B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Northern District of Texas		PROOF OF CLAIM
Name of Debtor: FiberTower Network Services Corp., et al.	Case Number: 12-44027-DML-11	
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*		
Name of Creditor (the person or other entity to whom the debtor owes money or property): United States Government - Acting by and through the Administrator of General Services		COURT USE ONLY
Name and address where notices should be sent: Jackson T. Reams, Assistant Regional Counsel, 301 7th Street SW, Suite 7048, Washington, DC 20407 Telephone number: 202-708-3295 email: jackson.reams@gsa.gov		☑ Check this box if this claim amends a previously filed claim. Court Claim Number: 225 or 348 (*If known*) Filed on: 11/30/2012
Name and address where payment should be sent (if different from above): U.S. General Services Administration, P.O. Box 301511, Los Angeles, CA, 90030-1511 Telephone number: email:		☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

RECEIVED
OCT 28 2013
BMC GROUP

1. Amount of Claim as of Date Case Filed: $ $6,239.07, now $464.25

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: Unpaid rent for tower leases atop Federal buildings in DC.
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____

Annual Interest Rate _____ % ☐ Fixed or ☐ Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $_____

Basis for perfection: _____

Amount of Secured Claim: $_____

Amount Unsecured: $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(__).

Amount entitled to priority: $_____

FiberTower
00638

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adj.....*

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☑ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Gary Shipley
Title: Program Manager, Antenna & Outleasing
Company: U.S. General Services Administration
Address and telephone number (if different from notice address above):
301 7th Street SW
Washington DC 20407

(Signature) Gary Shipley (Date) 10/23/13

Telephone number: 202-260-0692 email: gary.shipley@gsa.gov

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

GSA

MEMORANDUM

From: Gary Shipley
Program Manager
Critical Infrastructure Development

Date: October 23, 2013

Subject: Summary in Support of Amended Proof of Claim
In re FiberTower Network Services Corp. et al.
Case Number 12-44027-DML-11

Pursuant to 40 U.S.C. 581(h), the United States General Services Administration (GSA) leases space atop its buildings to FiberTower Network Services Corporation (FiberTower). The applicable FiberTower leases have been assigned the following contract numbers:

GS-06-11-1101
GS-06-11-1018
GS-06-11-1019
GS-06-11-1020
GS-06-11-1021
GS-06-11-1022
GS-06-11-1038
GS-06-11-1039
GS-06-11-1040
GS-06-11-1041
GS-06-11-1042
GS-06-11-1043

These leases, in aggregate, required that FiberTower pay GSA monthly rent of $11,567.89. *See* Exhibit 1 to GSA's November 30, 2012 Summary in Support of Proof of Claim (listing all applicable leases, the monthly payment required for each lease, and the total monthly payment). Each of these leases requires that FiberTower pay monthly rent "in advance and due on or before the first day of the month throughout the lease term." *See generally* Exhibit 3 to GSA's November 30, 2012 Summary in Support of Proof of Claim (containing all applicable leases).

FiberTower generally made these required payments within a few weeks of their due date. In July 2012, however, FiberTower did not tender a full payment for the month of July. *See* Exhibit 2 to GSA's November 30, 2012 Summary in Support of Proof of Claim (providing detail on FiberTower's July 2012 payment). Instead, FiberTower submitted a July 27, 2012

check for only $5,224.19 of the $11,567.89 due. *Id.* The check was marked with text that stated "Debtor in Possession on -- Case # 12-44027-DML-11." *Id.* Further, the check detail indicated that the payment was "Post-Petition 7/18-7/31." *Id.*

Based on this information, the GSA believes that as of July 1, 2012, FiberTower was obligated to tender payment to the Government of $11,567.89. However, because FiberTower only tendered payment of $5,224.19, GSA believes that FiberTower's July 2012 rent payment is short $6,343.70. This debt is partially offset by the fact that FiberTower had, prior to July 2012, overpaid its rent bills by $104.63. *See* Exhibit 1 to GSA's November 30, 2012 Summary in Support of Proof of Claim (listing all FiberTower payment irregularities). Accordingly, as of November 30, 2012, GSA believed that FiberTower owed the Government $6,239.07.

In June 2013, MCI Communications Services, Inc. submitted a cure payment of $433.82 for Lease GS-06-11-1041, which it had assumed from FiberTower. This payment reduced the amount of funds owed GSA to $5,805.25. GSA later discovered that it held deposits from FiberTower for FiberTower's remaining leases in the amount of $10,362.28.

In a September 3, 2013 letter, the U.S. Department of Justice informed Debtors' counsel that the U.S. General Services Administration intended to recoup unpaid rent from security deposits as permitted under the relevant leases. See Exhibit 1 (detailing basis for legal entitlement to recoup unpaid rent against security deposits). When Debtors' counsel failed to object to this course of action, the Government proceeded with recoupment. A schedule of deposits, amounts owed, amounts recouped and outstanding balances are set forth below.

Lease	Deposit	Amount Owed by Fibertower	Amount Recouped	Balance Outstanding
GS-06-11-1018	$760.65	$433.82	$433.82	$0.00
GS-06-11-1101	$760.65	$464.25	$464.25	$0.00
GS-06-11-1021	$760.65	$1,224.90	$760.65	$464.25
GS-06-11-1022	$1,625.00	$0.63	$0.63	$0.00
GS-06-11-1038	$760.65	$433.82	$433.82	$0.00
GS-06-11-1039	$760.65	$433.82	$433.82	$0.00
GS-06-11-1019	$760.65	$433.82	$433.82	$0.00
GS-06-11-1020	$760.65	$433.82	$433.82	$0.00
GS-06-11-1040	$760.65	$433.82	$433.82	$0.00
GS-06-11-1042	$1,891.43	$1,078.73	$1,078.73	$0.00
GS-06-11-1043	$760.65	$433.82	$433.82	$0.00
TOTALS	**$10,362.28**	**$5,805.25**	**$5,341.00**	**$464.25**

With the exception of Lease GS-06-11-1021, the deposits were sufficient to recoup in full the

amounts owed for each lease. With regard to Lease GS-06-11-1021, the unpaid balance exceeded the deposit. Accordingly, the entire $760.65 deposit was recouped, leaving an unpaid balance on that lease of $464.25. The balance of the deposits after recoupment of $5,341.00 totaled $5,021.28.

As a result, on October 23, 2013, the U.S. Government returned $5,021.28 to Debtors' counsel and is modifying its proof of claim to seek the outstanding unpaid prepetition rent for Lease GS-06-11-1021 in the amount of $464.25.

Exhibit 1

U.S. Department of Justice
Civil Division

Street Address
1100 L St., N.W., Room 10032
Washington, D.C. 20005

Postal Service Address
P.O. Box 875 Ben Franklin Station
Washington, D.C. 20044-0875

LLOYD H. RANDOLPH VOICE: 202-307-0356 FAX: 202-514-9163 E-MAIL: Lloyd.Randolph@usdoj.gov
Senior Trial Counsel

September 3, 2013

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Counsel to the Committee

Re: *Fibertower Network Services Corp.*, Case No. 12-44027-DML-11 (Bankr. N.D. Tex.)

Dear Counsel:

I write on behalf of the General Services Administration ("GSA") to inform you that late last week, GSA found in a GSA account $ 10,362.28 (the "Deposit") collected from debtor FiberTower Network Services Corp. ("FT"). GSA has temporarily frozen the Deposit while GSA (i) considers whether GSA may recoup a portion of the Deposit to satisfy, or (ii) obtains authorization to set off a portion of the Deposit against, GSA's claim against FT of $6,239.07 for unpaid rent (the "GSA Claim"). *See* GSA's November 30, 2012 Proof of Claim filed in this bankruptcy as claim number 225-1 (the "GSA Proof of Claim").

FT entered into twelve separate lease agreements (each, a "GSA Lease") with GSA, a copy of each of which is attached to the GSA Proof of Claim. Before the Petition Date, GSA collected funds from FT "as a security deposit to cover any monies outstanding and due GSA as a result of damage to the leased premises or other damage resulting from [FT's] use of site or from non-performance of a contractual obligation or duty under the terms of this Lease." Leases § 8. The Deposit is the amount so collected and remaining in GSA accounts as of the date FT petitioned for bankruptcy.

GSA's temporary freeze of the Deposit does not violate the automatic stay of section 362(a) of the Bankruptcy Code, 11 U.S.C. § 101 *et* seq. ("Code"). First, "a recoupment is not subject to the

automatic stay of section 362(a)." *In re Holford*, 896 F.2d 176, 179 (5th Cir. 1990) (holding that under the doctrine of recoupment, one party to a lease did not violate the automatic stay by withholding payments under a lease "to the extent the damages equal or exceed the funds withheld" because to this extent, "the debtor has no interest in the funds"). Second, even if GSA is not entitled to recoup any portion of the Deposit, the freezing of the Deposit does not violate the automatic stay because it is "not a setoff within the meaning of [Code] § 362(a)(7)." *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 19 (1995). A *Strumpf*-based "withholding of funds on deposit subject to a set-off" prior to confirmation of a reorganization plan is merely a "*temporary* refusal to perform" that "does not violate the automatic stay." *In re Continental Airlines*, 134 F.3d 536, 539 (3d Cir. 1998) (emphasis added).

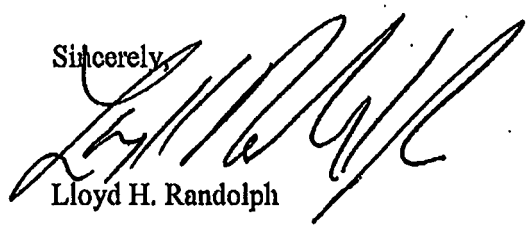
GSA is entitled to recoup that portion of the Deposit needed to satisfy the GSA Claim. Recoupment is available "'where the creditor's claim against the debtor arises from the same transaction as the debtor's claim . . . [because] it is essentially a defense to the debtor's claim against the creditor. . . .'" *In re U.S. Abatement Corp.*, 79 F.3d 393, 398 (5th Cir. 1996) (quoted citation omitted) (holding creditor properly recouped its payments to contractor-debtor's subcontractors to satisfy their liens on creditor's property where debtor had agreed to indemnify creditor for its payments to satisfy subcontractors' liens). As noted above, the Leases (at § 8) give GSA a right to retain the Deposit to cover damages for FT's non-performance of the Leases. FT's claim to the Deposit arises under the very next sentence of the Leases (at § 8): "The security deposit . . . . will be returned after Lease expiration when determination has been made by [GSA] that no more monies are due hereunder." In similar circumstances, courts have acknowledged that unpaid rent may be recouped from security deposits. *In re Karppiah*, 2008 WL 2716855, *5 (Bankr. D. N.J. 2008) (holding that "application of the security deposit to the satisfaction of unpaid . . . rent is a matter of recoupment since the obligations arise from the same lease and involve the same property"); *see also In re Go Fig, Inc.*, 51 Bankr. Ct. Dec. 63, 2009 WL 537090 *6-*7 (Bankr. E.D. Mo. 2009) (stating that recoupment from security deposit would be available in respect of pre-petition claim for breach of lease).

If any of you contends that GSA is not entitled under the doctrine of recoupment to retain the portion of the Deposit equal to the amount of the GSA Claim, please let me know within ten business days from the date of this letter.

Absent any such contention, I will endeavor to have GSA promptly return to FT the Deposit, net of the amount of the GSA Claim, and to withdraw the GSA Proof of Claim. Please inform me promptly of the address to which this portion of the Deposit should be sent.

Please let me know if you have questions or concerns about this matter.

Sincerely,



Lloyd H. Randolph

Northern District of Texas
Claims Register

12-44027-dml11 FiberTower Network Services Corp., et al

Judge: D. Michael Lynn **Chapter:** 11

Office: Ft. Worth **Last Date to file claims:** 12/04/2012

Trustee: **Last Date to file (Govt):**

Creditor: (15173514) United States of America c/o Lloyd H. Randolph, Esq. U.S. Department of Justice P.O. Box Ben Franklin Station Washington, DC 20044-0875	**Claim No: 225** *Original Filed Date:* 11/30/2012 *Original Entered Date:* 11/30/2012 *Last Amendment Filed:* 10/23/2013 *Last Amendment Entered:* 10/23/2013	*Status:* *Filed by:* CR *Entered by:* Lloyd H. Randolph *Modified:*

Amount claimed: $464.25

History:

Details	225-1	11/30/2012	Claim #225 filed by United States of America, Amount claimed: $6239.07 (Randolph, Lloyd)
Details	225-2	10/23/2013	Amended Claim #225 filed by United States of America, Amount claimed: $464.25 (Randolph, Lloyd)

Description: (225-1) unpaid rent on leases of space atop federal buildings (225-2) unpaid rent for leased space atop Federal buildings in DC

Remarks: (225-2) prior claim ($6239.07) reduced by recoupment

Claims Register Summary

Case Name: FiberTower Network Services Corp., et al
Case Number: 12-44027-dml11
Chapter: 11
Date Filed: 07/17/2012
Total Number Of Claims: 1

Total Amount Claimed*	$464.25
Total Amount Allowed*	

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured		
Priority		
Administrative		