

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

M-2025-3052793

In re:

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Chapter 11

EVERSTREAM SOLUTIONS LLC, *et al.*,

Case No. 25-90144 (CML)

Debtors.<sup>1</sup>

(Jointly Administered)

SUPPLEMENT IN SUPPORT OF SALE TRANSACTION

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Dated: July 24, 2025  
Houston, Texas

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DATE OF DEPOSIT

JUL 26 2025

PA Public Utility Commission  
Secretary's Bureau

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Midwest Fiber Holdings LP (3804); Midwest Fiber Acquisition Topco LLC (N/A); Midwest Fiber Acquisition Midcol LLC (6061); Midwest Fiber Acquisition LLC (N/A); Everstream Solutions LLC (2361); Everstream Networks LLC (4542); Everstream GLC Holding Company LLC (4493); American Fiber Comm L.L.C. (2389); HRS Internet, LLC (5042); Lynx Network Group, Inc. (6261); 15955 State Street LLC (2731); Rocket Fiber LLC (7722); Lynx Fiber One, LLC (7151); and Lynx Fiber Two, LLC (3416). The Debtors' mailing address is 1228 Euclid Ave. Suite 250, Cleveland, OH 44115.

Everstream Solutions LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”)<sup>2</sup> in the above-captioned chapter 11 cases, hereby file this supplement (this “**Supplement**”) to the Bidding Procedures Motion (as defined herein) and the Debtors’ request for entry of the Sale Order (as defined herein) authorizing the sale (the “**Sale Transaction**”) of all or substantially all of the Debtors’ assets other than the IL Divested Business, the MO Divested Business, and all assets used exclusively in connection with the PA Business (each, as defined in the WholeCo APA (as defined herein)) (the “**Assets**”)<sup>3</sup> pursuant to:

- (a) in the event the Sale Transaction is consummated with the Successful Bidder, the Stalking Horse Agreement by and among Midwest Fiber Holdings LP and, in the event the Sale Transaction is consummated with the Successful Bidder, Bluebird MidWest, LLC (“**Bluebird**”), an indirect subsidiary of Bluebird Network, LLC, a regional internet and data service provider and data center operator; or
- (b) solely to the extent the Sale Transaction is consummated with the Back-Up Bidder, the terms of that certain *Asset Purchase Agreement* (as applicable, together with the exhibits thereto, as may be amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “**WholeCo APA**”), or, solely to the extent the Sale Transaction is consummated with the Back-Up Bidder, Metro Everstream Bidco, LLC (“**Metro Comm**”) (as applicable, the “**Buyer**”), an affiliate of MCC Network Services, LLC d/b/a Metro Comm;

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Declaration of Justin Schmaltz in Support of Debtors’ Chapter 11 Petitions and First Day Relief* (Docket No. 5) (the “**First Day Declaration**”) or the Bidding Procedures Order (including exhibits) (as defined herein), as applicable.

<sup>3</sup> As used herein, the term “**Assets**” shall include assets used exclusively in connection with the PA Business to the extent the Sale Transaction is consummated with the Back-Up Bidder pursuant to the Back-Up Bid.

in all cases, free and clear of all liens, claims, and encumbrances, except for certain obligations assumed by the Buyer and permitted encumbrances, (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale Transaction, and (iii) granting related relief.

In support of this Statement and entry of the Sale Order, the Debtors refer to the First Day Declaration and the Initial Henry Declaration,<sup>4</sup> as well as the *Supplemental Declaration of James Henry in Support of Sale Transaction*, to be filed in advance of the Sale Hearing (the “**Supplemental Henry Declaration**”), each of which are incorporated by reference herein, and respectfully represent as follows:

**Preliminary Statement**

1. The Debtors are pleased to announce the designation of Bluebird’s bid as the Successful Bid (as defined herein) for the Assets, which provides for an aggregate cash purchase price of \$384.6 million, plus certain assumed liabilities (subject to certain purchase price adjustments), and Metro Comm’s bid as the Back-Up Bid (as defined herein) for the Assets, which provides for an aggregate cash purchase price of \$366 million plus certain assumed liabilities (subject to certain purchase price adjustments), each, a significant improvement from the Stalking Horse Bid. The Successful Bid and Back-Up Bid are the culmination of an extensive eight-month prepetition marketing process, a 50-day postpetition market check, and a competitive Auction (as defined herein). With the Successful Bid and Back-Up Bid in hand, the Debtors now seek approval of the Sale Transaction for the benefit of the Debtors’ estates and their stakeholders.

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<sup>4</sup> *Declaration of James Henry in Support of Motion of Debtors for Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (D) Assumption and Assignment Procedures, (II) Scheduling Auction and Sale Hearing, and (III) Granting Related Relief (Docket No. 58) (“Initial Henry Declaration”).*

## Background

### ***I. Evaluation of Strategic Options, Prepetition Marketing Process, and Execution of Stalking Horse Agreement***

2. As set forth in detail in the First Day Declaration and the Initial Henry Declaration, the Debtors and their independent managers and directors, with the assistance of the Debtors' advisors, began exploring strategic alternatives in April 2023. Those efforts resulted in a series of strategic, liquidity-enhancing transactions such as the 2023 Recapitalization Transactions, the Illinois Sale, and the Missouri Sale. By mid-2024, the Debtors, their advisors, and the Restructuring Advisory Committees determined that, in light of the Debtors' diminishing liquidity, a sale of the Debtors' remaining assets through a competitive bidding process would maximize the value of such assets for the benefit of the Debtors and their stakeholders. Accordingly, in September 2024 the Debtors and their M&A advisor, Bank Street Group LLC ("**Bank Street**"), launched the Prepetition Sale Process.

3. On the eve of these chapter 11 cases, after eight months of marketing the Debtors' business to more than 85 potential purchasers, the Debtors executed the Stalking Horse Agreement. The Stalking Horse Agreement provided a purchase price of \$285 million (subject to purchase price adjustments) plus certain assumed liabilities, subject to higher or otherwise better bids.

### ***II. Bidding Procedures Order and Related Notices***

4. The Motion (the "**Bidding Procedures Motion**"), which was filed on the Petition Date, was granted on June 24, 2025, pursuant to that certain *Order Establishing Bidding Procedures Relating to Sale of Debtors' Assets* (Docket No. 216) (the "**Bidding Procedures Order**"), whereby, among other things, the Court approved the bidding procedures attached thereto (the "**Bidding Procedures**"), set a hearing to consider the proposed Sale Transaction for

August 1, 2025 (the “**Sale Hearing**”), and approved the form and manner of notice for the Sale Hearing and Sale Transaction (the “**Sale Notice**”).

5. In accordance with the Bidding Procedures, the Debtors (i) filed and served the Sale Notice on the Sale Notice Parties (as defined in the Bidding Procedures Motion) and all known creditors and other interested parties on June 25, 2025 and July 8, 2025, *see Certificates of Service* (Docket Nos. 222, 282), and (ii) caused the Sale Notice to be published in the national edition of the *New York Times* on June 30, 2025, *see Affidavit of Publication of the New York Times Regarding the Notice of Sale, Bidding Procedures, Auction, and Sale Hearing* (Docket No. 226).

6. On July 24, 2025, the Debtors filed and caused to be served on all applicable counterparties (i) a list of each executory contract that may be assumed and assigned as part of the Sale Transaction and (ii) a good faith estimate of the cure costs associated with each contract.

### ***III. Postpetition Marketing Process and Auction***

7. Following entry of the Bidding Procedures Order, Bank Street, along with the Debtors and the Debtors’ other advisors, including the Debtors’ investment banker, PJT Partners LP, worked diligently to solicit interest in the Assets, contacting potential bidders, answering diligence questions, and coordinating a competitive bidding process. Those efforts culminated in the receipt of two binding bids in addition to the Stalking Horse Bid. On July 21, 2025, the Debtors filed the *Notice of Designation of Qualified Bidders and Starting Bid* (Docket No. 289) (the “**Pre-Auction Notice**”), which announced the bid submitted by Metro Comm as the starting bid and named two other bidders as Qualified Bidders (as defined in the Bidding Procedures) for the Auction.

8. In accordance with the Bidding Procedures Order, on July 22, 2025, the Debtors commenced an auction (the “**Auction**”). The Auction was active for over twelve hours and included multiple rounds of competitive bidding. During the Auction, to increase efficiency and promote a competitive environment, the Debtors made certain modifications to the Auction procedures provided by the Debtors to the Qualified Bidders, including implementation of time limits, formal “rounds” with each bidder permitted to “skip” bidding in a round only once during the course of the Auction, and increased Minimum Overbid Amounts, in each case, in consultation with the Consultation Parties and consistent with the Bidding Procedures.

9. As the Auction progressed, and following several rounds of active bidding, Fiber TopCo LLC, the third Qualified Bidder, announced that it would not place an additional overbid and withdrew from the Auction.

10. The Auction continued with two Qualified Bidders—Bluebird and Metro Comm—continuing to compete for several additional hours, primarily over purchase price, assumed liabilities, and provisions related to regulatory approvals. After additional rounds of bidding, Metro Comm announced that it had also decided not to increase its bid any further, leaving Bluebird as the highest or otherwise best bid and as the Back-Up Bidder at the conclusion and closing of the Auction.

***IV. Successful Bid, Back-Up Bid, and Proposed Sale Transaction***

11. The Debtors, in consultation with the Consultation Parties and with the reasonable consent of the OpCo Agent (on behalf and at the direction of the Required OpCo Lenders (as defined in the Bidding Procedures)) and the DIP Agent (on behalf and at the direction of the Required DIP Lenders (as defined in the Bidding Procedures)), thus selected Bluebird’s bid as the winning bid (such bid, the “**Successful Bid**”) and Metro Comm’s bid as the back-up bid

(such bid, the “**Back-Up Bid**”) for the purchase of the Assets pursuant to the respective purchase agreements. The Successful Bid, which has a base price of \$384.6 million plus certain assumed liabilities (subject to certain purchase price adjustments), represents the highest or otherwise best offer for the Assets. The Back-Up Bid, which has a base price of \$366 million, plus certain assumed liabilities (subject to certain purchase price adjustments) represents the next highest or otherwise best offer for the Assets.

12. In accordance with the Bidding Procedures Order, concurrent herewith, the Debtors also filed a proposed form of order (the “**Sale Order**”) as Exhibit A to the *Notice of Filing Proposed Order (A) Approving Sale of Debtors’ Assets, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief*, which will be noticed on all Sale Notice Parties. For the reasons set forth herein and the Bidding Procedures Motion, the Debtors now seek entry of the Sale Order.

### Supplement

#### **A. Sale Transaction Should be Approved as Exercise of Debtors’ Business Judgment**

13. Section 363(b) of the Bankruptcy Code provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have found that a debtor’s sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate “some articulated business justification.” See *Institutional Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (citing *Comm. of Equity Sec.*

*Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C.)*, 650 F.3d 650, 601 (5th Cir. 2011); *In re Cowin*, No. 13-30984 (JB), 2014 WL 1168714, at \*38 (Bankr. S.D. Tex. Mar. 21, 2014); *West v. Flores (In re St. Marie Clinic PA)*, No. 10-70802 (MI), 2013 WL 5221055, at \*9 (Bankr. S.D. Tex. Sept. 17, 2013); *In re Particle Drilling Techs., Inc.*, No. 09-33744 (MI), 2009 WL 2382030, at \*2 (Bankr. S.D. Tex. July 29, 2009). As long as a transaction “appears to enhance a debtor’s estate, court approval of a debtor-in-possession’s decision to [enter into the transaction] should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code.” *Richmond Leasing Co. v. Cap. Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (citation omitted).

14. The Debtors have a sound business justification for selling the Assets to the Successful Bidder, which the Debtors believe is the highest or otherwise best offer for the Assets.<sup>5</sup> In addition, in the event the Sale Transaction with the Successful Bidder is not consummated, the Debtors have a sound business justification for selling the Assets to the Back-Up Bidder, which is the next highest or otherwise best offer for the Assets. Prior to the Petition Date, and after considering various alternatives, the Debtors concluded that a sale of the Assets pursuant to a competitive bidding process was the most value-maximizing path forward for the Debtors and their stakeholders. *See* Initial Henry Decl. ¶ 10. Accordingly, the Debtors commenced a robust eight-month prepetition marketing process, secured the Stalking Horse Bid, and established and received Court approval of the Bidding Procedures that provided an additional 50-day postpetition

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<sup>5</sup> Since October 2023, the Debtors, with the assistance of their advisors, tested the willingness of bidders to broaden the sale perimeter to include assets related to the PA Business, but no party signaled a sustained interest in acquiring such assets throughout the Debtors’ prepetition and postpetition marketing processes, until Metro Comm modified its bid (which has been designated as the Back-Up Bid) to include these assets at the Auction. *See* Initial Henry Decl. ¶ 17.

marketing period for the Assets. The Bidding Procedures established a process to reach the highest or otherwise best offer for the Assets, allowing sufficient time to market the Assets on a postpetition basis while encouraging competition with the Stalking Horse Bid. As a result, each of the Successful Bid and the Back-Up Bid represents a significant improvement from the Stalking Horse Bid. The Debtors and their advisors conducted their postpetition sale process in compliance with the Bidding Procedures Order and the Debtors believe all participating parties conducted themselves in compliance with the same. In light of the foregoing, the Debtors believe that the sale process was fair and reasonable and the Sale Transaction with the Successful Bidder or, if not consummated, the Back-Up Bidder, should be approved as a sound exercise of the Debtors' business judgment.

**B. Buyer Is a "Good-Faith" Purchaser Entitled to Protections under Bankruptcy Code Sections 363(m) and 363(n)**

15. Pursuant to section 363(m) of the Bankruptcy Code, a good-faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *O'Dwyer v. O'Dwyer (In re O'Dwyer)*, 611 F. App'x 195, 200 (5th Cir. 2015); *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014); *Hardage v. Herring Nat'l Bank*, 837 F.2d 1319, 1323 (5th Cir. 1988); *see also In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (holding that, to constitute lack of good faith, a party's conduct in connection with the sale must usually amount to fraud, collusion between the buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders). In other words, a party would have to show fraud or collusion between the successful bidder and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. An appropriate characterization of good faith in a bankruptcy sale is a lack of "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take

grossly unfair advantage of other bidders.” *Bleufontaine, Inc. v. Roland Int’l (In re Bleufontaine, Inc.)*, 634 F.2d 1383, 1388 n.7 (5th Cir. 1981) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

16. The Debtors believe that the Buyer—whether the Successful Bidder or the Back-Up Bidder, as applicable—is a “good faith” purchaser within the meaning of section 363(m), and that the terms of the WholeCo APA were negotiated at arm’s length and in good faith without any collusion or fraud. As further described in the Supplemental Henry Declaration, the Debtors believe that all parties, including the Buyer, complied with the Bidding Procedures and Bidding Procedures Order during the postpetition sale process. See Supp. Henry Decl. ¶ [16]. Accordingly, the Buyer is entitled to the protections of sections 363(m) and 363(n) of the Bankruptcy Code.

**C. Sale Should Be “Free and Clear” of Liens, Claims, and Encumbrances Pursuant to Bankruptcy Code Section 363(f)**

17. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As section 363(f) is stated in the disjunctive, when proceeding pursuant to section 363(f), it is only necessary to meet one of the five conditions of section 363(f). See *Port of Corpus Christi Auth. v. Sherwin Alumina Co., L.L.C. (In re Sherwin Alumina Co., L.L.C.)*, 952 F.3d 229, 234 & n\*18 (5th Cir. 2020); *In re Nature Leisure Times, LLC*, No. 06-41357 (BTR), 2007 WL 4554276, at \*3 (Bankr. E.D. Tex. Dec. 19, 2007) (“The language of § 363(f) is in the disjunctive such that a sale free and clear of an interest can be approved if any one of the aforementioned conditions contained in § 363(f) are satisfied.”). Under 363(f)(2), where the debtor provides adequate notice of a transaction, a party’s lack of objection to the sale

constitutes consent under section 363(f)(2). *See Pelican Homestead & Sav. Ass'n v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985); *In re TAO-SAHI, LP*, No. 11-52027 (RBK), 2012 WL 3550897, at \*11 (Bankr. W.D. Tex. 2012 April 19, 2012) (finding that interest holders that did not object to plan or sale were deemed to have consented under section 363(f)(2)); *Futuresource L.L.C. v. Reuters Ltd.*, 312 F.3d 281, 285–86 (7th Cir. 2002); COLLIER ON BANKRUPTCY ¶ 363.06 [3] (16th ed. 2025) (consent required by section 363(f)(2) “may be implied from circumstances surrounding the sale”). Moreover, under section 363(f)(5), assets can be sold free and clear if an entity with an interest therein could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f)(5). *See, e.g.*, COLLIER ON BANKRUPTCY ¶ 363.06 (16th ed. 2025) (“Applicable nonbankruptcy law may recognize a monetary satisfaction when the lienholder is to be paid in full out of the proceeds of the sale or otherwise.”).

18. The Sale Transaction satisfies or will satisfy section 363(f) of the Bankruptcy Code. First, the OpCo Lenders, the HoldCo Lenders, and the DIP Lenders have consented to the Sale Transaction and all other parties in interest with claims, liens, encumbrances, or other interests in the Assets have been provided adequate notice of the Sale Transaction. Absent any objection therefrom which is not otherwise resolved, section 363(f)(2) will have been satisfied. Second, the Sale Order provides that all claims, liens, encumbrances, and other interests will attach to the proceeds of the Sale Transaction in the order of priority which they now have against the Assets.

**Waiver of Stays Pursuant to Bankruptcy Rules 6004 and 6006**

19. To implement the foregoing successfully, the Debtors request a waiver of any stay applicable to the Sale Order, including the stays set forth in Bankruptcy Rules 6004(h) and 6006(d). In light of the Debtors' current financial condition, the Sale Transaction should be

consummated as soon as practicable to allow the Debtors to maximize the value of their estates. Moreover, consummation of the Sale Transaction will require certain regulatory approvals, which will be obtained more efficiently if the Debtors quickly obtain a final order approving the Sale Transaction. The Debtors cannot afford further delay in advancing those approval processes. Accordingly, the Debtors represent that ample cause exists to justify the Debtors' request that the Sale Order be effective immediately upon entry and that the fourteen-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) be waived, to the extent such stays apply.

**Notice**

20. Notice of this Supplement will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and the Sale Notice Parties (as defined in the Bidding Procedures Motion), and any other party entitled to notice pursuant to Bankruptcy Local Rule 9013-1(d).

Dated: July 24, 2025  
Houston, Texas

/s/ Clifford W. Carlson

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**Certificate of Service**

I hereby certify that on July 24, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Clifford W. Carlson  
Clifford W. Carlson