

**MARCUS & SHAPIRA LLP**  
One Oxford Centre  
301 Grant Street, 35<sup>th</sup> Floor  
Pittsburgh, PA 15219  
Phone: (412) 338-5214  
Facsimile: (412) 391-8758  
Darlene M. Nowak, Esquire  
Attorneys for GTT Americas LLC  
And GC Pivotal LLC

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

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

**LIMITED OBJECTION OF GTT AMERICAS LLC and  
GC PIVOTAL LLC TO CONFIRMATION OF PLAN AND CURE OF  
EXECUTORY CONTRACTS**

GTT Americas LLC and GC Pivotal LLC (jointly, “GTT”) for themselves, their affiliates and predecessors in interest, objects to the designation of cure amount listed in the Debtors’ Plan Supplement [Dkt. 1973, “Notice of Filing of Plan Supplement”]<sup>1</sup> and in support thereof, avers as follows:

1. GTT is engaged in the business of providing telecommunications and broadband services. GTT is located at Suite 1450, 7900 Tysons One Place, McLean, Virginia 22102.
2. Debtors are and have been customers of GTT for several years. At the time of the Debtors’ petitions for relief in bankruptcy, Debtors were indebted to GTT for telecommunication

<sup>1</sup> GTT does not object to the assumption of its contracts by the Debtor other than set out herein. This objection is limited to the calculation and payment of cure and is asserted to assure that contracts are assumed subject to all of their terms and obligations as required by §365 without release of said rights by confirmation.



services, equipment rental, late fees and termination charges in the total amount of \$2,025,457.86 under numerous executory contracts, some of which were identified by the Debtors in their Schedules and Notice of Filing of Plan Supplement, incorporated herein by reference. This debt has not been paid.

3. GTT filed timely proofs of claim (“Claims”) in these cases as follows:

<u>Claim No.</u>	<u>Debtor</u>	<u>Amount</u>
4654	Multiple Debtors <sup>2</sup>	\$ 378,298.01
4724	Multiple Debtors	<u>\$ 1,647,159.85</u>
	<b>TOTAL:</b>	<b>\$2,025,457.86</b>

Copies of these Proofs of Claim are incorporated by reference.

4. The Debtors have never objected to GTT’s proofs of claim. The proofs of claim are prima facie valid. Bankr. Rule 3001(f).

5. In Debtors’ Schedules of Assets and Liabilities, Debtors admitted having contingent and unsecured liquidated debts to GTT.

6. On May 6, 2020, Debtors filed a First Amended Joint Chapter 11 Plan of Reorganization and Amended Disclosure Statement. The Plan provided that Debtors would identify which contracts it was assuming or rejecting in a schedule to be filed later as a part of the Plan Supplement, but in any event, unless a contract was specifically identified as rejected, it would be deemed assumed.

7. The Debtors filed the Plan Supplement on June 3, 2020. The Assumption Schedule attached to the Supplement identifies 12 contracts (“Contracts”) which the Debtor asserts relate to GTT. The names of the co-parties listed, however (Covad, Reliance, Access

---

<sup>2</sup>Debtors consented to allow GTT Americas and GC Pivotal to file consolidated claims. Each consolidated claim breaks out the particular amount, and invoice numbers, pertaining to each Debtor and provides an overall summary. An itemization of these claims would comprise many hundreds of pages and are not attached here.

Point Inc., Transbeam Inc. and “WBS Connect (aka GTT)” do not immediately correlate with the GTT entities which filed proofs of claim in the case, GTT Americas LLC and GC Pivotal LLC, although they may relate to the names of companies previously acquired by GTT.

8. The Debtor has expressed its intent to assume all contracts and all contract relationships with GTT in light of the fact that it has informed GTT that GTT’s claims are not impaired under the Plan and it has no right to vote on the Plan.

9. The Cure Amount for the 12 assumed contracts is listed as “TBD”. No information is provided as to how or when that determination will be made. In fact, GTT and Windstream have been in negotiations to determine this amount for several months but have not to date been able to reach an agreement.

10. To the extent that other contracts are deemed to be accepted under the Plan, no cure amount is listed for these contracts and no provision exists in the Plan for the determination of a cure amount.

11. The Plan provides that all obligations under executory contracts, both pre- and post-petition, are released upon assumption of the executory contracts without any explicit provision for cure of pre- and post-petition obligations, whether or not now due.

12. Besides the above pre-petition Claim amount, Windstream is indebted to GTT for past-due charges totaling **\$184,357.23** since February 2020, and for current debts incurred but not yet due in the total amount of **\$1,063,325.86**. Attached as Exhibit 1 is a ledger containing a summary of the invoices, payments and balance due.

13. Section 1123(b)(2) provides that a Plan may include provisions for assumption of an executory contract if done in compliance with §365. Section 365 requires that, in order for a debtor to assume a contract, it must cure all prior defaults in full. 11 U.S.C. §365(b)(1)(A). It

makes no distinction between pre- and post-petition defaults. Cure includes not only the unpaid bills for services and goods, but also late fees, interest, termination charges and, where provided, attorneys fees. *In re Crown Books Corp.*, 269 B.R. 12, 15 (Bankr. Del. 2001); *In re Skylark Travel*, 120 B.R. 352, 355 (Bankr. S.D.N.Y. 1990); *In re Entertainment Inc.*, 223 B.R. 141, 150 (Bankr. N.D. Ill., 1998).

14. As noted above, Debtors are in default of prepetition payments in the amount of **\$2,025,457.86**. That amount will be increased by any post-petition obligations that remain unpaid on the Effective Date of the Plan.

15. The Plan fails to comply with §1123 because it does not satisfy the cure requirements of §365(b)(1)(A).

16. In order to resolve this objection, the Plan Supplement should be modified to 1) identify the pre-petition cure amount of GTT's contracts as **\$2,025,457.86** and the post-petition cure amount of **\$184,357.23**, 2) include the timely payment of current but not-yet-due amounts accrued under the assumed contracts according to contract terms and 3) provide for a reservation of rights as to all co-parties whose contracts are "deemed" assumed under the Plan without a designation of a cure amount to claim and receive payment of cure or other accrued obligations in full as such may later be determined.

#### RESERVATION OF RIGHTS

17. The Debtors have reserved all rights to withdraw any contract from its list of Assumed Executory Contracts. GTT reserves any and all rights, claims, and defenses it has or may have with regard to its Claims, the Contracts, the Cure Notice, any and all cure claims and cure amounts, and any other motion, application, notice, or other documents filed in this case. GTT reserves its right to supplement this Objection to preserve and assert its rights in connection

with the Contracts, including by filing a further objection to the assumption of any of its  
Contracts.

18. Nothing herein shall be interpreted as GTT's consent to assumption of any of its  
Contracts other than on the conditions set out herein and all objections and defenses to any  
request by the Debtors to assume any of the Contracts are expressly reserved.

WHEREFORE, GTT Communications Inc. respectfully requests this Court to enter an  
Order sustaining this Objection and requiring payment of cure to GTT no later than the Effective  
Date in the amount of **\$2,025,457.86** (plus **\$184,357.23** and such other postpetition debts that  
may be due and unpaid at that time), and modifying the Plan to reserve the rights of all co-parties  
of assumed contracts to the determination and payment of cure amounts whether accrued pre- or  
post-petition notwithstanding confirmation of the Plan.

Dated: June 16, 2020

By: /s/Darlene M. Nowak  
Darlene M. Nowak (Pro Hac Vice)  
**MARCUS & SHAPIRA LLP**  
One Oxford Centre  
301 Grant Street, 35<sup>th</sup> Floor  
Pittsburgh, PA 15219  
Phone: (412) 338-5214  
Facsimile: (412) 391-8758  
Email: [nowak@marcus-shapira.com](mailto:nowak@marcus-shapira.com)

Counsel for GTT Americas LLC and GC  
Pivotal LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Limited Objection Of GTT Americas LLC And GC Pivotal LLC To Confirmation of Plan And Cure of Executory Contracts has been served on the following Notice Parties (as identified in the Notice of Filing of Plan Supplement) by the means shown below to the addresses shown on June 16, 2020, and on all ECF participants registered in this case through the court's ECF System at the email address registered with the court.

<p>By E-mail: Windstream Holdings, Inc. 4001 North Rodney Parham Road Little Rock, Arkansas 72212 Att: Kristi Moody <a href="mailto:Kristi.moody@windstream.com">Kristi.moody@windstream.com</a></p>	<p>By E-mail: Kirkland &amp; Ellis LLP 601 Lexington Ave. New York NY 10022-4611 Attn: Stephen Hessler, P.C. <a href="mailto:shessler@kirkland.com">shessler@kirkland.com</a> Marc Kieselstein, P.C. <a href="mailto:mkieselstein@kirkland.com">mkieselstein@kirkland.com</a></p> <p>300 North LaSalle Chicago IL 60654 Attn: Ross M. Kwasteniet, P.C. <a href="mailto:Ross.kwasteniet@kirkland.com">Ross.kwasteniet@kirkland.com</a> Brad Weiland <a href="mailto:Brad.weiland@kirkland.com">Brad.weiland@kirkland.com</a> John R. Luze <a href="mailto:John.luze@kirkland.com">John.luze@kirkland.com</a></p>
<p>By first class U.S. Mail: Office of the United States Trustee Southern District of New York 201 Varick St., Suite 1006 New York, NY 10014 Att: Paul K. Schwartzberg</p>	<p>By E-Mail: Morrison &amp; Foerster LLP 250 West 55<sup>th</sup> St. New York NY 10019 Attn: Lorenzo Marinuzzi <a href="mailto:lmarinuzzi@mofocom">lmarinuzzi@mofocom</a> Todd M. Goren <a href="mailto:tgoren@mofocom">tgoren@mofocom</a> Jennifer L. Marines <a href="mailto:jmarines@mofocom">jmarines@mofocom</a> Erica J. Richards <a href="mailto:erichards@mofocom">erichards@mofocom</a></p>

/s/ Darlene M. Nowak

Division	Collector	Client	Client Group BAN	Posting date	Doc type	Doc No	Currency	Original Amc	Balance	Business Un	Due Date
<b>Below red line is past due: 184,357.23</b>								<b>Current Invoices not due:</b>	1,063,325.86		
Americas	Mary Lou Avil.	American Tele	Windstream C311002	2020-06-07	Invoice	INV3572550	USD	674.55	674.55	BU - USD	2020-07-06
Americas	Mary Lou Avil.	American Tele	Windstream C1000014019	2020-06-01	Credit Memo	CM2355695	USD	-646.23	-646.23	BU - USD	2020-06-01
Americas	Mary Lou Avil.	Masscomm In	Windstream CMAS005-01	2020-06-01	Invoice	INV3502278	USD	606.00	606.00	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Mass Commu	Windstream CT114101	2020-06-01	Invoice	INV3492032	USD	16,515.84	16,515.84	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Windstream F	Windstream CC13355	2020-06-01	Credit Memo	CM2363556	USD	-218.89	-218.89	BU - USD	2020-06-01
Americas	Mary Lou Avil.	Windstream F	Windstream CC13355	2020-06-01	Invoice	INV3502940	USD	10,109.56	10,109.56	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Windstream C	Windstream CC-1000011	2020-06-01	Invoice	INV3535401	USD	3,405.22	3,405.22	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Talk America,	Windstream CC22757	2020-06-01	Invoice	INV3503030	USD	2,587.73	2,587.73	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Mass Commu	Windstream CU001935	2020-06-01	Invoice	INV3492041	USD	218,872.05	218,872.05	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Windstream F	Windstream CC23732	2020-06-01	Invoice	INV3503250	USD	1,322.62	1,322.62	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Paetec Comr	Windstream C7-1-11JXR	2020-06-01	Invoice	INV3532759	USD	1,339.00	1,339.00	BU - USD	2020-06-30
Americas	Mary Lou Avil.	One Commun	Windstream C100489	2020-06-01	Invoice	INV3532994	USD	4,228.38	4,228.38	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Broadview Ne	Windstream CU001826	2020-06-01	Invoice	INV3491479	USD	4,354.11	4,354.11	BU - USD	2020-06-06
Americas	Mary Lou Avil.	Masscomm-E	Windstream C2619084	2020-06-01	Invoice	INV3504236	USD	104.89	104.89	BU - USD	2020-06-30
Americas	Mary Lou Avil.	McLeod USA	Windstream CC23663	2020-06-01	Invoice	INV3502868	USD	357.66	357.66	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Cavalier Tele	Windstream CC23576	2020-06-01	Invoice	INV3503095	USD	277.46	277.46	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Masscomm (T	Windstream C1000014009	2020-06-01	Credit Memo	CM2355597	USD	-805.48	-805.48	BU - USD	2020-06-01
Americas	Mary Lou Avil.	Masscomm (T	Windstream C1000014009	2020-06-01	Invoice	INV3493636	USD	34,833.27	34,833.27	BU - USD	2020-06-30
Americas	Mary Lou Avil.	American Tele	Windstream C1000014019	2020-06-01	Invoice	INV3493734	USD	5,745.00	5,745.00	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Earthlink	Windstream C100457	2020-06-01	Invoice	INV3541807	USD	3,146.50	3,146.50	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Earthlink Busi	Windstream CC24101	2020-06-01	Invoice	INV3502981	USD	1,918.02	1,918.02	BU - USD	2020-06-30
Americas	Mary Lou Avil.	DeltaCom, LL	Windstream C100684-OSN	2020-06-01	Invoice	INV3564252	USD	2,382.67	2,382.67	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Cavalier - CA	Windstream CC24117	2020-06-01	Invoice	INV3503037	USD	393.15	393.15	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Broadview Ne	Windstream CC15016	2020-06-01	Invoice	INV3503139	USD	10,302.20	10,302.20	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Intellifiber Net	Windstream C1000014027	2020-06-01	Invoice	INV3493770	USD	15,468.35	5,309.21	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Intellifiber Net	Windstream C1000014027	2020-06-01	Credit Memo	CM2355731	USD	-103.09	-103.09	BU - USD	2020-06-01
Americas	Mary Lou Avil.	Broadview Ne	Windstream C7-1-POP1	2020-06-01	Invoice	INV3533142	USD	7,929.41	7,929.41	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Broadview Ne	Windstream C100027	2020-06-01	Invoice	INV3541180	USD	15,547.77	15,547.77	BU - USD	2020-06-30
Americas	Mary Lou Avil.	American Tele	Windstream CC23646	2020-06-01	Invoice	INV3502888	USD	14,892.92	14,892.92	BU - USD	2020-06-30
Americas	Mary Lou Avil.	American Tele	Windstream CC23646	2020-06-01	Credit Memo	CM2363504	USD	-160.67	-160.67	BU - USD	2020-06-01
Americas	Mary Lou Avil.	Windstream F	Windstream CT170605	2020-06-01	Invoice	INV3541233	USD	1,216.11	1,216.11	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Windstream C	Windstream C100104	2020-06-01	Invoice	INV3539405	USD	32,931.49	32,931.49	BU - USD	2020-06-30
Infrastructure	Mary Lou Avil.	Business Only	Windstream CBUS101	2020-06-01	Invoice	INV3532728	USD	1,833.66	1,833.66	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Earthlink Busi	Windstream CC24076	2020-06-01	Invoice	INV3502903	USD	246,236.59	246,236.59	BU - USD	2020-06-30
Americas	Mary Lou Avil.	Earthlink Busi	Windstream CC24076	2020-06-01	Credit Memo	CM2363519	USD	-16,554.41	-16,554.41	BU - USD	2020-06-01
Americas	Mary Lou Avil.	Earthlink Busi	Windstream CC18877	2020-06-01	Credit Memo	CM2363735	USD	-9,625.38	-9,625.38	BU - USD	2020-06-01
Americas	Mary Lou Avil.	Earthlink Busi	Windstream CC18877	2020-06-01	Invoice	INV3503119	USD	442,066.97	442,066.97	BU - USD	2020-06-30
Americas	Mary Lou Avil.	American Tele	Windstream C311002	2020-05-12	Payment	1228556	USD	-1,666.22	-539.37	BU - USD	2020-05-12
Americas	Mary Lou Avil.	American Tele	Windstream C311002	2020-05-07	Invoice	INV3438169	USD	675.43	675.43	BU - USD	2020-06-05
Americas	Mary Lou Avil.	Windstream F	Windstream CC23732	2020-05-01	Credit Memo	CM2280564	USD	-96.04	-96.04	BU - USD	2020-05-01

Americas	Mary Lou Avil. American Tele	Windstream C C23646	2020-05-01	Credit Memo	CM2280694	USD	-238.00	-238.00	BU - USD	2020-05-01
Americas	Mary Lou Avil. Mass Commu	Windstream C U001935	2020-05-01	Invoice	INV3385933	USD	226,546.45	994.10	BU - USD	2020-05-30
Americas	Mary Lou Avil. Windstream F	Windstream C T170605	2020-05-01	Invoice	INV3417259	USD	1,289.24	94.48	BU - USD	2020-05-30
Americas	Mary Lou Avil. Earthlink Busi	Windstream C C24076	2020-05-01	Invoice	INV3409626	USD	287,459.90	36,341.58	BU - USD	2020-05-30
Americas	Mary Lou Avil. Earthlink Busi	Windstream C C18877	2020-05-01	Invoice	INV3399274	USD	383,944.77	35,854.50	BU - USD	2020-05-30
Americas	Mary Lou Avil. Broadview Ne	Windstream C C100027	2020-05-01	Invoice	INV3417370	USD	15,547.77	1,380.00	BU - USD	2020-05-30
Americas	Mary Lou Avil. Windstream F	Windstream C C13355	2020-05-01	Invoice	INV3399728	USD	12,637.99	12,600.29	BU - USD	2020-05-30
Americas	Mary Lou Avil. Earthlink Busi	Windstream C C24076	2020-04-03	Payment	ACH0403202	USD	-6,102.12	-3,051.06	BU - USD	2020-04-03
Infrastructure	Mary Lou Avil. Business Only	Windstream C BUS101	2020-04-01	Credit Memo	CM2221051	USD	-3,879.48	-499.05	BU - USD	2020-04-01
Americas	Mary Lou Avil. American Tele	Windstream C C23646	2020-04-01	Invoice	INV3309587	USD	15,141.02	14,079.39	BU - USD	2020-04-30
Americas	Mary Lou Avil. Earthlink Busi	Windstream C C18877	2020-04-01	Invoice	INV3309817	USD	327,906.02	594.58	BU - USD	2020-04-30
Americas	Mary Lou Avil. Broadview Ne	Windstream C C100027	2020-04-01	Invoice	INV3331568	USD	15,547.77	1,380.00	BU - USD	2020-04-30
Americas	Mary Lou Avil. Earthlink Busi	Windstream C C24076	2020-04-01	Invoice	INV3309484	USD	294,495.53	42,289.03	BU - USD	2020-04-30
Americas	Mary Lou Avil. Windstream F	Windstream C T170605	2020-04-01	Invoice	INV3331544	USD	1,270.19	75.43	BU - USD	2020-04-30
Americas	Mary Lou Avil. Windstream F	Windstream C C23732	2020-04-01	Invoice	INV3309691	USD	3,638.97	2,258.51	BU - USD	2020-04-30
Americas	Mary Lou Avil. American Tele	Windstream C C311002	2020-03-07	Invoice	INV3253547	USD	2,463.34	540.05	BU - USD	2020-04-05
Americas	Mary Lou Avil. Earthlink Busi	Windstream C C18877	2020-03-01	Invoice	INV3222250	USD	325,292.26	13,726.08	BU - USD	2020-03-30
Americas	Mary Lou Avil. Earthlink Busi	Windstream C C24076	2020-03-01	Invoice	INV3221993	USD	296,537.82	25,852.11	BU - USD	2020-03-30
Americas	Mary Lou Avil. Windstream F	Windstream C T170605	2020-03-01	Invoice	INV3232023	USD	2,015.97	45.19	BU - USD	2020-03-30