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*Counsel for Texas Ad Valorem Taxing Jurisdictions*

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

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<b>IN RE:</b>		§	
		§	
<b>FIBERTOWER NETWORK SERVICES CORP.,</b>		§	<b>Case No. 12-44027-dml11</b>
<b>et al.,</b>		§	<b>Chapter 11</b>
		§	
<b><i>Debtors.</i></b>		§	<b>(Jointly Administered)</b>
<hr/>		§	

**OBJECTION OF TEXAS AD VALOREM TAXING JURISDICTIONS TO  
DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN**

**To the Honorable D. Michael Lynn,  
United States Bankruptcy Judge:**

NOW COME, the Texas Ad Valorem Taxing Jurisdictions,<sup>1</sup> secured creditors in the above-numbered and styled bankruptcy case, and file this objection to *Debtors' Second Amended Joint Chapter 11 Plan* (the "Plan"). In support of their objection, the Texas Ad Valorem Taxing Jurisdictions would show the Court as follows:

<sup>1</sup> The Texas Ad Valorem Taxing Jurisdictions consist of the following governmental entities: Bexar County, Clear Brook City Mud, City of Coppell, Coppell ISD, Dallas County, Fort Bend County, Galveston County, Harris County WCID #21, Harris County, Hays CISD, Irving ISD, Kaufman County, McLennan County, Round Rock ISD, San Marcos CISD and Tarrant County

1. The Texas Ad Valorem Taxing Jurisdictions are political subdivisions of the State of Texas.

2. The Texas Ad Valorem Taxing Jurisdictions hold administrative claims for personal property ad valorem taxes for tax years 2013 and 2014 on the Debtors' business personal property located in the respective jurisdictions.<sup>2</sup> These property taxes were duly assessed in accordance with the laws of the State of Texas and constitute valid, liquidated secured claims against the Debtors' property, entitled to priority over other secured claims under 11 U.S.C. § 506.

3. The laws of the State of Texas, Property Tax Code, §32.05(b), give the tax liens securing the property taxes superiority over the lien of any other claim or lien against the property. The Texas Ad Valorem Taxing Jurisdictions' claims are for *ad valorem* taxes assessed against the Debtors on January 1 of each year pursuant to Texas Property Tax Code §§ 32.01 and 32.07. These taxes are secured by first priority liens on the property of the Debtors pursuant to Tex. Prop. Tax Code §§ 32.01 and 32.05. The Texas Ad Valorem Taxing Jurisdictions' liens take priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. See Texas Property Tax Code § 32.05 (b); See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. 1995) (bank's foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit's statutory tax lien). The tax lien arises on January 1 of each tax year and "floats" to after acquired property. See City of Dallas v. Cornerstone Bank, 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The tax lien is a lien *in solido* and is a lien on all real and personal property of the Debtor. See In re Universal Seismic, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. See In re: Winns, 177 B.R. 253 (Bankr. W.D. Tex. 1995). These tax claims are entitled to priority

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<sup>2</sup> Harris County also holds a claim for unpaid business personal property taxes for tax year 2012.

as secured claims, senior to other secured claims, according to the Bankruptcy Code, 11 U.S.C. §506. Stanford v. Butler, 826 F.2d 353 (5th Cir. 1987).

4. The Texas Ad Valorem Taxing Jurisdictions object to the Plan to the extent it requires the Texas Ad Valorem Taxing Jurisdictions to file administrative claims for tax year 2014. The Texas Ad Valorem Taxing Jurisdictions have previously filed administrative proofs of claim for the 2013 taxes, which are last payable without penalty and interest on January 31, 2014. The 2014 taxes are not due until January 2015. Accordingly, the Debtors should be required to pay the 2014 taxes in the ordinary course of business without the necessity of local governments having to file administrative claims. 11 U.S.C. § 503(b)(1)(D).

5. In the event, the 2013 taxes are not paid by January 31, 2014, the Texas Ad Valorem Taxing Jurisdictions object to the Plan on the basis that the Plan does not provide for the payment of post-petition penalties and interest on the ad valorem tax claims.

6. The Texas Ad Valorem Taxing Jurisdictions object to the Plan on the basis that it fails to provide for the retention of the Texas Ad Valorem Taxing Jurisdictions' liens on their collateral until such time as the claims are paid. The Plan should not be confirmed unless and until it specifically provides for the Texas Ad Valorem Taxing Jurisdictions' liens for pre- and post-petition taxes to remain on its collateral until the claims, including any applicable penalty and interest, is paid in full.

**[concluded on the following page]**

**WHEREFORE, PREMISES CONSIDERED**, the Texas Ad Valorem Taxing Jurisdictions respectfully pray that this Court sustain their objection to the Plan, that it accordingly deny confirmation of the Plan, and for such other and further relief, at law or in equity, as is just.

Dated: January 8, 2014

Respectfully submitted,

**LINEBARGER GOGGAN  
BLAIR & SAMPSON, LLP**

*/s/ John P. Dillman*

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of *the Texas Ad Valorem Taxing Jurisdictions' Objection to Debtors' Second Amended Joint Chapter 11 Plan* was served upon the entities listed below by either electronic court filing or by placing same, in the United States mail, first class, postage fully prepaid on January 8, 2014:

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/s/ Tara L. Grundemeier  
**Tara L. Grundemeier**