obligations</i></b>                    |  |
| 2024 Second Lien Notes - 10.500%, due June 20, 2024           | 414.9  |
| 2025 Second Lien Notes - 9.00%, due June 30, 2025             | 802.0  |

<sup>8</sup> These notes were assumed as part of an acquisition transaction and are secured by certain assets of the issuer of these notes and its subsidiaries. The issuer of these notes, Windstream Holdings of the Midwest, Inc, is a guarantor of Windstream Services other debt obligations

|  |   |
|--|---|
| <b>Total Secured Debt Obligations</b>  | <b>\$4,467.8</b>                          |
| <i>Unsecured Note Issuances (in US\$ millions)</i>                           |   |
| 2020 Senior Notes – 7.750%, due October 15, 2020                             | 78.1                                      |
| 2021 Senior Notes – 7.750%, due October 1, 2021                              | 70.1                                      |
| 2022 Senior Notes – 7.500%, due June 1, 2022                                 | 36.2                                      |
| 2023 Senior Notes – 7.500%, due April 1, 2023                                | 34.4                                      |
| 2023 Senior Notes – 6.375%, due August 1, 2023 (“6 3/8% Notes”) <sup>9</sup> | 806.9                                     |
| 2024 Senior Notes – 8.750%, due December 15, 2024                            | 105.8                                     |
| <b>Total Unsecured Note Obligations</b>                                      | <b>\$ 1,131.5</b>                         |
| <b>Total Funded-Debt Obligations</b>   | <b>\$5,599.3<br/>million<sup>10</sup></b> |

28. In addition to outstanding funded-debt obligations, Windstream Holdings’ equity has traded publicly on the NASDAQ under the ticker symbol “WIN” since 2009 (having previously traded on the New York Stock Exchange from the time of its formation). In August 2017, Windstream Holdings’ board of directors elected to eliminate Windstream Holdings’ quarterly common stock dividend of \$.15 per share commencing in the third quarter of 2017, intending to use the cash savings from the elimination of the quarterly dividend payment to repay certain of its debt obligations.

29. Windstream’s capital structure is a product of the spin-off and merger that led to its formation and a series of financings, refinancings, and exchange transactions that have fueled Windstream’s growth and technical advancement over the last decade. In recent years, Windstream has engaged in a number of refinancings and debt repayments, including the March

<sup>9</sup> The 6 3/8% Notes, as described above, are inclusive of outstanding 6.375% senior notes due 2023 issued in 2013 and 2017.

<sup>10</sup> Includes less of a net discount on long term debt (31.7), unamortized debt issuance costs (60.8), and current maturities (17.9).

2016 closing of an incremental term loan to repurchase \$441 million of 7.875% Senior Notes due 2017; the September 2016 redemption of the remaining 7.875% Senior Notes due 2017 via incremental B-6 term loans and revolver borrowings; and the February 2017 closing of the \$580 million B-7 term loans to refinance term loans in prior tranches maturing in August 2019.

30. Windstream continued to actively monitor its balance sheet through 2017, and in mid-2017 was considering additional market transactions to improve its capital structure. But in mid-2017 and as further described below, Aurelius acquired the 6 3/8% Notes and alleged certain defaults under the 6 3/8% Notes Indenture related to the Uniti spin-off transaction, ultimately resulting in litigation in November 2017. The uncertainty left in the wake of Aurelius's actions effectively eliminated Windstream's access to the capital markets for additional unsecured debt or equity capital (and leaving exchange offers as the most viable alternative to strengthen their balance sheet).<sup>11</sup>

### **III. Events Leading to the Commencement of the Chapter 11 Cases.**

31. Beginning in early August 2017, Windstream became aware of market rumors that an unidentified fund was acquiring notes in one or more of Windstream's outstanding issuances of unsecured notes for the purpose of attempting to call a default under one of the indentures. Soon thereafter, Windstream learned that the fund was Aurelius, who had accumulated a position in the 6 3/8% Notes and intended to issue a notice of default related to the Uniti spin-off, which had closed more than two years earlier.

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<sup>11</sup> Recently, Windstream engaged in an August 2018 notes exchange of \$414.8 million of 7.50% Senior Notes due 2020 in exchange for 10.500% Secured Second Lien Notes due 2024, as well as \$18.8 million of 7.75% Senior Notes due 2021, \$5.3 million of 7.50% Senior Notes due 2022, \$86.0 million of 7.50% Senior Notes due 2023, \$340.7 million of 2023 Notes, and \$578.6 million of 8.75% Senior Notes due 2024 in exchange for \$802.0 million of new 9.000% Secured Second Lien Notes due 2025.

**A. District Court Litigation and Exchange and Consent Transactions.**

32. In addition to learning that Aurelius had accumulated a position in the 6 3/8% Notes, in late 2017, Windstream also learned that Aurelius had accumulated a sizeable position in Windstream Services' credit default swaps, which would be triggered upon a payment default or bankruptcy filing. In a notice letter received September 22, 2017, Aurelius asserted a default under the 6 3/8% Notes indenture related to the Uniti spin-off transaction, although no other creditor or noteholder has previously complained. In simple terms, Aurelius alleged that the Uniti spin-off constituted a prohibited "Sale and Leaseback Transaction" under section 4.19 of the 6 3/8% Notes Indenture. The Aurelius notice purported to constitute a written notice of default under the 6 3/8% Notes Indenture, which would trigger a 60-day grace or cure period after which the indenture trustee or holders of at least 25% in aggregate principal amount of outstanding 6 3/8% Notes could declare the principal amount of all outstanding 6 3/8% Notes to be immediately due and payable.

33. Shortly after Aurelius issued its notice, Windstream Services filed suit against U.S. Bank, the indenture trustee under the 6 3/8% Notes Indenture, in Delaware Chancery Court, seeking a declaration that it had not violated any provision of the 6 3/8% Notes Indenture and related injunctive relief. On October 12, 2017, U.S. Bank, at Aurelius's direction, filed suit in the Southern District of New York seeking relief essentially mirroring the relief sought by Windstream in the Delaware Chancery Court action. Windstream Services responded to the Trustee's complaint the following day and asserted counterclaims against the Trustee and Aurelius for declaratory relief.

34. On October 18, 2017, Windstream Services launched debt exchange offers with respect to its senior notes, including the 6 3/8% Notes, and related consent solicitations. The transactions contemplated the exchange of outstanding notes with earlier maturities into new notes,

including into new 2023 Notes, coupled with consent solicitations that would waive any alleged defaults relating to the Uniti spin off, including the defaults alleged by Aurelius.

35. On October 31, 2017, it became clear that, based on tenders of notes in the exchange offers and consents delivered in the consent solicitations, holders representing the requisite percentage of the 6 3/8% Notes needed to waive the defaults alleged in the Aurelius purported notice of default would be received. On November 6, 2017, Windstream Services and U.S. Bank executed a supplemental indenture, and new 2023 Notes were issued, which sought to give effect to the waivers and consents for the 6 3/8% Notes. Windstream also completed other consent solicitations waiving any alleged default related to the Uniti spin-off under its other note issuances (which are based on substantially identical indentures). Aurelius and U.S. Bank subsequently challenged the validity of the exchange transactions and consent solicitation through litigation.

**B. District Court Ruling and Chapter 11 Filing.**

36. On February 15, 2019, Judge Furman issued findings of fact and conclusions of law stating that Windstream was in breach of its bond indentures by engaging in an impermissible Sale and Leaseback Transaction, and that any of Windstream's subsequent efforts to secure a waiver neither waived nor cured the default that arose from that breach. The immediate consequences of the findings were severe. Because the findings stated that Aurelius's Notice of Default ripened into an Event of Default on December 7, 2017, Aurelius would be entitled to a money judgment in the amount of the 6 3/8% Notes it holds plus interest, a figure amounting to approximately \$300 million, with additional interest accruing from July 23, 2018.

37. The findings also led to a cross default under the credit agreement governing Windstream's secured term and revolving loan obligations and the valid acceleration of the 6 3/8% Notes by Aurelius would give rise to a cross-acceleration event of default under the indentures governing Windstream's other series of secured and unsecured notes. In the absence of

Windstream filing for chapter 11, these defaults would have permitted Aurelius to exercise remedies against Windstream and ultimately its assets, potentially leading to a value-destructive piecemeal liquidation, and the defaults would have allowed other parties to accelerate other debt obligations and exercise similar remedies. For the avoidance of doubt, the Debtors reserve all rights with respect to the findings, including pursuit of remedies provided for under the Bankruptcy Code, such as equitable subordination.

#### **IV. Immediate Financing Solutions and Proposed DIP Financing.**

38. Due to the court's findings, Windstream lost the ability to draw on its revolving facility under its then existing terms, and therefore Windstream lacked the ability to fund day-to-day cash needs and faced a significant and near term liquidity shortfall. In response, Windstream immediately engaged in discussions with certain key stakeholders regarding potential means to resolve debt defaults and liquidity challenges in the days leading up to the Petition Date. Further, in the time leading to the filing of the chapter 11 cases, Windstream engaged Katten Munchin Rosenman LLP ("Katten") as conflicts counsel.

##### **A. First Lien Credit Agreement Amendment and Waiver.**

39. In connection with discussions of all available alternatives, Windstream pursued an amendment and waiver under its first lien revolving credit facility. On February 21, 2019, Windstream obtained a limited waiver from the required revolving lenders under the credit agreement regarding certain conditions to borrowing (the "Amendment and Waiver"). The Amendment and Waiver allowed Windstream to draw \$25 million in immediate funding and provided that any additional borrowings under the revolving credit facility were now subject to

consent from all revolving lenders. The liquidity resulting from the Amendment and Waiver allowed the Windstream critical additional days to plan for a smooth transition into chapter 11.

**B. Out of Court Bridge Financing Proposal.**

40. In addition to the Amendment and Waiver, Windstream explored the availability of any other out-of-court financing. On February 21, 2019, Windstream received a proposal which was revised on February 22, 2019 from certain large financial institutions (the “Out-of-Court Proposal”) for a new or refinanced revolving credit facility and other funding in an aggregate amount of up to \$1.5 billion. While the Out-of-Court Proposal would have offered the potential benefit of some runway (in the form of reopened borrowing availability under a revolving credit facility), it would have required the satisfaction of several challenging conditions. More specifically, the following:

- A majority of all first lien term loan and revolving lenders would have been required to waive defaults, pay the Aurelius judgment (or a bond in connection with an appeal) or redeem or repay the 6 3/8% Notes, and refinance the first lien revolver.
- The holders of a majority of the outstanding notes of each series (other than the 6 3/8% Notes) would have been required to waive cross-acceleration events of default. It was not at all certain that Windstream could have obtained these consents, at all or in the time available, especially in the face of defaults across its entire capital structure and challenging liquidity constraints.
- Any funding provided by Uniti (the structure and terms of which remained undetermined) potentially would have required additional consents under Windstream’s credit agreement and other debt instruments. Without being able to know what a developed funding proposal would ultimately be, it was not at all certain that Windstream could have obtained these consents, either.

41. Windstream believed that each of these hurdles needed to be cleared in a matter of days, or else the time required to negotiate, document, and implement a definitive transaction would likely have required additional interim funding. The most likely source of such funding—Windstream’s existing revolving lenders—was opposed to providing any further out-of-court

funding, and under the Amendment and Waiver any additional funding required the consent of 100% of revolving lenders.

42. In addition, Windstream debated whether the ultimate benefits of the Out-of-Court Proposal were material in light of the impending judgment related to the decision. Windstream likely would have had to use substantially all of the new revolving availability either to pay the Aurelius judgment or to post a bond in connection with an appeal or redeem or repay all of the 6 3/8% Notes. Accordingly, Windstream would have been required to exhaust the potential benefit of a liquidity runway almost immediately and would have been left, again, with severely constrained liquidity. The transaction would have increased the company's overall leverage and did not offer any improvement to the terms of the Uniti master lease—therefore putting increased strain on Windstream's cash flows without any accompanying relief.

43. Most importantly, other key stakeholders did not support the Out-of-Court Proposal. Windstream and its advisors engaged in discussions regarding the Out-of-Court Proposal with the first lien agent and revolving lenders, as well as the ad hoc first lien term lender group and their respective advisors. Neither constituency supported the Out-of-Court Proposal. Moreover, Windstream independently considered the Out-of-Court Proposal and determined it was not the best path forward.

44. On February 22, 2019, Windstream's advisors conveyed to the proposing institutions the challenges regarding the Out-of-Court Proposal. Windstream engaged in generally amicable and constructive discussions with the proposing institutions through the Petition Date. Ultimately, these factors led Windstream, in the exercise of the business judgment of its board of

directors and management, to end pursuit of the Out-of-Court Transaction and dedicate all efforts to preparing for a chapter 11 filing and securing acceptable debtor-in-possession financing.

**C. Proposed DIP Financing.**

45. In parallel with general chapter 11 preparations, negotiations of the Amendment and Waiver, and exploration of the Out-of-Court Proposal, Windstream and its advisors pursued an acceptable debtor-in-possession financing arrangement. More specifically, on February 20, 2019, PJT Partners (“PJT”), on behalf of Windstream, contacted eight different money-center banks, each an existing lender under the first lien revolving credit facility and having the financial wherewithal to provide up to \$1 billion in financing.

46. On February 21 and 22, PJT received six different debtor-in-possession financing proposals, each providing \$1 billion in financing allocated between term loan and revolving credit facilities. Ultimately, Windstream decided to pursue a proposal that provides a superpriority debtor-in-possession financing facility (the “Proposed DIP Financing”), which will provide Windstream with much-needed liquidity to fund its business and the administration of these chapter 11 cases. The Proposed DIP Financing represents the best of all available options and provides Windstream with postpetition financing in the form of a senior secured, superpriority term loan and revolving credit facility and contemplates consensual use of Windstream’s secured lenders’ cash collateral. Windstream believes that the extraordinary interest of its stakeholders, including the receipt of six bids to provide DIP financing obtained in two days, is a strong indication of the commitment and investment the company’s creditors have in supporting the Windstream’s restructuring.

47. Based on my knowledge and extensive discussions with Windstream’s management team and advisors, I believe that the Proposed DIP Financing gives the Debtors sufficient liquidity to stabilize its operations and fund the administration of these chapter 11 cases

as the Debtors seek to proceed expeditiously toward a value-maximizing resolution to these chapter 11 cases. Further, the Debtors have an immediate need for debtor-in-possession financing to fund immediate liquidity needs and provide comfort to their employee, customer, and vendor constituencies. Finally, based on extensive discussions with Windstream's advisors, I understand that the Proposed DIP Financing is on the most favorable terms available in light of the circumstances of these chapter 11 cases, the time available, and the current market for such financing.

48. While Windstream intends to proceed expeditiously with these chapter 11 cases, building consensus takes time, especially under these circumstances. Windstream commenced these chapter 11 cases to provide a steady foundation for the negotiation process and avoid a piecemeal destruction of Windstream's business. I am confident that preserving Windstream's going-concern value through the chapter 11 process, including through entry into the Proposed DIP Financing, will ultimately inure to the benefit of all stakeholders.

**V. Evidentiary Support for First Day Motions.<sup>12</sup>**

49. Contemporaneously herewith, Windstream filed a number of First Day Motions and is seeking orders granting various forms of relief intended to stabilize Windstream's business operations and facilitate the efficient administration of these chapter 11 cases. The First Day Motions seek authority to, among other things, ensure sufficient liquidity to run Windstream's business, ensure the continuation of Windstream's cash management systems, and allow for other business operations without interruption. I believe that the relief requested in the First Day

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<sup>12</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the respective First Day Motions.

Motions is necessary to give Windstream an opportunity to work towards successful chapter 11 cases that will benefit all of Windstream's stakeholders.

50. The First Day Motions request authority to pay certain prepetition claims. I understand that Rule 6003 of the Federal Rules of Bankruptcy Procedure provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first 21 days following the filing of a chapter 11 petition, "except to the extent relief is necessary to avoid immediate and irreparable harm." In light of this requirement, Windstream has narrowly tailored its requests for immediate authority to pay certain prepetition claims to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to Windstream and its estates. Other relief will be deferred for consideration at a later hearing.

51. I am familiar with the content and substance of the First Day Motions. The facts stated therein are true and correct to the best of my knowledge, information, and belief, and I believe that the relief sought in each of the First Day Motions is necessary to enable Windstream to operate in chapter 11 with minimal disruption to its business operations and constitutes a critical element in successfully implementing a chapter 11 strategy. A description of the relief requested and the facts supporting each of the First Day Motions is detailed in **Exhibit B**.

**VI. Information Required by Local Bankruptcy Rule 1007-2.**

52. Local Bankruptcy Rule 1007-2 requires certain information related to Windstream, which I have provided in the exhibits attached hereto as **Exhibit C** through **Exhibit N**.

Specifically, these exhibits contain the following information with respect to Windstream (on a consolidated basis, unless otherwise noted):<sup>13</sup>

- **Exhibit C.** Pursuant to Local Bankruptcy Rule 1007-2(a)(3), provides the names and addresses of the members of, and attorneys for, any committee organized prior to the order for relief in these chapter 11 cases, and a brief description of the circumstances surrounding the formation of the committee.
- **Exhibit D.** Pursuant to Local Bankruptcy Rule 1007-2(a)(4), provides the following information with respect to each of the holders of the debtors' 30 largest unsecured claims, excluding claims of insiders: the creditors name; the address (including the number, street, apartment, or suite number, and zip code, if not included in the post office address); the telephone number; the name(s) of the person(s) familiar with the debtors' account; the nature and approximate amount of the claim; and an indication of whether the claim is contingent, unliquidated, disputed, or partially secured.
- **Exhibit E.** Pursuant to Local Bankruptcy Rule 1007-2(a)(5), provides the following information with respect to each of the holders of the five largest secured claims against the debtors: the creditor's name; address (including the number, street, apartment, or suite number, and zip code, if not included in the post office address); the amount of the claim; a brief description of the claim; an estimate of the value of the collateral securing the claim; and an indication of whether the claim or lien is disputed at this time.
- **Exhibit F.** Pursuant to Local Bankruptcy Rule 1007-2(a)(6), provides a summary of the debtors' assets and liabilities.
- **Exhibit G.** Pursuant to Local Bankruptcy Rule 1007-2(a)(7), provides a summary of the publicly held securities of the debtors.
- **Exhibit H.** Pursuant to Local Bankruptcy Rule 1007-2(a)(8), provides the following information with respect to any property in possession or custody of any custodian, public officer, mortgagee, pledge, assignee of rents, or secured creditors, or agent for such

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<sup>13</sup> The information contained in **Exhibit C** through **Exhibit N** attached to this declaration does not constitute an admission of liability by, nor is it binding on, Windstream. Windstream reserves all rights to assert that any debt or claim listed herein is a disputed claim or debt, and to challenge the priority, nature, amount, or status of any such claim or debt.

entity: the name; address; and telephone number of such entity and the court in which any proceeding relating thereto is pending.

- **Exhibit I.** Pursuant to Local Bankruptcy Rule 1007-2(a)(9), provides a list of property comprising the premises owned, leased, or held under other arrangement from which the debtors operate their business.
- **Exhibit J.** Pursuant to Local Bankruptcy Rule 1007-2(a)(10), sets forth the location of the debtors' substantial assets, the location of their books and records, and the nature, location, and value of any assets held by the debtors outside the territorial limits of the United States.
- **Exhibit K.** Pursuant to Local Bankruptcy Rule 1007-2(a)(11), provides a list of the nature and present status of each action or proceeding, pending or threatened, against the debtors or their property where a judgment or seizure of their property may be imminent.
- **Exhibit L.** Pursuant to Local Bankruptcy Rule 1007-2(a)(12), sets forth a list of the names of the individuals who comprise the debtors' existing senior management, their tenure with the debtors, and a brief summary of their relevant responsibilities and experience.
- **Exhibit M.** Pursuant to Local Bankruptcy Rule 1007-2(b)(1)-(2)(A), provides the estimated amount of payroll to the debtors' employees (not including officers, directors, and equity holders) and the estimated amounts to be paid to officers, equity holders, directors, and financial and business consultants retained by the debtors, for the 30-day period following the Petition Date.
- **Exhibit N.** Pursuant to Local Bankruptcy Rule 1007-2(b)(3), provides a schedule, for the 30-day period following the Petition Date, of estimated cash receipts and disbursements, net gain or loss, obligations and receivables expected to accrue but remain unpaid, other than professional fees, for the 30-day period following the filing of the chapter 11 cases, and any other information relevant to an understanding of the foregoing.

*[Remainder of page intentionally left blank.]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct.

Dated: February 25, 2019  
New York, New York

*/s/ Tony Thomas*

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Name: Tony Thomas  
Title: Chief Executive Officer and President  
Windstream Holdings, Inc.