

Fill in this information to identify the case:

Debtor Cytera Data Centers, Inc.

United States Bankruptcy Court for the: _____ District of New Jersey
(State)

Case number 23-14857

Official Form 410

Proof of Claim

04/22

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

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

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

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

Part 1: Identify the Claim

1. Who is the current creditor?	<u>1919 Park Avenue Associates, L.L.C.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) Contact phone <u>201-931-6910</u> Contact email <u>ivolkov@mcgrailbensinger.com</u>	Where should payments to the creditor be sent? (if different) Contact phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



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

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

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

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

See summary page

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature or property:
☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____

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

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

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

Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

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

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



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

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

☒ No

☐ Yes. Check all that apply:

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

Amount entitled to priority

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

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

\$ _____

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

\$ _____

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

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

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

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

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

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

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

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

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

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

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

Executed on date 08/09/2023
MM / DD / YYYY

/s/Ilana Volkov
Signature

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

Name Ilana Volkov
First name Middle name Last name

Title Attorney

Company McGrail and Bensinger LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877)-726-6510 | International 001-310-823-9000

Debtor: 23-14857 - Cyxtera Data Centers, Inc. District: District of New Jersey, Newark Division		
Creditor: 1919 Park Avenue Associates, L.L.C. McGrail and Bensinger LLP, Attn: Ilana Volkov, Esq. 888-C 8th Avenue, #107 New York, NY, 10019 United States Phone: 201-931-6910 Phone 2: Fax: Email: ivolkov@mcgrailbensinger.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Guaranty for Lease Agreement - 1919 Park Ave., Weehawken, NJ. See attached Exhibit A.	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: Contingent	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Ilana Volkov on 09-Aug-2023 1:56:24 p.m. Eastern Time Title: Attorney Company: McGrail and Bensinger LLP		

EXHIBIT A

GUARANTY

THIS GUARANTY is made this 24 day of July, 2009, by SAVVIS, Inc., a Delaware corporation, with an address of 1 Savvis Parkway, Town & Country, MO 63017 ("Guarantor")

WHEREAS, 1919 PARK AVENUE ASSOCIATES, L.L.C., a New Jersey limited liability company with an office at 400 Plaza Drive, P.O. Box 1515, Secaucus, New Jersey 07094-1515 ("Landlord") has leased certain premises located at 1919 Park Avenue, Weehawken, New Jersey to SAVVIS COMMUNICATIONS CORPORATION, a Missouri corporation, with offices at 1 Savvis Parkway, Town & Country, MO 63017 ("Tenant") pursuant to a Lease Agreement (the "Lease") of even date herewith, to which this Guaranty is attached; and

WHEREAS, Landlord has refused to enter into the Lease unless the Guarantor executes and delivers this Guaranty; and

WHEREAS, in order to induce Landlord to enter into the Lease, the Guarantor has agreed to guarantee the payment of Rent and any other charges provided for in the Lease and the performance by Tenant of all the covenants to be performed and observed on its part pursuant to the Lease.

NOW THEREFORE, in consideration of the premises and of the sum of Ten Dollars (\$10.00) paid to Guarantor, the receipt and sufficiency of which are hereby acknowledged, the terms of the Guaranty are as follows:

1. The Guarantor agrees that the obligation of the Guarantor is a primary and unconditional obligation, and the Guarantor unconditionally and absolutely guarantees the due and punctual payment of the Rent, the Additional Charges and any other moneys due or which may become due pursuant to the terms of the Lease, and the due and punctual performance and observance by the Tenant of all the terms, covenants and conditions of the Lease whether according to the present terms thereof, or pursuant to any extension of time or any change or changes in the terms, covenants and conditions thereof now or at any time hereafter made or granted. The liability of the Guarantor hereunder shall be enforceable against the Guarantor without the necessity for any suit or proceedings on the Landlord's part of any kind or nature whatsoever against the Tenant.

2. The Guarantor, without affecting the Guarantor's obligations hereunder in any respect, hereby waives notice of the acceptance of this Guaranty by the Landlord; notice of presentment, diligence, demand for payment, nonpayment, protest, notice of dishonor, extension of time of payment, and indulgences and notices of every kind.

3. The Guarantor, without affecting the Guarantor's obligations hereunder in any respect, hereby consents to the acceptance or release of security, the release or addition of parties liable under the Lease, any and all forbearances and extensions of the time of payment of Rent, and any and all changes in the terms, covenants and conditions of the Lease, and any extension or renewal of the Term of the Lease, any assignment or transfer of the Lease by Tenant and any consents given by Landlord hereafter made or granted; it being the intention hereof that the Guarantor shall remain liable in principal until the full amount of the Rent and any other sums due or to become due under the Lease shall have been fully paid and the terms, covenants and conditions shall have been fully performed and observed by the Tenant, notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of the Guarantor.

4. The Guarantor hereby waives all defenses, offsets or counterclaims which the Guarantor or the Tenant may at any time have in connection with the Lease, except for the defense that there is no default under the Lease.

5. Until all the covenants and conditions in said Lease on the Tenant's part to be performed and observed are fully performed and observed, the Guarantor: (a) shall have no right of subrogation against the Tenant by reasons of any payments or acts of performance by the Guarantor hereunder; (b) waives any right to enforce any remedy which the Guarantor now or hereafter shall have against the Tenant by reason of any one or more payment or acts of performance in compliance with the obligations of the Guarantor hereunder; and (c) subordinates any liability or indebtedness of the Tenant now or hereafter held by the Guarantor to the obligations of the Tenant to the Landlord under said Lease.

6. The Guarantor agrees that this Guaranty may be enforced by Landlord without first resorting to or exhausting any other remedy.

7. The Guarantor agrees that the Guarantor's obligation to make payment in accordance with the terms of this Guaranty shall not be limited, modified, changed, released or impaired in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Tenant or its estate in bankruptcy or the rejection or disaffirmance of the Lease resulting from the operation of any present or future provision of the United States Bankruptcy Code or other similar statute, or from the decision of any court or from the cessation from any cause whatsoever of the liability of Tenant.

8. The Guarantor agrees that in the event this Guaranty is placed in the hands of an attorney for enforcement, the Guarantor will reimburse Landlord for all expenses incurred, including reasonable attorney's fees and court costs.

9. The Guarantor agrees that this Guaranty shall inure to the benefit of the Landlord and shall be binding upon and enforceable by Landlord and any successor to Landlord against the Guarantor and the Guarantor's successors, heirs, personal representatives and assigns. The Landlord shall have the right to assign and transfer this Guaranty.

10. This Guaranty shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey. Guarantor hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Guaranty may be brought in the Courts of the State of New Jersey, or the Federal District Court for the District of New Jersey, as Landlord may elect. By execution and delivery of this Guaranty, Guarantor hereby irrevocably accepts and submits generally and unconditionally for itself and with respect to its properties, to the jurisdiction of any such court in any such action or proceeding, and hereby waives in the case of any such action or proceeding brought in the courts of the State of New Jersey, or Federal District Court for the District of New Jersey, any defenses based on jurisdiction, venue or forum non conveniens.

11. If any provision or portion thereof of this Guaranty is declared or found by a court of competent jurisdiction to be unenforceable or null and void, such provision or portion thereof shall be deemed stricken and severed from this Guaranty and the remaining provisions and portions thereof shall continue in full force and effect.

12. Capitalized terms not defined herein shall be construed as defined in the Lease.

IN WITNESS WHEREOF, the Guarantor has executed this instrument the day and year first above written.

ATTEST/WITNESS

GUARANTOR:

SAVVIS, INC.

Tara A. Zeller

BY:

Howard A. Shartel
Name: Howard A. Shartel
Title: V.P. Procurement + Real Estate