



COURT FILE NO. 2301-07385

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Calgary

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

AND IN THE MATTER OF CYXTERA TECHNOLOGIES,  
INC., CYXTERA CANADA, LLC, CYXTERA  
COMMUNICATIONS CANADA, ULC and CYXTERA  
CANADA TRS, ULC

APPLICANTS CYXTERA TECHNOLOGIES, INC., CYXTERA CANADA,  
LLC, CYXTERA COMMUNICATIONS CANADA, ULC AND  
CYXTERA CANADA TRS, ULC

DOCUMENT APPLICATION

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
FILING THIS  
DOCUMENT

Gowling WLG (Canada) LLP  
1600, 421 – 7th Avenue S.W.  
Calgary, AB T2P 4K9

Telephone (403) 298-1946

File No. A171290

**Attention: Tom Cumming/Sam Gabor/Stephen Kroeger**

#### NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: July 4, 2023  
Time: 2:00 P.M. (Mountain Time)  
Where: Calgary Court Centre  
Via Webex: See attached Appendix "A"  
<https://albertacourts.webex.com/meet/virtual.courtroom02>  
Before: The Honourable Justice Nixon

Go to the end of this document to see what you can do and when you must do it.

**Application and remedy sought:**

1. The Applicant, Cyxtera Technologies, Inc. ("**CTI**"), in its capacity as foreign representative (in such capacity, the "**Foreign Representative**") of Cyxtera Canada LLC ("**Cyxtera LLC**"), Cyxtera Communications, ULC ("**Communications ULC**") and Cyxtera Canada TRS, ULC ("**TRS ULC**", and with Communications ULC, "**Cyxtera Canada**", and with Cyxtera LLC, the "**Debtors**") in their cases (the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States *Bankruptcy Code* (the "**US Bankruptcy Code**") before the United States Bankruptcy Court for the District of New Jersey (the "**US Bankruptcy Court**"), makes this application for an order, substantially in the form attached hereto as **Schedule "A"**:

- (a) recognizing and giving effect in Canada to the following second day orders (collectively, the "**Second Day Orders**") of the US Bankruptcy Court pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), each as defined in the Affidavit of Eric Koza #2 sworn June 30, 2023 ("**Koza Affidavit #2**"):
  - (i) Bidding Procedures Order;
  - (ii) Final Consolidated Creditor List Order;
  - (iii) Final Hedging Order;
  - (iv) Second Interim Cash Management Order;
  - (v) Final Utility Adequate Assurance Order;
  - (vi) Final Critical Vendor Order;
  - (vii) Final Customer and Partner Program Order;
  - (viii) Final Employee Compensation Order;

- (ix) Final Insurance Maintenance Order; and
- (x) Final Tax Payment Order; and
  
- (b) approving the professional fees, costs and disbursements of Gowling WLG (Canada) LLP (“**Gowling WLG**”) as counsel for the Foreign Representative and the Debtors for the period May 23, 2023, up to and including June 26, 2023, as set out in Koza Affidavit #2;
- (c) approving the professional fees, costs and disbursements for Alvarez & Marsal Canada Inc., in its capacity as the information officer in these Recognition Proceedings (the “**Information Officer**”), for the period of May 23, 2023, up to and including June 23, 2023;
- (d) approving the professional fees, costs and disbursements for the Information Officer’s counsel, McMillan LLP (“**McMillan**”), for the period of May 23, 2023, up to and including June 27, 2023;
- (e) providing such further and other relief as this Honourable Court may deem appropriate.

**The grounds for this application are:**

2. CTI is a US corporation incorporated pursuant to the laws of Delaware with its main office in Coral Gables, Florida and its registered office in Wilmington, Delaware. CTI is the ultimate parent corporation of a group of companies operating under the tradename “Cyxtera” that are incorporated in the US, Canada, United Kingdom, Germany, Australia, Japan, the Netherlands, Hong Kong, Singapore and the Cayman Islands and certain of which are debtors in the Chapter 11 Proceedings (CTI, together with the Debtors and their affiliates being collectively referred to as “**Cyxtera**” or the “**Cyxtera Group**”).

3. Cyxtera LLC is a US limited liability corporation incorporated pursuant to the laws of Delaware with its registered office in Wilmington Delaware, whose sole activity is to hold all of the shares in the capital of Communications ULC.

4. Communications ULC is an Alberta unlimited liability corporation incorporated pursuant to the laws of Alberta. Communications ULC's registered office is in Calgary, Alberta and it is extra-provincially registered and carries on business in British Columbia, Ontario and Québec, where its data centers are located.

5. TRS ULC is an Alberta unlimited liability corporation incorporated pursuant to the laws of Alberta and with its registered office in Calgary, Alberta. Although TRS ULC does not have operations, it is extra-provincially registered in British Columbia, Ontario and Québec. Communications ULC is the sole shareholder of TRS ULC.

6. Cyxtera is a leading global data center provider of: (i) retail colocation—the practice of renting space and power to customers to deploy their technology infrastructure including servers, storage, and security devices in an extremely resilient and highly connected environment; (ii) interconnection services—the practice of connecting information technology equipment to a customer's network service providers; and (iii) digital exchange services—the practice of offering customers additional resources including the ability to rent Cyxtera-owned servers or the ability to access partner-delivered products and software to help customers holistically manage their hybrid technology systems. Cyxtera offers this advanced suite of services to more than 2,000 customers worldwide. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees worldwide and operates more than sixty data centers in over thirty markets around the world, including the US, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

7. On June 4, 2023 (the “**Petition Date**”), sixteen (16) Cyxtera entities, including CTI, the Debtors and other affiliates (collectively the “**Chapter 11 Debtors**”), filed voluntary petitions for relief under Chapter 11 of the US Bankruptcy Code in the US Bankruptcy Court, commencing the Chapter 11 Cases, whereupon an automatic stay of proceedings against the Chapter 11 Debtors

came into effect under the Bankruptcy Code. The Chapter 11 Debtors are operating their business and managing their properties as debtors-in-possession within the Chapter 11 Cases.

8. Contemporaneously with filing the petitions commencing the Chapter 11 Cases, the Chapter 11 Debtors filed first day motions therein (“**First Day Motions**”), which were heard on June 6, 2023 (the “**First Day Hearing**”), where they sought and obtained certain procedural and substantive orders from the US Bankruptcy Court (collectively the “**First Day Orders**”). Some of the First Day Orders could be obtained in final form at or shortly after the First Day Hearing (“**First Day Final Orders**”), while others could only be obtained as interim orders (the “**First Day Interim Orders**”). The First Day Interim Orders could become final orders on or before a second hearing before the US Bankruptcy Court (the “**Second Day Hearing**”).

9. At the First Day Hearing on June 6, 2023, the US Bankruptcy Court granted the First Day Final Orders and First Day Interim Orders.

10. Pursuant to an originating application to this Honourable Court by the Foreign Representative on behalf of the Debtors under Part IV of the CCAA (the proceedings commenced thereby being the “**Recognition Proceedings**”), this Honourable Court on June 7, 2023 granted:

- (a) an Initial Recognition Order – Foreign Main Proceeding, *inter alia*, recognizing the Chapter 11 Cases as foreign main proceedings and recognizing the Foreign Representative as foreign representative of the Debtors in the Chapter 11 Cases for the purposes of Part IV of the CCAA; and
- (b) a Supplemental Order – Foreign Main Proceeding, *inter alia*, recognizing and giving effect in Canada to the First Day Final Orders and First Day Interim Orders, appointing Alvarez & Marsal Canada Inc. as Information Officer in the Recognition Proceedings, granting a super-priority administration charge over the Debtors assets in Canada in favour of the Information Officer, counsel to the Information Officer and Canadian counsel to the Chapter 11 Debtors, and granting a super-priority charge over the assets of the Debtors in Canada in favour of the debtor-in-possession lenders to the Chapter 11 Debtors.

### **Recognition of the Second Day Orders is Appropriate**

11. At the Second Day Hearing before the US Bankruptcy Court, which is to be held on or before June 29, 2023, the Chapter 11 Debtors are seeking to have the US Bankruptcy Court grant the Second Day Orders. The Second Day Orders referred to at paragraph 1(a) above encompass certain First Day Interim Orders which the Chapter 11 Debtors are seeking to obtain final orders, as well as the Bidding Procedures Order. It is anticipated that the US Bankruptcy Court will grant some or all of the Second Day Orders, and enter the Second Day Orders either before the Second Day Hearing based on certificates of no objection filed by the Chapter 11 Debtors, or at or shortly after the Second Day Hearing.

12. Section 49 of the CCAA grants this Honourable Court broad discretion to make any order that it considers appropriate in the Recognition Proceedings if it is satisfied that the order is necessary for the protection of a debtor company's property or the interests of its creditors.

13. The recognition of the Second Day Orders in Canada is necessary for the protection of the Debtors' property and the interests of the Debtors' creditors and furthers the policies contemplated by section 44 of the CCAA, namely:

- a) cooperation between this Honourable Court and the US Bankruptcy Court,
- b) the fair and efficient administration of the Chapter 11 Cases and these Recognition Proceedings to protect the interests of creditors, other interested persons and the Debtors,
- c) protecting and maximizing the value of the Debtors' properties, and
- d) to enhance the prospects of rescuing the financially troubled business of the Chapter 11 Debtors.

14. Accordingly, CTI requests that the Second Day Orders be recognized and given effect in Canada by this Honourable Court pursuant to section 49 of the CCAA.

### **Professional Fees and Disbursements**

15. The account of Gowling WLG as Canadian counsel for the Foreign Representative and Debtors, as attached to the Koza Affidavit #2, reflects the work performed by Gowling, and the account is accurate, fair and reasonable.

16. The accounts of the Information Officer and McMillan reflect the work performed by them respectively, and their accounts are accurate, fair and reasonable.

### **Further Grounds**

17. The further and other grounds set out in the Koza Affidavit #2.

### **Affidavit or other evidence to be used in support of this application:**

18. Affidavit of Eric Koza, sworn June 6, 2023.

19. Affidavit of Eric Koza #2, sworn June 30, 2023.

20. Secretarial Affidavit of Kristy DeIure, sworn June 7, 2023.

21. Secretarial Affidavit of Kristy DeIure, sworn June 30, 2023.

22. Affidavit of Service of Kristy DeIure, to be sworn.

23. First Report of the Alvarez & Marsal Canada Inc. in its capacity as Information Officer in these recognition proceedings.

24. The materials filed in the Chapter 11 Proceedings.

25. Such further materials as counsel may advise and this Honourable Court may permit.

### **Applicable Acts and regulations:**

26. The *Companies' Creditors Arrangement Act*, RSC 1995, c C-36, as amended.

27. The Alberta *Rules of Court*.
28. Such further and other legal basis as counsel may advise and this Honourable Court may allow.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings as against the applicant(s) and as against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice of them to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.



**Appendix “A”**  
**Virtual Court Room Details**

**Virtual Courtroom 02** has been assigned for the following matter:

Date: Jul 04, 2023 02:00 PM

Style of Cause: 2301 07385 - CYXTERA TECHNOLOGIES INC. v. COMPANIES  
CREDITORS ARRANGEMENT ACT

Presiding Justice: NIXON (D.B.),

**Virtual Courtroom Link:**

**<https://albertacourts.webex.com/meet/virtual.courtroom02>**

**Instructions for Connecting to the Meeting**

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom 15 minutes prior to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

**<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>**

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

***Please note this email is responsible for Webex information only. If you have questions about procedure or concerns with your matter, please contact the appropriate Court Coordinator or Judicial Assistant for further assistance.***

**SCHEDULE “A”**

COURT FILE NO. 2301-07385

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COMMUNICATIONS CANADA, ULC and CYXTERA  
CANADA TRS, ULC

APPLICANTS CYXTERA TECHNOLOGIES, INC., CYXTERA CANADA,  
LLC, CYXTERA COMMUNICATIONS CANADA, ULC and  
CYXTERA CANADA TRS, ULC

DOCUMENT **ORDER – RECOGNITION OF FOREIGN ORDERS**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
FILING THIS  
DOCUMENT

Gowling WLG (Canada) LLP  
1600, 421 – 7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 4K9  
Telephone (403) 298-1946  
File No. A170537  
**Attention: Tom Cumming/Sam Gabor/Stephen Kroeger**

**DATE ON WHICH ORDER WAS  
PRONOUNCED:** July 4, 2023

**NAME OF JUSTICE WHO MADE THIS  
ORDER:** The Honourable Mr. Justice B. Nixon

**LOCATION AT WHICH ORDER WAS  
MADE:** Calgary, Alberta

UPON THE APPLICATION made by Cyxtera Technologies, Inc. in its capacity as the foreign representative (the “**Foreign Representative**”) of Cyxtera Canada, LLC, Cyxtera Communications Canada, ULC and Cyxtera Canada TRS, ULC (collectively the “**Debtors**”) in

their proceedings commenced by voluntary petitions for relief under Chapter 11 of title 11 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) filed on June 4, 2023 in the United State Bankruptcy Court of New Jersey (the “**Foreign Proceedings**”), for the following Order under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”);

AND UPON reading the Application, the Affidavit of Eric Koza sworn June 6, 2023, the Affidavit of Eric Koza #2 sworn June 30, 2023 (the “**Koza Affidavit #2**”), the Secretarial Affidavit of Kristy DeLure sworn June 7, 2023, the Secretarial Affidavit of Kristy DeLure sworn June 30, 2023, the first report of Alvarez and Marsal Canada Inc. (in such capacity, the “**Information Officer**”), in its capacity as information officer dated June 30, 2023 (the “**First Information Officer Report**”) each filed; and

AND UPON hearing the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and such other counsel that appeared on the application, no one else appearing although duly served as appears from the affidavit of service of Kristy DeLure sworn June \_\_\_, 2023;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The time for service of the notice of this application and supporting materials is hereby abridged and declared good and sufficient and validated so that this application is properly returnable today and further service thereof is hereby dispensed with.

**RECOGNITION OF FOREIGN ORDERS**

2. The following orders (collectively, the “**Foreign Orders**”) of United States Bankruptcy Court of the District of New Jersey made in the Foreign Proceedings, each as defined in the Koza Affidavit #2, are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

(a) Bidding Procedures Order, a copy of which is attached hereto as **Schedule “A”**;

- (b) Final Consolidated Creditor List Order, a copy of which is attached hereto as **Schedule “B”**;
- (c) Final Hedging Order, a copy of which is attached hereto as **Schedule “C”**;
- (d) Second Interim Cash Management Order, a copy of which is attached hereto as **Schedule “D”**;
- (e) Final Utility Adequate Assurance Order, a copy of which is attached hereto as **Schedule “E”**;
- (f) Final Critical Vendor Order, a copy of which is attached hereto as **Schedule “F”**;
- (g) Final Customer and Partner Program Order, a copy of which is attached hereto as **Schedule “G”**;
- (h) Final Employee Compensation Order, a copy of which is attached hereto as **Schedule “H”**;
- (i) Final Insurance Maintenance Order, a copy of which is attached hereto as **Schedule “I”**; and
- (j) Final Tax Payment Order, a copy of which is attached hereto as **Schedule “J”**.

## **GENERAL**

3. The account of the Foreign Representative’s and Debtors’ legal counsel, Gowling WLG (Canada) LLP, for its professional fees, costs and disbursements, as set out in the Koza Affidavit #2, is hereby approved without the necessity of a formal assessment of its accounts.

4. The account of the Information Officer, for its professional fees, costs and disbursements, as set out in the First Information Officer Report, is hereby approved without the necessity of a formal assessment of its accounts.

5. The account of McMillan LLP, as legal counsel for the Information Officer, for its professional fees, costs and disbursements, as set out in the First Information Officer Report, is hereby approved without the necessity of a formal assessment of its accounts.

6. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or globally, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

7. Each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

8. Any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Information Officer and their respective legal counsel, Goodmans LLP, as Canadian counsel to the DIP/First Lien Group (as defined in the Initial Recognition Order – Foreign Main Proceeding in these CCAA proceedings dated June 7, 2023), and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

9. This Order shall be effective as of 12:01 A.M. MST on the date of this Order.

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Justice of the Court of King's Bench of Alberta