

Stephen E. Hessler, P.C.
Mark McKane, P.C. (*pro hac vice* pending)
Patrick Venter
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Chad J. Husnick, P.C.
Benjamin M. Rhode (*pro hac vice* pending)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Proposed Counsel to the Debtors and Debtors in Possession

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

)				
In re:)				Chapter 11
)				
FRONTIER COMMUNICATIONS CORPORATION, <i>et al.</i> , ¹)				Case No. 20-22476 (RDD)
)				
Debtors.)				(Joint Administration Requested)
)				

**DEBTORS’ MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING
THE DEBTORS TO HONOR CERTAIN PREPETITION OBLIGATIONS
TO CUSTOMERS AND CONTINUE CERTAIN CUSTOMER PROGRAMS IN
THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”),

¹ The last four digits of Debtor Frontier Communications Corporation’s tax identification number are 9596. 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 are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/ftc>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 50 Main Street, Suite 1000, White Plains, New York 10606.

(a) authorizing, but not directing, the Debtors to honor certain prepetition obligations to customers and continue certain customer programs in the ordinary course of business, and (b) granting related relief. In addition, the Debtors request a final hearing be scheduled by the Court (as defined below) within approximately twenty-five (25) days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Background

5. Frontier Communications Corporation is a publicly held provider of telecommunications services and the fourth largest Incumbent Local Exchange Carrier in the United States, offering a broad portfolio of communications services for 4.1 million consumer, commercial, and wholesale customers. Through a series of acquisitions culminating with the 2016

purchase of Verizon Communications Inc.’s broadband and landline services in the states of California, Texas, and Florida (the “CTF Transaction”), the Debtors transformed in scale from a provider of services in mainly rural areas into one of the largest telecommunications businesses in the United States, with 2019 revenue of approximately \$8.1 billion.

6. In the years since the completion of the CTF Transaction, the Debtors have faced industry headwinds stemming from fierce competition in the telecommunications sector and changing consumer preferences. Moreover, shifting technology has redefined what infrastructure telecommunications companies need to excel in the industry, most notably an industry overhaul from broadband networks relying on copper cables to those relying on optical fiber. These conditions have rendered the Debtors’ approximately \$17.5 billion in outstanding funded debt unsustainable.

7. Rather than execute a liability management transaction that would at best delay maturities without addressing their capital structure in a comprehensive manner, the Debtors have negotiated with their key stakeholders. After extensive, arm’s-length negotiations that played out over several months, the Debtors executed the Restructuring Support Agreement with certain holders of unsecured notes (the “Noteholder Groups”), which puts the Debtors on a path to file a plan of reorganization during the course of these chapter 11 cases that would maximize stakeholder recoveries, allow operational continuity, and ensure a viable enterprise upon emergence.

8. On April 14, 2020 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of Carlin*

Adrianopoli, Executive Vice President of Strategic Planning, in Support of Chapter 11 Petitions and First Day Motions (the “First Day Declaration”), filed contemporaneously with this Motion.²

9. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

The Debtors’ Customers

10. The Debtors conduct business with residential, commercial, and wholesale customers and deliver broadband, video, voice, and other services over a combination of fiber and copper-based networks to households and businesses across the United States. The Debtors’ commercial customers include Fortune 1000 companies, government entities, educational institutions, and non-profit organizations. Additionally, the Debtors provide wholesale services to national operators, which purchase voice and data services from the Debtors to supplement their own network infrastructure. Any interruption, including discontinuation, reduction, loss, or impairment of the Debtors’ telecommunication services or changes to the existing rates and terms of conditions that govern the Debtors’ relationships with the customers would impact the Debtors’ stream of revenue, could lead to significant capital expenditures, and could be irreparably detrimental to the estates.

11. Technological advances, as well as regulatory changes, have enabled a wide range of non-traditional communications providers to compete with traditional communications

² Capitalized terms not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

providers such as the Debtors. Many of these non-traditional providers are not subject to the same regulations as traditional communications providers and also benefit from lower cost structures. Moreover, the telecommunications industry has also experienced substantial consolidation in recent years leading to the emergence of larger competitors with stronger brand recognition and enhanced service offerings.

Customer Contracts.

12. Customer receipts are a major component of the Debtors' receivables. The Debtors primarily conduct their operations through long-term contracts with their residential and commercial customers under which the Debtors provide telecommunication services (the "Customer Contracts"). The Debtors' business operations are thus highly dependent on the uninterrupted continuation of the Customer Contracts.

13. The Debtors generally bill their customers under the Customer Contracts for the upcoming month's service on the first day of the monthly billing cycle. The Debtors bill their customers for services in advance (the "Advanced Billings"). Accordingly, the Debtors continually maintain accrued but unsatisfied performance obligations under the Customer Contracts, as the Advanced Billings are charged at the beginning of the monthly billing cycle, but the corresponding services are still owed. Revenue is recognized as the services are provided over time. As such, the obligations incurred under the Advanced Billings do not entail spending the Debtors' cash, but rather require the Debtors to perform on account of the Advanced Billings. As of the Petition Date, the Debtors estimate that they have accrued performance obligations on approximately \$229.4 million worth of Advanced Billings.³ By this Motion, and out of an

³ For the avoidance of doubt, the Advanced Billings represent amounts paid to the Debtors by their customers in anticipation of future services. As such, the Advanced Billings do not represent obligations to spend cash but rather require the Debtors to render services for billed but unearned fees.

abundance of caution, the Debtors seek authority, but not direction, to continue their customary practice of Advanced Billings in the ordinary course of business and to honor related obligations, including any obligations incurred prior to the Petition Date.

14. The Debtors' customers are the lifeblood of the Debtors' businesses. Maintaining the Customer Contracts, and honoring any obligations on behalf of Advanced Billings, is critical to the Debtors' long-term success and viability. While the Debtors do not believe they are delinquent on any prepetition obligations arising under the Customer Contracts or Advanced Billings, out of an abundance of caution, the Debtors request authority to honor all obligations arising under the Customer Contracts and Advanced Billings, including any such obligations that may have arisen prior to the Petition Date.

15. Accordingly, by this Motion the Debtors seek authorization, but not direction, to maintain the Customer Contracts in the ordinary course of business and to continue to honor all customer-related obligations, including honoring any prepetition obligations associated therewith, notwithstanding the commencement of these chapter 11 cases.

Customer Programs⁴

16. The Debtors provide certain customer-related programs, policies, incentives, discounts, and other accommodations (collectively, the "Customer Programs") to customers to develop and maintain positive relationships. These Customer Programs promote and maintain customer satisfaction, which, in turn, increases the Debtors' goodwill and brand value. In such a competitive industry, maintaining customer goodwill is critical to the Debtors' ongoing operations and the preservation and maximization of stakeholder value. The Debtors estimate that they spend

⁴ Although this Motion is intended to be comprehensive, the Debtors may have inadvertently omitted some Customer Programs. The Debtors request relief with respect to all Customer Programs, regardless of whether such Customer Program is specifically identified herein.

approximately \$1,000 for each new residential customer acquired and approximately \$2,500 for each new commercial customer acquired. Were the Debtors unable to continue the Customer Programs, resulting in customer attrition, the Debtors would lose the benefit of this significant upfront investment. Therefore, the Debtors seek authorization to continue to provide the Customer Programs to their customers, as well as to honor certain prepetition claims that directly benefit the Debtors' customers.

17. As of the Petition Date, the Debtors estimate that there are approximately \$21.2 million of prepetition obligations outstanding related to Customer Programs. These obligations include amounts owed under the Debtors' Sales Promotions, Marketing Campaigns, Upgrade Programs, Retention Programs, Employee Discounts, Service Level Guarantees, Wholesale Programs, Customer Deposits, and Customer Refunds (each defined and described below, and each, a Customer Program). Additionally, the Debtors owe certain third parties amounts and obligations for goods and services associated with customer acquisition, retention, and experience, including amounts and obligations under or to the Debtors' Third-Party Providers Programs, Transition Services Agreements, Channel Partners, MDU Partners, Marketing Partners, and Community Partnerships (each defined and described below, and each, a Customer Program).

18. For the avoidance of doubt, pursuant to this Motion the Debtors are not seeking to assume or reject any executory contracts pursuant to section 365 of the Bankruptcy Code.

I. New Customer Acquisition.

19. The Debtors offer various sales promotions (the "Sales Promotions") that are available to both residential and commercial customers. Through many Customer Programs, the Debtors offer to apply a credit to a customer's bill (a "Bill Credit"). Under the Sales Promotions,

the Debtors offer a Bill Credit to new and existing customers who order particular services or commit to a specific service term length. The nature and extent of the Sales Promotions vary from month to month and market to market. The Debtors believe that the substantial majority of new customers acquired are a result of the Sales Promotions.

20. Additionally, the Debtors run certain marketing campaigns designed to acquire new customers (the “Marketing Campaigns”). The Marketing Campaigns further incentivize prospective customers to purchase services by offering gifts or other perks to customers who sign up during a designated period. These gifts or perks may include gift cards, physical hardware, or third-party services paid for by the Debtors for a pre-established period of time. On average, the Debtors spend approximately \$1.3 million per month on Marketing Campaigns. The Sales Promotions and Marketing Campaigns are vital to the Debtors’ new customer acquisition, which in turn drives revenue. Accordingly, the Debtors seek the authority, but not direction, to continue the Sales Promotions and the Marketing Campaigns in the ordinary course of business, and to honor any prepetition obligations associated therewith.

II. Upgrade Programs.

21. The Debtors offer discounts and promotions to encourage existing residential and commercial customers to: (a) upgrade their level of service; and/or (b) subscribe to additional services offered by the Debtors through value-added, “bundled” service packages, which may include video, internet, telephone, and/or other value-added services (collectively, the “Upgrade Programs”). Under the Upgrade Programs, the Debtors offer Bill Credits to existing customers in exchange for an enhanced service subscription. The Upgrade Programs are a significant driver of revenue to the Debtors and therefore are critical to the Debtors’ overall operations. Accordingly,

the Debtors seek the authority, but not direction, to continue administering the Upgrade Programs in the ordinary course of business, and to honor any prepetition obligations associated therewith.

III. Retention Programs.

22. The Debtors offer certain services, promotions, and programs (collectively, the “Retention Programs”), which encourage customers to maintain their services with the Debtors. The Debtors offer three types of Retention Programs: (a) Save Offers; (b) Roll-Off Offers; and (c) Discretionary Credits (each as defined below).

23. The Debtors authorize call center representatives to offer Bill Credits or other incentives to dissatisfied customers and/or customers who call to terminate their service, in order to “save” customer relationships (collectively, the “Save Offers”). Examples of Save Offers include, but are not limited to, free premium channels and reduced pricing of services for a limited period of time if the customer agrees to continue their service with the Debtors. The Debtors estimate that they offer approximately 24,000 Save Offers per month.

24. The Debtors also offer Bill Credits designed to encourage customers to maintain their service when experiencing an increase in their bill due to the expiration of promotional credits (the “Roll-Off Offers”). The Roll-Off Offers partially replace an expiring promotional credit to reduce the sudden increase in a customer’s bill (*e.g.*, a \$30 promotional credit may be replaced with a \$15 Bill Credit). The Debtors utilize direct marketing (mail and email) to remind customers of their promotional credit expiration and inform them of their new credit level. The Roll-Off Offers can be offered pursuant to direct marketing efforts prior to the expiration of the promotional credit, or by call center representatives assisting customers after the expiration of such promotional credits. The Roll-Off Offers have been proven through test-and-control methodology to retain customers and drive incremental revenue and cash flow. Based on historical averages, the Debtors

estimate that approximately 16,000 customers per month, or roughly one-fourth of customers with an expiring promotional credit, are retained pursuant to Roll-Off Offers.

25. Further, the Debtors grant call center representatives the authority to issue discretionary, non-recurring credits and/or refunds (collectively, the “Discretionary Credits”) to certain customers. Customers with service complaints, damages, or time guarantees that have not been met, may be issued a Discretionary Credit in the form of a Bill Credit. Based on historical averages, the Debtors estimate that approximately \$3.9 million of Discretionary Credits are issued on a monthly basis. Discretionary Credits improve customer satisfaction and ensure customer retention and are therefore vital to the Debtors’ businesses.

26. The Retention Programs help reduce customer attrition and ensure the stability of the Debtors’ customer base and revenue. Accordingly, the Debtors seek the authority, but not direction, to continue the Retention Programs in the ordinary course of business, and to honor any prepetition obligations associated therewith.

IV. Employee Discounts.

27. The Debtors offer various discount promotions to their employees (the “Employee Discounts”) in the ordinary course of business. Under the Employee Discounts, the Debtors offer Bill Credits to their employees as a form of employee benefit. The Bill Credits are applied on a monthly basis and vary based upon location and underlying agreement. The Employee Discounts not only improve employee morale, but also ensure that the Debtors secure their employees as customers, providing a significant source of revenue given that the Debtors employ approximately 17,700 individuals. Accordingly, the Debtors seek the authority, but not direction, to continue offering the Employee Discounts in the ordinary course of business, and to honor any prepetition obligations associated therewith.

V. Service Level Guarantees.

28. The Debtors, in the ordinary course of business, incorporate service level agreements into Customer Contracts at the time of execution. In such service level agreements, the Debtors may provide for certain service level guarantees with respect to certain goods and/or services (the “Service Level Guarantees”). The terms of the Service Level Guarantees vary from contract to contract. Pursuant to the Service Level Guarantees, customers experiencing a service interruption or outage, typically defined contractually as a complete lack of service as opposed to diminished service, may request a pro-rata Bill Credit that is dependent on the duration of such outage. The Service Level Guarantee continues so long as the customer maintains the covered service with the Debtors or executes a new Customer Contract with an applicable Service Level Guarantee. In addition, certain states mandate Service Level Guarantees by incorporating them into the certificates to do business in such states. These state-mandated Service Level Guarantees principally revolve around voice services and provide for mandatory Bill Credits for residential customers who experience an outage, with the terms of the payments and outage durations that trigger the payment determined at the state level. Accordingly, the Debtors seek the authority, but not direction, to continue offering the Service Level Guarantees in the ordinary course of business, and to honor any prepetition obligations associated therewith.

VI. The Wholesale Programs and Resale.

29. The Debtors offer their wholesale customers tiered volume and term based pricing, service level guarantees applicable to wholesale services, and promotional prices (collectively, the “Wholesale Programs”). The Debtors’ wholesale customers have become accustomed to these prices and consider it an advantage of doing business with the Debtors on a wholesale basis. Further, were such programs to cease, many wholesale customers may stop doing

business with the Debtors and switch their business to a competitor of the Debtors. Accordingly, the Debtors seek the authority, but not direction, to continue the Wholesale Programs in the ordinary course of business, and to honor any prepetition obligations associated therewith.

VII. Customer Deposits & Refunds.

30. The Debtors, in the ordinary course of business, provide customers with equipment, such as cable boxes, cable modems, and telephone adapters, installed in conjunction with their services. In certain situations, customers are required to pay initial deposits (the “Customer Deposits”) for such equipment. Typically, the Debtors refund the customer deposits via check when a customer terminates service and returns such equipment within a specified period of time. If the customer terminates service within a year of making the Customer Deposit, then such Customer Deposit is applied to any outstanding amounts owed by the customer, and any excess amount is refunded to such customer in the form of a prepaid Citibank gift card. Based on historical averages, the Debtors’ average new monthly Customer Deposits total approximately \$820,000, while refunds of Customer Deposits total approximately \$610,000 per month. As of the Petition Date, the Debtors hold approximately \$6.8 million in Customer Deposits.

31. Further, given the Advanced Billings, when a customer pays for a full month of service but terminates service mid-month, the Debtors may owe the customer on account of prepaid services that were not provided. In these circumstances, the Debtors typically rectify any account discrepancies by rendering certain refunds (the “Customer Refunds”). Customer Refunds in amounts between \$5 and \$500 are administered through prepaid Citibank gift cards. The Debtors typically pay Customer Refunds below \$5 or in excess of \$500 by check. On average, the Debtors’ total monthly spend on Customer Refunds is approximately \$1.1 million, with an

average payment of \$50. Approximately 95 percent of the Customer Refunds are rendered in the form of prepaid Citibank gift cards. Failure to refund the Customer Deposits and Customer Refunds could negatively impact the Debtors' brand and goodwill and ultimately could impede new customer acquisition. Accordingly, the Debtors seek the authority, but not direction, to refund Customer Deposits and Customer Refunds in the ordinary course of business, and to honor any prepetition obligations associated therewith.

VIII. Third-Party Providers Programs.

32. The Debtors procure certain services from certain third-party service providers (the "Third-Party Providers") and offer those services to the Debtors' customers (the "Third-Party Providers Programs"). The Third Party Providers Programs include, but are not limited to:

- a. **Frontier Secure Services.** The Debtors resell certain broadband related value-added services of certain Third-Party Providers to the Debtors' customers. These services may include, but are not limited to, hard drive backup, identity protection, and device protection (the "Frontier Secure Services"). Approximately 810,000 customers are enrolled in the Frontier Secure Services.
- b. **Third-Party Broadband Services.** The Debtors also resell wholesale satellite broadband services to their customers, of which approximately 8,000 are currently enrolled, including certain services that the Debtors offer to their customers pursuant to an agreement with Hughes Communications.
- c. **Frontier Anywhere.** The Debtors purchase Voice over Internet Protocol ("VoIP") products from Mitel Networks Corporation on a wholesale basis and resell such VoIP products to their customers under the Frontier Anywhere brand, which has approximately 22,000 customers thereunder.
- d. **DISH Services.** The Debtors offer certain of their customers the option of purchasing DISH Network TV pursuant to an agreement with DISH Network ("DISH," and such agreement, the "DISH Agreement"). Pursuant to the DISH Agreement, DISH provides content directly to the Debtors' customers, and the Debtors add associated fees to such customer's broadband bill. Corresponding revenue and expenses pass through to DISH. In exchange, the Debtors receive a small economic benefit, including: (a) a one-time \$240 fee for each customer enrolled; (b) a monthly residual fee of \$1 for each subscriber attributable to the Debtors; and (c) a

monthly billing and collection fee of \$1.65 per subscriber. Through the DISH Agreement, the Debtors offer their customers greater content optionality, which in turn has a significant positive impact on customer retention. Approximately 170,000 of the Debtors' customers subscribe to DISH Network TV.

33. The Third-Party Providers Programs provide a valuable complement to the Debtors' services and maximize the experience of the Debtors' customers, who would otherwise have to procure such products and services directly from the Third-Party Providers. On average, the Debtors' total monthly spend is approximately \$2.2 million for the Frontier Secure Services and \$200,000 for third-party wholesale services, with these two services comprising a large portion of expenditure related to the Third-Party Providers Programs. Failure to compensate the Third-Party Providers may limit the Debtors' ability to retain and generate revenue from their customers. Accordingly, the Debtors seek the authority, but not direction, to continue the Third-Party Providers Programs in the ordinary course of business, and to honor any prepetition obligations associated therewith.

IX. Transition Services Agreements.

34. Pursuant to certain transactions consummated by the Debtors, the Debtors may have entered into transition services agreements (the "Transition Services Agreements"), pursuant to which the Debtors provide certain services to the counterparties of such transactions to assist in the transition of, *inter alia*, accounting services, invoice processing for vendor payments, customer payment processing, IT services, and network connectivity. The service terms of each Transition Services Agreement varies. Each Transition Services Agreement remains in effect so long as the term of a service provided pursuant to the agreement has not expired. The Debtors seek the authority, but not direction, to honor their obligations under any Transition Services Agreement in the ordinary course of business, including any prepetition obligations associated therewith, as the Debtors may be contractually bound to assist with such customer-related transition services.

X. Channel Partners.

35. The Debtors enter into contracts with third-party lead generators (the “Channel Partners”) who refer and solicit orders from potential customers for the Debtors’ portfolio of products, solutions, and technology services (collectively, the “Channel Partners Agreements”). The Channel Partners generate revenue through customer acquisition that complements the Debtors’ own direct sales initiatives. In most cases, after the initial referral or solicitation, the Channel Partners provide substantial assistance to the Debtors in servicing the customers acquired by the Channel Partners’ efforts. In effect, the Channel Partners function as an additional salesforce for the Debtors and, as such, are critical to the Debtors’ businesses. The Debtors currently maintain Channel Partner Agreements with approximately 110 Channel Partners, which generated approximately 75,000 new service contracts per month for the Debtors in 2019.

36. The Debtors pay Channel Partners a commission in exchange for their referral services and order solicitation (collectively, the “Channel Partner Commissions”). The amount of each Channel Partner Commission varies by agreement and typically represents a percentage of the contract value of each customer that enters into a service contract with the Debtors as a result of such Channel Partner’s efforts. Based on historical averages, the Debtors spend approximately \$13.1 million per month on account of the Channel Partner Commissions, of which approximately \$10.6 million is allocated to residential customers and approximately \$2.5 million is allocated to commercial customers.

37. Due to the generally short-term and non-exclusive nature of the Channel Partners Agreements, these parties have few incentives to promote the Debtors’ products and services and, instead, may focus on selling competitors’ products and services. If this were to occur, the

Debtors' revenue would not only be negatively impacted in the near term, but the Debtors may permanently damage business relationships with both their Channel Partners and end users. Accordingly, the Debtors seek the authority to continue the Channel Partner Agreements in the ordinary course of business, and to honor any prepetition obligations related therewith.

XI. Multi-Dwelling Unit Partners.

38. The Debtors enter into certain agreements with landlords, property owners, and property managers of multi-dwelling units (collectively, the "MDU Partners", and such agreements, the "MDU Agreements") within range of the Debtors' fiber network. The MDU Agreements provide the Debtors with exclusive rights to provide broadband and video services in the MDU Partners' properties. In exchange, the Debtors provide the MDU Partners with an upfront cash payment or a residual payment as a percentage of the revenue the Debtors generate from such properties. As of the Petition Date, the Debtors have approximately 1,400 MDU Partners and pay approximately \$340,000 per month on account of the MDU Agreements. The exclusive rights under the MDU Agreements provide the Debtors with revenue enhancement and security. Were the Debtors to cease making payments under the MDU Agreements, the MDU Partners may remove the Debtors' exclusivity or provide such exclusivity to a competitor, resulting in customer and revenue loss for the Debtors. Accordingly, the Debtors seek the authority, but not direction, to continue honoring the MDU Agreements in the ordinary course of business, and to honor any prepetition obligations associated therewith.

XII. Marketing Partners.

39. The Debtors enter into certain agreements with third-party data analytics, media production, and advertising providers (collectively, the "Marketing Partners"). The Marketing Partners work with the Debtors to develop targeted customer acquisition and retention strategies,

media production and placement, and other marketing programs. For example, the Debtors retain a national advertising agency (the “Ad Agency”) as part of the Debtors’ advertising and marketing campaigns, designed to stimulate demand for their services. The Ad Agency provides creative and planning services to maximize the Debtors’ return on their marketing spend, in exchange for fixed fees. The Ad Agency works with the Debtors and media production companies to produce the necessary physical or virtual media for use in the Debtors’ advertising. Additionally, the Debtors subscribe to data subscriptions from certain vendors that provide insight into the purchasing habits of prospective customers. Based on historical averages, the Debtors pay the Marketing Partners approximately \$14.3 million per month. The Marketing Partners generate approximately fifteen to twenty percent of, and are therefore critical to, new customer acquisition. Accordingly, the Debtors seek the authority, but not direction, to pay the Marketing Partners in the ordinary course of business, and to honor any prepetition obligations related therewith.

XIII. Community Partnerships.

40. The Debtors sponsor and contribute to various community events, organizations, and charities (collectively, the “Community Partnerships”) to engender the goodwill of their customer base and promote the Debtors’ businesses in certain communities. The following are examples of Community Partnerships the Debtors have supported in the past:

- a. The Steven B. Robbins Foundation, an organization that provides scholarships to students whose families have been affected by cancer;
- b. EmpowHer Institute, an organization focused on eradicating the dropout rate among low-income high school students in Los Angeles;
- c. Positive Results Corporation, an organization focused on creating awareness and preventing the trauma associated with experiencing violence and abuse;
- d. local fairs, festivals, and events, such as the Florida State Fair and Manatee County Fair; and

- e. national and local sports teams, such as the Tampa Bay Buccaneers, Los Angeles Clippers, Bridgeport Sound Tigers, and Durham Bulls Baseball Club.

41. Based on historical averages, the Debtors spend approximately \$590,000 per month on the Community Partnerships. As of the Petition Date, the Debtors estimate that approximately \$280,000 of obligations on account of the Community Partnerships remain outstanding. The Community Partnerships maintain and engender the goodwill of the communities the Debtors serve and often provide a marketing platform for the Debtors. Consequently, the Community Partnerships are an important source of new customer acquisition and customer retention. Accordingly, the Debtors seek the authority, but not direction, to continue entering into the Community Partnerships in the ordinary course of business, and to honor any prepetition obligations associated therewith.

Basis for Relief

I. Continuing to Honor Customer Programs in the Ordinary Course Is Warranted Under Sections 105(a) and 363(b) of the Bankruptcy Code.

42. Courts in this district generally acknowledge that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In doing so, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

43. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See In re Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

44. In addition, courts may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *In re Ionosphere Clubs*, 98 B.R. at 176.

45. Several courts apply the doctrine of necessity where payment of a prepetition claim (a) is “necessary for the successful reorganization of the debtor,” (b) falls within “the sound business judgment of the debtor,” and (c) will not “prejudice other unsecured creditors.”

In re United Am., Inc., 327 B.R. 776, 782 (Bankr. E.D. Va. 2005). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175. That is because the rehabilitation of a debtor in reorganization cases remains “the paramount policy and goal of Chapter 11.” *Id.* at 175-76; *see also In re Just For Feet*, 242 B.R. 821, 824–26 (D. Del 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”).

46. Implicit in the fiduciary duties of any debtor-in-possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *In re CoServ*, 273 B.R. at 497. Some courts note that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The court in *CoServ* specifically noted the pre-plan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” *Id.* Consistent with a debtor’s fiduciary duties, courts have also authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175.

47. Here, the Customer Programs are an important aspect of the Debtors’ relationship with their customers. As described above, the Debtors’ Customer Programs promote and maintain customer satisfaction, which, in turn, increases the Debtors’ goodwill, the value of their brand, and ultimately their revenues. Continuing to administer the Customer Programs without interruption during the pendency of these chapter 11 cases is critical to preserve the value of the Debtors’ assets, which will inure to the benefit of the Debtors’ estates and their creditors. Therefore, the

Debtors seek authorization to continue to provide the Customer Programs to their customers, as well as to honor certain prepetition claims that directly benefit the Debtors' customers.

48. Courts have granted relief similar to that requested herein. *See, e.g., In re Barneys New York*, No. 19-36300 (CGM) (Bankr. S.D.N.Y. Sept. 4, 2019) (authorizing debtors to continue to maintain and administer prepetition customer programs in the ordinary course of business and honor prepetition obligations related to same); *In re Hollander Sleep Products, LLC*, No. 19-11608 (MEW) (Bankr. S.D.N.Y. July 2, 2019) (same); *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019) (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 9, 2018) (same); *In re Cenveo Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Feb. 6, 2018) (same); *In re Avaya, Inc.*, No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (approving over \$90 million in prepetition payments to customer programs and third-party providers for the benefit of customers); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-0566 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) (granting debtors authority to continue to maintain and administer prepetition customer programs in the ordinary course of business and honor prepetition obligations related to same); *In re Aéropostale, Inc.*, No. 16-11275 (SHL) (Bankr. S.D.N.Y. June 3, 2016) (same).⁵ Accordingly, the Debtors submit that the Court should authorize the Debtors to continue the Customer Programs in the ordinary course of business on a postpetition basis.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

49. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations,

⁵ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

anticipated access to cash collateral, and approval of postpetition debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect to the Customer Programs. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

50. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture and imperil the Debtors' restructuring. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

51. To successfully implement the foregoing, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

52. Nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Motion Practice

53. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of its application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Notice

54. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the United States Trustee for the Southern District of New York; (b) the holders of the fifty largest unsecured claims against the Debtors (on a consolidated basis); (c) the agent under the proposed postpetition debtor in possession financing facility; (d) the

administrative agents and indenture trustees under the Debtors' prepetition credit agreement and note indentures; (e) Akin Gump Strauss Hauer & Feld LLP and Milbank LLP, counsel to the Noteholder Groups; (f) the Pension Benefit Guaranty Corporation; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the United States Securities and Exchange Commission; (j) the attorneys general in the states where the Debtors conduct their business operations; (k) the Federal Communications Commission; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

55. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: April 15, 2020
New York, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.

Mark McKane, P.C. (*pro hac vice* pending)

Patrick Venter

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

- and -

Chad J. Husnick, P.C.

Benjamin M. Rhode (*pro hac vice* pending)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle Street

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

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

In re:)	Chapter 11
)	
FRONTIER COMMUNICATIONS)	Case No. 20-22476 (RDD)
CORPORATION, <i>et al.</i> , ¹)	
)	
Debtors.)	(Joint Administration Requested)

**INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO HONOR CERTAIN PREPETITION OBLIGATIONS
TO CUSTOMERS AND CONTINUE CERTAIN CUSTOMER PROGRAMS IN
THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to maintain and administer the Customer Programs and honor certain prepetition obligations related thereto, (b) scheduling the Final Hearing (as defined below), and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and

¹ The last four digits of Debtor Frontier Communications Corporation’s tax identification number are 9596. 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 are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/ftc>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 50 Main Street, Suite 1000, White Plains, New York 10606.

² Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Motion.

this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2020, at __: __ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2020, and shall be served on: (a) the Debtors, Frontier Communications Corporation, 50 Main Street, Suite 1000, White Plains, New York 10606; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Stephen E. Hessler, P.C. and Patrick Venter, and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: Chad J. Husnick, P.C. and Benjamin M. Rhode; (c) counsel to any statutory committee appointed in these cases; (d) counsel to the Noteholder Groups, (i) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn.: Ira S. Dizengoff, Philip C. Dublin and Naomi Moss and (ii) Milbank LLP, 55 Hudson Yards, New York, New York 10001, Attn.: Dennis F. Dunne, Samuel A. Khalil and Michael W. Price; and (e) the Office of The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Greg M. Zipes and Brian S. Masumoto. In the event no objections to entry of a final

order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to continue the Customer Contracts and honor all obligations related thereto, including obligations that arose prior to the Petition Date.

4. The Debtors are authorized, but not directed, to continue to administer the Customer Programs in effect and honor any prepetition obligations related to the Customer Programs, in each case, in the ordinary course of business on a postpetition basis.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented

for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. Nothing contained in the Motion or this Interim Order is intended or should be construed to create an administrative priority claim on account of any of the Customer Contracts or Customer Programs.

9. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor in possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

10. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

11. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to any order authorizing use of cash collateral or postpetition financing.

12. For the avoidance of doubt, other than as relating to approval or consent to entry of this Interim Order (or the proposed form hereof), any consent or approval rights of the parties to

the Restructuring Support Agreement shall remain in force unaffected from and after entry of this Interim Order, solely to the extent the Restructuring Support Agreement remains in effect.

13. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. Notwithstanding anything to the contrary, the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

17. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

White Plains, New York

Dated: _____, 2020

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

In re:)	Chapter 11
)	
FRONTIER COMMUNICATIONS)	Case No. 20-22476 (RDD)
CORPORATION, <i>et al.</i> , ¹)	
)	
Debtors.)	(Joint Administration Requested)

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO HONOR CERTAIN PREPETITION OBLIGATIONS
TO CUSTOMERS AND CONTINUE CERTAIN CUSTOMER PROGRAMS IN
THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing the Debtors to maintain and administer the Customer Programs and honor certain prepetition obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant

¹ The last four digits of Debtor Frontier Communications Corporation’s tax identification number are 9596. 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 are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/ftc>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 50 Main Street, Suite 1000, White Plains, New York 10606.

² Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Motion.

to 28 U.S.C. § 157(b); and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue the Customer Contracts and honor all obligations related thereto, including obligations that arose prior to the Petition Date.
3. The Debtors are authorized, but not directed, to continue to administer the Customer Programs in effect and honor any prepetition obligations related to the Customer Programs, in each case, in the ordinary course of business on a postpetition basis.
4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion

are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Nothing contained in the Motion or this Final Order is intended or should be construed to create an administrative priority claim on account of any of the Customer Contracts or Customer Programs.

8. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor in possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

9. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to any order authorizing use of cash collateral or postpetition financing.

10. For the avoidance of doubt, other than as relating to approval or consent to entry of this Final Order (or the proposed form hereof), any consent or approval rights of the parties to the Restructuring Support Agreement shall remain in force unaffected from and after entry of this Final Order, solely to the extent the Restructuring Support Agreement remains in effect.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding anything to the contrary, the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

White Plains, New York
Dated: _____, 2020

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE