

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

In re:)
) Chapter 11
)
WINDSTREAM HOLDINGS, INC., *et al.*,¹) Case No. 19-22312 (RDD)
)
Debtors.) (Jointly Administered)
)

**LIMITED OBJECTION OF MITSUBISHI UFJ LEASE & FINANCE (U.S.A.) TO
DEBTORS' AMENDED MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, AND 507 (I) AUTHORIZING
THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION
FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS, (III) AUTHORIZING USE OF CASH COLLATERAL, (IV)
GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY,
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

Mitsubishi UFJ Lease & Finance (U.S.A.) Inc. ("Mitsubishi"), by and through its undersigned attorneys, hereby submits this limited objection in response to *Debtors' Amended Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modify the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the "DIP Motion")* [Dkt. No. 42] filed by Windstream Holdings, Inc., *et al.* (the "Debtors").

BACKGROUND FACTS

1. On February 25, 2019 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code. The Debtors continue

¹ 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.



to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, Mitsubishi and Debtor Windstream Supply, LLC (“Windstream”) entered into a Master Lease and certain supplements thereto under which Mitsubishi, as lessor, agreed to lease to Windstream, as lessee, various pieces of office computer hardware and networking equipment (collectively, the “Leased Equipment”). Windstream has been using the Leased Equipment in providing telecommunications services to its customers. Upon information and belief, after the Petition Date, the Debtors continue to use the Leased Equipment in the ordinary course of their businesses.

3. Pursuant to the Master Lease supplements, Windstream granted Mitsubishi a lien on the Leased Equipment. To perfect the security interests granted under the Master Lease supplements, Mitsubishi has filed certain UCC Financing Statements with the Ohio Secretary of State.

LIMITED OBJECTION

5. Pursuant to the DIP Motion, the Debtors seek approval of debtor-in-possession financing from certain DIP Lenders,² and a final order that grants the DIP Lenders certain priming liens in the Debtors’ property, which includes the following:

Pursuant to section 364(d)(1) of the Bankruptcy Code, *a valid binding, continuing, enforceable, full perfected first priority priming security interest in and lien upon all prepetition and postpetition property of the DIP Loan Parties of the same nature, scope and type as the Prepetition Collateral regardless of where located, regardless whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected* (the “DIP Priming Liens”), which shall prime all respects to the interests of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties (including, without limitation, the Adequate Protection Liens granted to the Prepetition Secured Parties) (the “Primed Liens”). Notwithstanding anything herein to the contrary, the DIP Priming Liens shall be (i) subject and junior to the Carve Out in

² All capitalized terms not defined herein are given the definitions provided in the DIP Motion.

all respects, (ii) senior in all respects to the Prepetition Liens and (iii) senior to the Adequate Protection Liens;

See DIP Motion, Ex. A, Proposed Order (the “Proposed Order”), at p. 40 (emphasis added).

6. Mitsubishi objects to the DIP Motion and the Proposed Order because the above-referenced language appears to improperly provide the DIP Lenders with liens that prime the liens and security interests of Mitsubishi under its equipment leases.

7. Other language in the Proposed Order and the *Superpriority Secured Debtor-in-Possession Credit Agreement* [Dkt. No. 152] arguably excludes property like the Leased Equipment from the priming liens. See Local Rule 4001-2. The above-quoted language, however, is inconsistent with such an interpretation.

8. To avoid the improper priming of Mitsubishi’s interests in the Leased Equipment, the Proposed Order should include specific language excluding the Leased Equipment from the DIP Lenders’ priming lien.

9. Mitsubishi has not agreed to subordinate its security interests in the Leased Equipment to priming liens in favor of the DIP Lenders. Mitsubishi’s rights in and to the Leased Equipment should not be modified or affected by the final DIP Order on the DIP Motion, unless the Debtors can demonstrate they have adequately protected Mitsubishi’s lien rights. See 11 U.S.C. § 364(d)(1); see also, *Resolution Trust Corp. v. Swede land Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)*, 16 F.3d 552, 564-65 (3d Cir.1994); *In re First South Sav. Ass’n*, 820 F.2d 700 (5th Cir. 1987); *Snowshoe Co. v. Bray (In re Snowshoe Co.)*, 789 F.2d 1085 (4th Cir. 1986).

10. The Debtors have not, in the DIP Motion or otherwise, proposed to adequately protect Mitsubishi’s liens and interests in the Leased Equipment.

11. As a result, Mitsubishi requests language in the proposed Final Order that clarifies that any priming lien granted to the DIP Lenders under 11 U.S.C. § 364(d) does not prime the interests of Mitsubishi with respect to Leased Equipment.

12. Accordingly, Mitsubishi requests inclusion of the following language in the DIP Order:

Notwithstanding anything in the DIP Documents or this Final Order to the contrary, the DIP Liens shall not prime or otherwise have priority over any and all liens or interests of Mitsubishi UFJ Lease & Finance (U.S.A.) Inc. ("Mitsubishi") arising under, or in connection with, any agreements between Mitsubishi and one or more of the DIP Parties. The liens and interests of Mitsubishi are not being primed by the DIP Priming Liens and are not included in the Primed Liens.

WHEREFORE, Mitsubishi respectfully requests that this Court (i) enter an order sustaining this Objection, (ii) direct that the Final Order on the DIP Motion clarify that any priming liens granted to the DIP Lenders under 11 U.S.C. § 364(d) do not prime the security interests of Mitsubishi, and (iii) grant such other, further, and different relief as this Court deems just and proper.

[signature on following page.]

Respectfully submitted,

Dated: April 9, 2019

/s/ Jeffrey S. Greenberg
Jeffrey S. Greenberg (*pro hac vice*
admission pending)
Baker, Donelson, Bearman, Caldwell
& Berkowitz, PC
100 Light Street, 19th Floor
Baltimore, Maryland 21202
Telephone: (410) 862-1187
Email: jgreenberg@bakerdonelson.com

*Counsel for Mitsubishi UFJ Lease &
Finance (U.S.A.) Inc.*

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

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

CERTIFICATE OF SERVICE

I, Jeffrey S. Greenberg, hereby certify that on April 9, 2019, I caused a copy of the foregoing *Limited Objection of Mitsubishi UFJ Lease & Finance (U.S.A.) Inc. to Debtors' Amended Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* to be served electronically with the Court and served through the Court's CM/ECF system upon all registered electronic filers appearing in this case who consented to electronic service and on the parties listed below:

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Via Email

Stephen E. Hessler
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Email: shessler@kirkland.com
(Debtor's Counsel)

Ross M. Kwasteniet, P.C.
Brad Weiland, Esquire
John R. Luze, Esquire
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Email: ross.kwasteniet@kirkland.com
brad.weiland@kirkland.com
john.luze@kirkland.com
(Debtor's Counsel)

Paul K. Schwartzberg, Esquire
Serene Nakano, Esquire
The Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, New York 10014
Email: paul.schwartzberg@usdoj.gov
serene.nakano@usdoj.gov
(United States Trustee)

Lorenzo Marinuzzi, Esquire
Brett H. Miller, Esquire
Todd M. Goren, Esquire
Jennifer L. Marines, Esquire
Erica J. Richards, Esquire
Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019
Email: lmarinuzzi@mofo.com
brettmiller@mofo.com
tgoren@mofo.com
jmarines@mofo.com
erichards@mofo.com
(Committee Counsel)

Via Federal Express

Windstream Holdings, Inc.
Attn.: Kristi M. Moody
4001 North Rodney Parham Road
Little Rock, Arkansas 72212
(Debtor's General Counsel)

/s/ Jeffrey S. Greenberg
Jeffrey S. Greenberg (*pro hac vice*
admission pending)
Baker, Donelson, Bearman, Caldwell
& Berkowitz, PC
100 Light Street, 19th Floor
Baltimore, Maryland 21202
Telephone: (410) 862-1187
Email: jgreenberg@bakerdonelson.com

*Counsel for Mitsubishi UFJ Lease &
Finance (U.S.A.) Inc.*