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Special FCC Regulatory Counsel to the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § Chapter 11
§
FIBERTOWER NETWORK SERVICES § Case No. 12-44027-DML-11
CORP., *et al.*, §
§ Jointly Administered
Debtors. §

**SUMMARY OF THE THIRD INTERIM APPLICATION OF
LATHAM & WATKINS LLP AS SPECIAL FCC REGULATORY COUNSEL TO THE
DEBTORS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR THE PERIOD JULY 1, 2013 THROUGH OCTOBER 31, 2013**

Name of Applicant: Latham & Watkins LLP ("**L&W**")
Authorized to Provide Professional Services to: The Debtors as Special FCC Regulatory Counsel
Effective Date of Retention: January 2, 2013
Period for which Compensation and Reimbursement is Sought: July 1, 2013 through October 31, 2013 (the "**Interim Period**")
Prior Fee Application: One
Prior Fees Awarded: \$694,027.4
Prior Expenses Awarded: \$1,010.38
Dates of Orders Awarding Prior Fees and Expenses June 11, 2013 and October 10, 2013

Total Fees Requested for Approval for the Interim Period: \$191,126.50¹

Total Expenses Requested for Approval for Interim Period: \$49.72²

Total Monthly Fees Allowed during the Interim Period (80% of Fees): \$60,475.60

Total Monthly Expenses for the Interim Period Allowed during the Interim Period: \$49.72

Total Monthly Fees Payable for the Interim Period Upon Expiration of Applicable Objection Period: \$92,425.60

Total Monthly Expenses Payable for the Interim Period Upon Expiration of Applicable Objection Period: NA

Total Amount of Fee Holdbacks Requested to be Paid: \$38,225.30

L&W TIMEKEEPER SUMMARY FOR THE INTERIM PERIOD

<u>Professional Name</u>	<u>Title</u>	<u>Law School Graduation Year</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
John P. Janka	Partner	1989	46.10	\$965.00	\$44,486.50
James H. Barker	Partner	1990	49.20	965.00	\$47,478.00
David Burns	Counsel	1989	1.80	880.00	\$1,584.00
Jarrett S. Taubman	Counsel	2005	27.60	820.00	\$22,632.00
Matthew T. Murchison	Sr. Associate	2008	99.70	700.00	\$69,790.00
Karen R. Sprung	Prof. Staff	N/A	16.60	260.00	\$4,316.00
Alexandra Liopiros	Project Asst.	N/A	4.20	200.00	\$840.00
Total			245.2		\$191,126.50

¹ This amount includes fees that have been, or may be, paid in part (subject to required holdbacks) pursuant to the Compensation Order.

² This amount includes expenses that have been, or may be, reimbursed pursuant to the Compensation Order.

SUMMARY OF EXPENSES INCURRED DURING THE INTERIM PERIOD

<u>Expense Category</u>	<u>Service Provider (if applicable)</u>	<u>Purpose of Expense (if applicable)</u>	<u>Total Expenses</u>
Telephone	AT&T	See Exhibits A and B	\$20.72
Ground Transportation	N/A	See Exhibit A	29.00
Total			\$49.72

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**THIRD INTERIM APPLICATION OF LATHAM & WATKINS LLP
AS SPECIAL FCC REGULATORY COUNSEL TO THE DEBTORS
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR THE PERIOD JULY 1, 2013 THROUGH OCTOBER 31, 2013**

Latham & Watkins LLP (“**L&W**”), as Special FCC Regulatory Counsel for the debtors and debtors in possession in the above-captioned case (the “**Debtors**”),³ in support of its Third Interim Fee Application (the “**Third Interim Application**”), pursuant to sections 330(a) and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 2016-1 of the Local Bankruptcy Rules for the Northern District of Texas (the “**Local Bankruptcy Rules**”), the U.S. Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 issued by the Executive Office for the U.S. Trustee (the “**UST Guidelines**”), the Guidelines for Compensation and Expense Reimbursement of Professionals

³ The Debtors are FiberTower Network Services Corp., FiberTower Corporation, FiberTower Licensing Corp., and FiberTower Spectrum Holdings LLC.

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OF LATHAM & WATKINS LLP**

promulgated by the U.S. Bankruptcy Court for the Northern District of Texas (the “**Local Guidelines**,” and together with the UST Guidelines, the “**Guidelines**”), and this Court’s *Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals*, dated August 8, 2012 [Docket No. 213] (the “**Compensation Order**”), hereby requests interim allowance of \$191,176.22 (the “**Total Requested Amount**”) for the Interim Period, representing fees in the amount of \$191,126.50, and expenses in the amount of \$49.72. The foregoing amounts include fees and expenses that have been, or may be, paid in accordance with the Compensation Order (subject to applicable holdbacks).

The facts and circumstances supporting this Third Interim Application are set forth in the *Declaration of James R. Barrett in Support of the Third Interim Fee Application of Latham & Watkins LLP as Special FCC Regulatory Counsel to the Debtors for Compensation and Reimbursement of Expenses for the Period July 1, 2013 through October 31, 2013* (the “**Barrett Declaration**”), filed contemporaneously herewith. In further support of this Third Interim Application, L&W respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Bankruptcy Rule 2016-1.

BACKGROUND

3. On July 17, 2012 (the “**Petition Date**”), the Debtors filed with this Court petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are currently operating their businesses as debtors in possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the “**Committee**”) was appointed on July 26,

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OF LATHAM & WATKINS LLP**

2012, by the U.S. Trustee for the Northern District of Texas. No trustee or examiner has been appointed.

4. On August 20, 2012, this Court entered the Compensation Order.

5. The Debtors' Application for Order Authorizing the Employment of Latham & Watkins LLP as Special FCC Regulatory Counsel Pursuant to Section 327(e) of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016 Effective as of January 2, 2013 [Docket No, 554] (the "**Retention Application**") was filed on January 30, 2013.

6. On February 19, 2013, this Court entered its Order Authorizing the Employment of Latham & Watkins LLP as Special FCC Regulatory Counsel Pursuant to Section 327(e) of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016 Effective as of January 2, 2013 [Docket No. 585] (the "**Retention Order**"), approving the Retention Application.

7. On June 11, 2013, this Court entered its Order Granting the First Interim Application of Latham & Watkins LLP as Special FCC Regulatory Counsel to the Debtors for Compensation and Reimbursement of Expenses for the Period January 1, 2013 Through February 28, 2013 [Docket No. 826] (the "**First Interim Order**").

8. On October 10, 2013, this Court entered its Order Granting the Second Interim Application of Latham & Watkins LLP as Special FCC Regulatory Counsel to the Debtors for Compensation and Reimbursement of Expenses for the Period March 1, 2013 Through June 30, 2013 [Docket No. 959] (the "**Second Interim Order**").

DISCLOSURES REQUIRED BY SECTION I OF THE LOCAL GUIDELINES

9. The Debtors, their businesses, and the events giving rise to these chapter 11 cases are described in detail in the Declaration of Kurt Van Wagenen in Support of Chapter 11 Petitions and First Day Motions [Docket No. 2], which is incorporated herein by reference.

10. On May 7, 2013, the Federal Communications Commission ("**FCC**") released an order denying FiberTower's December 7, 2012 Application for Review (the "**Application for Review**") regarding its request for a waiver or extension of the build-out deadlines for certain of

its 24 GHz and 39 GHz licenses. In doing so, the FCC declined to consider evidence that FiberTower presented regarding new facts and circumstances that warranted review. On June 6, 2013, FiberTower timely filed a Petition for Reconsideration of the FCC's order (the "**Petition for Reconsideration**"), arguing that the FCC is obligated to consider such new facts and circumstances. The Petition for Reconsideration remains pending at the FCC, and FiberTower is continuing to advocate before the FCC in connection with its waiver/extension request. In addition, the Debtors hold forty-nine (49) wide-area licenses in the 24 GHz and/or 39 GHz bands that are not subject to the Application for Review and Petition for Reconsideration pending before the FCC. The continued validity of such licenses depends, among other things, on compliance with a variety of FCC rules. Under FCC rules, a license may be terminated if there is a permanent discontinuance of service. FCC staff has informally indicated that it has some questions about whether the facilities authorized by those licenses have been "permanently discontinued," and it has asked for additional information concerning the licenses. For nine of the licenses, the FCC is reviewing substantial service showings filed by FiberTower and has asked for additional information concerning those showings. L&W has been advising and assisting the Debtors with respect to these matters.

11. Further background on these chapter 11 cases is provided by the [*Fourth Interim Application of Andrews Kurth LLP, Counsel to the Debtors, for Allowance of Compensation, Reimbursement of Expenses and Payment of Holdbacks*] [Docket No. 1004] (the "**Andrews Kurth Fee Application**"), which is incorporated herein by reference.⁴

⁴ Pursuant to section I.B of the Local Guidelines, as special counsel to the Debtors, L&W is permitted to incorporate by reference the narrative history furnished in a contemporaneous application.

MONTHLY FEE STATEMENTS

12. This is L&W's Third Interim Application for allowance of compensation and reimbursement of expenses. The Court approved L&W's First Interim Application on June 11, 2013 and its Second Interim Application on October 10, 2013.

13. Pursuant to the Compensation Order, L&W submitted to the Reviewing Parties (as such term is defined in the Compensation Order) its monthly fee statement for the period from July 1, 2013 through July 31, 2013 (the "**July Monthly Fee Statement**"). In the July Monthly Fee Statement, L&W sought compensation for services rendered in the amount of \$32,570.50 and expenses in the amount of \$38.74. No objections were received to the July Monthly Fee Statement and Debtors paid L&W 80% of fees in the amount of \$26,056.40 and 100% of expenses in the amount of \$38.74. The July Monthly Fee Statement is attached hereto as **Exhibit A**.

14. Pursuant to the Compensation Order, L&W submitted to the Reviewing Parties its monthly fee statement for the period from August 1, 2013 through August 31, 2013 (the "**August Monthly Fee Statement**"). In the August Monthly Fee Statement, L&W sought compensation for services rendered in the amount of \$8,564.00 and expenses in the amount of \$10.98. No objections were received to the August Monthly Fee Statement and Debtors paid L&W 80% of fees in the amount of \$6,851.20 and 100% of expenses in the amount of \$10.98. The August Monthly Fee Statement is attached hereto as **Exhibit B**.

15. Pursuant to the Compensation Order, L&W submitted to the Reviewing Parties its monthly fee statement for the period from September 1, 2013 through September 30, 2013 (the "**September Monthly Fee Statement**"). In the September Monthly Fee Statement, L&W sought compensation for services rendered in the amount of \$34,460.00. No objections were received to the September Monthly Fee Statement and Debtors paid L&W 80% of fees in the amount of \$27,568.00. The September Monthly Fee Statement is attached hereto as **Exhibit C**.

16. Pursuant to the Compensation Order, L&W submitted to the Reviewing Parties its monthly fee statement for the period from October 1, 2013 through October 31, 2013 (the "**October Monthly Fee Statement**"). In the October Monthly Fee Statement, L&W sought compensation for services rendered in the amount of \$115,532.00. As of the date hereof, because the Review Period (as such term is defined in the Compensation Order) for the October Monthly Fee Statement has not yet expired, L&W has not received any payments related to the October Monthly Fee Statement. The October Monthly Fee Statement is attached hereto as **Exhibit D**.

RELIEF REQUESTED

17. L&W seeks the entry of an order, substantially in the form attached hereto as **Exhibit E**, (i) granting interim approval of all fees and expenses in the aggregate amount of \$191,176.22 for the Interim Period, representing fees in the amount of \$191,126.50, and expenses in the amount of \$49.72; (ii) approving and directing the Debtors to pay to L&W the sum of \$38,225.00 in holdbacks, plus any other amounts requested for the Interim Period not previously paid pursuant to the Compensation Order; and (iii) granting such other relief as this Court deems proper and just.

CASE STATUS

18. As permitted by section I.B of the Local Guidelines, the description of the case status provided in the Andrews Kurth Fee Application is hereby incorporated by reference as if fully set forth herein.

SUMMARY OF SERVICES PERFORMED

19. As Special FCC Regulatory Counsel to the Debtors, L&W has performed legal services related to the Representative Matters (as such term is defined in the Retention Application).

20. Invoices detailing the services performed by each timekeeper, kept in intervals of tenths of an hour, are included as an attachment to the Monthly Fee Statements.

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21. The fees and expenses incurred by L&W for services rendered in this case are billed at rates and in accordance with practices set forth in the Retention Application.

22. L&W's fees for services rendered fall into the following billing category:

BILLING CATEGORY	DESCRIPTION
FCC Review Proceeding	This billing category includes all matters related to L&W's representation of the Debtors in the Representative Matters (as defined in the Retention Application).
FCC Reorganization	This billing category includes matters relating to L&W's representation of Debtors in connection with the Representative Matters to facilitate FCC consent for the Debtors to exit bankruptcy

23. The total number of hours expended by L&W professionals and paraprofessionals in performing professional services for the Debtors during the Interim Period was 245.2 at an average billing rate of \$779.47.

SUMMARY OF EXPENSES

24. During the Interim Period, L&W incurred actual and necessary expenses related to these chapter 11 cases in the amount of \$49.72. The expenses incurred include telephone charges and ground transportation charges. A summary table of the necessary costs and expenses incurred by L&W is included in the summary charts at the beginning of this Third Interim Application, with more detailed descriptions included in **Exhibits A and B**.

VALUATION OF SERVICES

25. In accordance with sections 330 and 331 of the Bankruptcy Code, the amounts requested for compensation and expense reimbursement are fair and reasonable given (a) the complexity of the Representative Matters, (b) the time expended by the attorneys and paraprofessionals of L&W, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the costs of comparable services. L&W's qualifications, and the bases of L&W's rates and compensation practices, are set forth in the Declaration of John P. Janka accompanying the Retention Application, which is incorporated by reference.

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26. In light of the foregoing, L&W submits that the compensation sought herein is reasonable and in accordance with the standards of sections 330 and 331 of the Bankruptcy Code, and that the expenses for which reimbursement is sought were actual and necessary. Moreover, L&W has reviewed the requirements of the Local Rules, the Guidelines, and the Compensation Order, and believes that this Third Interim Application complies with all.

WHEREFORE, L&W respectfully requests that this Court enter an order (i) granting interim approval of all fees and expenses in the aggregate amount of \$191,176.22 for the Interim Period, representing fees in the amount of \$191,126.50, and expenses in the amount of \$49.72; (ii) approving and directing the Debtors to pay to L&W the sum of \$38,225.30 in holdbacks, plus any other amounts requested for the Interim Period not previously paid pursuant to the Compensation Order; and (iii) granting such other relief as this Court deems proper and just.

Respectfully submitted this 3rd day of December, 2013.

LATHAM & WATKINS LLP

By: /s/James R. Barrett
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James H. Barker (admitted *pro hac vice*)
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CERTIFICATION

The undersigned certifies that (1) he has read the application; (2) to the best of his knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with these guidelines, except as specifically noted in the application; and (3) the compensation and expense reimbursement requested are billed at the rates, and in accordance with the practices, described in the Retention Application.

/s/James R. Barrett

James R. Barrett

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 3rd day of December, 2013, she caused a true and correct copy of the foregoing document to be served upon all parties appearing on the Limited Service List maintained in these chapter 11 cases via first class U.S. mail, postage prepaid.

/s/Michelle V. Larson

Michelle V. Larson