

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

In re:)	Chapter 11
)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 19-22312 (RDD)
)	
Debtors.)	(Jointly Administered)
)	
)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	Adv. Pro. No. 19-08246
)	
v.)	
)	
CHARTER COMMUNICATIONS, INC. and)	
CHARTER COMMUNICATIONS OPERATING, LLC,)	
)	
Defendants.)	

**ORDER ESTABLISHING REMOTE TRIAL PROCEDURES
FOR THE TRIAL OF COUNTS VI AND VII BEGINNING ON APRIL 27, 2020**

Counts VI and VII of this adversary proceeding are scheduled for trial beginning on April 27, 2020 (the “Trial”). Pursuant to Rule 43(a) of the Federal Rules of Civil Procedure, made applicable here by Rule 9017 of the Federal Rules of Bankruptcy Procedure, the current COVID-19 pandemic provides good cause in compelling circumstances to allow this trial to be conducted remotely through the use of telephonic and videoconferencing solutions. Accordingly, pursuant to this Court’s General Order M-543 regarding the COVID-19 pandemic, and after due

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 joint administration has been granted, 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’ 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.

deliberation, this Court adopts the following virtual hearing procedures which provide appropriate safeguards in relation to the trial of Counts VI and VII in this adversary proceeding.

IT IS HEREBY ORDERED THAT:

1. **Telephonic and Videoconferencing Solutions**. The Trial shall take place virtually using both telephonic and videoconferencing solutions as set forth herein. The Court shall utilize both Court Solutions (for audio purposes) and Skype for Business (for video purposes). Court Solutions can be accessed by visiting the website www.court-solutions.com. The Skype link shall be provided by the Court to the list of persons identified by the Parties as Skype participants in accordance with Section 3 below. All counsel that participate via Skype shall participate in appropriate pre-Trial testing of Skype as may be required by this Court's IT personnel.

2. **Limit on Videoconferencing**. Due to technological limitations, the number of Skype participants should be limited for optimal performance. In an effort not to overburden the platform or otherwise cause technological issues, videoconference participants shall be limited to ten (10) links. No such limitation, however, shall apply to participation through Court Solutions. The ten (10) links for Skype participants shall be limited to the Court, witnesses and attorneys that will be examining witnesses. Persons participating via Skype for video purposes shall simultaneously be connected to Court Solutions for audio purposes. Witnesses testifying via Skype shall utilize the Skype link only during the time they are testifying. Upon the conclusion of his or her testimony, the witness shall disconnect from the Skype link, but may continue to listen through Court Solutions. In order to limit the number of Skype participants, if necessary, the Court will take a brief recess between witnesses in order to add or subtract individuals participating via Skype.

3. **Prior Notice of Intent to Skype.** The Parties shall provide the Court with a list of all attorneys and witnesses who will attend the Trial via Skype by no later than five (5) business days prior to the Trial. The Court will circulate the Skype link to such persons participating via Skype prior to the Trial.

4. **Submission of Exhibits to Court.** Any exhibit or demonstrative that the Parties may use at Trial for any purpose, including for rebuttal or impeachment, that is not included in the Joint Exhibit Book, must be submitted via email by the offering Party to the Court (at rdd.chambers@nysb.uscourts.gov) and the other Parties in .pdf format no later than four (4) business days prior to the Trial. The Parties may email the Court and the other Parties a secure link to download the exhibits from an FTP or other file-sharing service, if necessary. In addition, the offering Party must submit to the Court any such exhibits or demonstratives in hard copy via express mail such that they arrive four (4) business days prior to the Trial. Exhibits intended to be used only for impeachment purposes, shall be submitted to the Court and the other Parties via email separately from all other exhibits in a .pdf folder conspicuously labeled “For Impeachment Purposes Only.” They also shall be provided at such time in hard copy in a binder so labeled. The Remote Witness shall not review the impeachment exhibits in this binder until the start of his or her testimony.

5. **Remote Witness Testimony.** Rule 43(a) of the Federal Rules of Civil Procedure, made applicable by Rule 9017 of the Federal Rules of Bankruptcy Procedure, provides that for “good cause in compelling circumstances” a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Having found that good cause in compelling circumstances exist here due to the COVID-19 pandemic, any witness called to testify at the Trial shall testify by contemporaneous transmission from a different location than

the Courtroom (“Remote Witness”). All Remote Witnesses shall be sworn in over Court Solutions and Skype, and such testimony will have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was sworn in by the Court deputy in person in open court at the courthouse. In the event that there is an error or malfunction with Skype, the Remote Witness may be sworn in and testify via Court Solutions only. The Party offering the Remote Witness shall be responsible for ensuring that the Court Solutions dial-in, Skype link, and *all exhibits from all Parties* are supplied to the Remote Witness in hard copy prior to, or, in the case of impeachment exhibits, at the Trial, and that the Remote Witness has been registered with Court Solutions and Skype. No person other than counsel may be present in the room from which the Remote Witness will testify during the testimony of the Remote Witness. While the Remote Witness is testifying, he or she may not have in the room from which the Remote Witness will testify any documents except his or her declaration submitted in lieu of direct testimony and all exhibits from all parties submitted to the Court pursuant to Paragraph 4 above. For the avoidance of doubt, nothing in this Order alters the Court’s requirement that the Parties submit direct witness examinations by affidavit or declaration on penalty of perjury on or before April 20, 2020.

6. **Courtroom Formalities.** Although being conducted using telephonic and videoconferencing solutions, the trial of this adversary proceeding constitutes a court proceeding, and any recording other than the official court version is prohibited. No Party may record images or sounds from any location. The formalities of a courtroom must be observed. When called to testify, a Remote Witness must situate himself or herself in such a manner as to be able to view the video screen and be seen by the Court.

7. **Retention of Jurisdiction.** This Court retains jurisdiction with respect to all matters arising from or related to this Order.

8. Pending Motion. This Order shall be subject to any subsequent ruling made by the Court with respect to Defendants' Motion for Relief from this Court's March 30, 2020 Order (Adv. Dkt. No.289), which is pending before the Court.

Dated: April 20, 2020
White Plains, NY

/s/
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY COURT JUDGE