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**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. §

**DEBTORS' MOTION FOR AUTHORITY TO (I) MAKE
POST-CONFIRMATION AMENDMENT TO DEBTORS' FOURTH
AMENDED JOINT CHAPTER 11 PLAN PURSUANT TO 11 U.S.C. § 1127(B) AND (II)
ENTER INTO TRUST AGREEMENT WITH RESPECT TO CERTAIN FCC LICENSES**

The above-captioned debtors and debtors in in possession (collectively, the "Debtors"),¹ for their Motion (the "Motion") for Authority to (i) Make Post-Confirmation Amendment to Debtors' Fourth Amended Joint Chapter 11 Plan [Docket No. 1057] (as amended, modified and supplemented, the "Plan")² Pursuant to 11 U.S.C. § 1127(b) and (ii) Enter into Trust Agreement with Respect to Certain FCC Licenses, respectfully represent:

¹ The Debtors in these chapter 11 cases are: (i) FiberTower Network Services Corp.; (ii) FiberTower Corporation;; (iii) FiberTower Licensing Corp.; and (iv) FiberTower Spectrum Holdings LLC.

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

INTRODUCTION

1. On July 17, 2012 (the "Petition Date"), each of the Debtors filed with this Court a petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code").

2. An official committee of unsecured creditors (the "Committee") was appointed by the Office of the United States Trustee (the "U.S. Trustee") on July 26, 2012. No trustee or examiner has been appointed.

3. The Debtors are operating their businesses and managing their properties as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

5. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

6. On January 17, 2014, the Debtors filed the Plan. The Plan contemplates a reorganization of the Debtors including, among other things, the transfer from FiberTower Spectrum Holdings, LLC to Reorganized FiberTower Spectrum of licenses issued by the FCC that were not terminated pursuant to that certain *Memorandum Opinion and Order* issued by the FCC's Wireless Telecommunications Bureau on November 7, 2012 (collectively, the "FCC Licenses").

7. On January 27, 2014, the Court entered the (i) *Findings of Fact and Conclusions of Law on Debtors' Fourth Amended Joint Chapter 11 Plan and Order Confirming Debtors Fourth Amended Joint Chapter 11 Plan* [Docket Nos. 1066 and 1067] (collectively, the "Confirmation Order"), pursuant to which, the Plan was confirmed.

8. Section 10.2 of the Plan sets forth the conditions precedent to the Effective Date under the Plan. Section 10.2(d) provides as a condition precedent that:

“the Debtors shall have obtained approval from the FCC with respect to the transfer from FiberTower Spectrum Holdings, LLC to Reorganized FiberTower Spectrum of the licenses that were not terminated by the FCC pursuant to the FCC Opinion;”

Moreover, Section 10.3 of the Plan provides:

“Any of the conditions contained in Sections 10.1 and 10.2 of this Plan (with the *exception* of entry of the Confirmation Order and the conditions set forth in Sections 10.2(d) and 10.2(g)), in whole or in part, may be waived only by consent of the Debtors and the Ad Hoc 2016 Committee without notice to or order of the Bankruptcy Court.”

(emphasis added)

9. On February 28, 2014, the FCC approved the transfer from FiberTower Spectrum Holdings, LLC to Reorganized FiberTower Spectrum of forty-six (46) of the forty-nine (49) FCC Licenses (the “Approved Licenses”). Three (3) of the FCC Licenses remain the subject of a pending application before the FCC (the “Pending Licenses”). The Debtors believe that the Approved Licenses constitute substantially all of the aggregate value attributable to the FCC Licenses, albeit the Pending Licenses do have value. Because the FCC has not ruled with respect to the transfer of *all* of the Pending Licenses, however, it is arguable that the condition precedent to effectiveness set forth in section 10.2(d) of the Plan has not been satisfied.

10. As described herein, the Debtors seek authority to amend the Plan (and enter into a Trust Agreement in connection therewith) to make it clear that the Effective Date may occur prior to the FCC’s determination with respect to the transfer of the Pending Licenses to Reorganized FiberTower Spectrum. The Debtors submit that the proposed amendments to the Plan are “immaterial” and that such amendments are both necessary and appropriate to carry out

the purposes and effects of the Plan and in the best interests of the Debtors' estates and parties in interest.

RELIEF REQUESTED

11. By this Motion, pursuant to Section 13.4 of the Plan, Paragraph 34 of the Confirmation Order, and sections 105(a), 363(b) and 1127(b) of the Bankruptcy Code, the Debtors seek the authority to (i) make a post-confirmation amendment to the Plan in substantially the form attached hereto as Exhibit A (the "Plan Amendment") and (ii) transfer the Pending Licenses to a trust (the "Trust") pursuant to a Trust Agreement in the form attached hereto as Exhibit B (the "Trust Agreement").

ARGUMENT AND AUTHORITY

A. THE DEBTORS' PROPOSED PLAN AMENDMENT IS WARRANTED AND PERMISSIBLE PURSUANT TO THE PLAN, THE CONFIRMATION ORDER AND SECTION 1127(B) OF THE BANKRUPTCY CODE

12. Section 13.4 of the Plan and Paragraph 34 of the Confirmation Order each provide, among other things, that in accordance with Section 1127(b) of the Bankruptcy Code, the Debtors may institute proceedings with this Court to make modifications to the Plan as may be necessary to "carry out the purposes and effects of the Plan," provided that such modifications do not materially or adversely affect the treatment of holders of Claims or Equity Interests under the Plan.

13. In accordance with the terms of the Plan, the Confirmation Order and Section 1127(b) of the Bankruptcy Code, the Debtors submit that an amendment to the Plan is warranted under the present circumstances. The FCC has approved the assignment of substantially all of the FCC Licenses to Reorganized FiberTower Spectrum and such Approved Licenses constitute the bulk of value attributable to the FCC Licenses. As described above, however, it is arguable that the Effective Date cannot occur unless the FCC rules with respect to *all* of the FCC Licenses.

14. The Debtors submit that amending the Plan to make it clear that the Plan may go effective prior to the FCC making a determination with respect to the transfer of the three (3) Pending Licenses to Reorganized FiberTower Spectrum is in the best interests of the Debtors' estates and parties in interest. Consequently, the Debtors propose to amend the condition precedent set forth in section 10.2(d) of the Plan. The Debtors' proposed Plan Amendment removes the ambiguity in the Plan and explicitly provides that the Plan may go effective if the FCC Licenses are approved for transfer from FiberTower Spectrum Holdings, LLC to *either* Reorganized FiberTower Spectrum *or* a trust in a form approved by, and subject to the continuing jurisdiction of, this Court.

15. The Debtors submit that such Plan Amendment is immaterial and not adverse to parties in interest. Indeed, the Debtors submit that such amendment is necessary to carry out the purposes and effects of the Plan and will benefit parties in interest. The Plan was confirmed more than six (6) weeks ago and the FCC has approved the transfer to the Reorganized Debtors of substantially all of the FCC Licenses (which constitute substantially all of the aggregate value attributable to the FCC Licenses). Moreover, the transfer of the Pending Licenses from FiberTower Spectrum Holdings, LLC to the Trust shall be subject to the prior approval of the FCC.

16. The Debtors believe that, under the terms of the Plan, the Effective Date could occur now, as the condition precedent in section 10.2(d) has most likely been satisfied. The proposed amendment to the Plan (and other relief requested herein), however, would "cure" the ambiguity in section 10.2(d) of the Plan and allow the Debtors' Plan to go effective, and permit the Debtors to emerge, expeditiously from chapter 11, without any question as to whether the condition in section 10.2(d) has been satisfied. As set forth in the proposed Plan Amendment and

the Trust Agreement, the proposed amendment would preserve the FCC's approval rights with respect to the transfer of the Pending Licenses to both the Trust and Reorganized FiberTower Spectrum (as described below).

B. ENTRY INTO AND PERFORMANCE UNDER THE TRUST AGREEMENT IS PERMISSIBLE UNDER SECTION 363(B) AND 105(A) OF THE BANKRUPTCY CODE

17. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *Cajun Elec. Power Coop., Inc. v. Official Comm. of Unsecured Creditors (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 354 (5th Cir. 1997). To obtain court approval to use, sell or lease property of the estate under section 363(b), the Debtors must show a legitimate business justification for the proposed action. *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986).

18. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of section 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 COLLIER ON BANKRUPTCY ¶ 105.01 (16th ed. rev. 2012) (citing *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995)).

19. In connection with the Plan Amendment, the Debtors propose to form the Trust pursuant to the Trust Agreement substantially in the form of Exhibit B attached hereto. As set forth in the Trust Agreement, FiberTower Spectrum Holdings, LLC shall transfer the Pending Licenses to the Trust. Such transfer shall be subject to prior approval by the FCC and the Trust shall remain subject to the continuing jurisdiction of this Court following the Effective Date.

Thomas Scott, the present *de facto* chief executive officer of the Debtors and the proposed President of the Reorganized Debtors shall serve as Trustee of the Trust.

20. The transfer of the Pending Licenses from FiberTower Spectrum Holdings, LLC to the Trust shall be subject to prior FCC approval. The Trust's purpose will be to hold the Pending Licenses until the application(s) with the FCC relating to the assignment of each of the Pending Licenses to Reorganized FiberTower Spectrum is either granted, denied or withdrawn. During the interim, the Trust will hold the Pending Licenses and this Court shall have jurisdiction over the Trust. When the assignment of each of the Pending Licenses to Reorganized FiberTower Spectrum has been approved or denied by the FCC, or the application(s) with respect to each of the Pending Licenses are withdrawn by the Trust, if applicable, all Pending Licenses that have been approved for assignment by the FCC to Reorganized FiberTower Spectrum will be transferred to Reorganized FiberTower Spectrum and the Trust will terminate.

21. The Debtors submit that sound business reasons exist for entering into, and the Court approving, the Trust Agreement. As described at length above, entry into the Trust Agreement (and the transfer of the Pending Licenses to the Trust) will enable the Debtors' Plan to go effective promptly, while preserving the FCC's right and ability to evaluate the pending application to transfer the Pending Licenses.

22. The transfer of the Pending Licenses from FiberTower Spectrum Holdings, LLC to the Trust shall be subject to FCC Approval. The FCC is familiar with and has consented to the use of trust structures holding FCC licenses in bankruptcy. *See, e.g., Freedom Broadcasting of New York Licensee, LLC*, Letter Order, 27 FCC Rcd 2498 (MB 2012) (granting consent to assignment of broadcast licenses from trust administered by bankruptcy court to new owner as

part of Chapter 11 restructuring); *ION Media Networks Liquidating Trust and Media Holdco, LP*, Memorandum Opinion and Order, 24 FCC Rcd 14579 (MB 2009) (granting consent to transfer of control of licensee subsidiaries from trust administered by bankruptcy court to new owner in connection with emergence from bankruptcy). The 2016 Ad Hoc Group has informed the Debtors that it consents to the relief requested in this Motion.

23. For all of the reasons set forth herein, the Debtors respectfully request that the Court grant this Motion.

NOTICE

24. Notice of this Motion has been provided to: (i) Counsel to the Committee; (ii) the U.S. Trustee; (iii) the FCC; and (iv) the parties appearing on the Limited Service List maintained in these cases. The Debtors respectfully submit that such notice is appropriate and that no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request that the Court enter an Order: (i) granting the relief requested herein and (ii) granting such other and further relief as may be just and proper.

Respectfully submitted this 20th day of March, 2014.

ANDREWS KURTH LLP

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Counsel to the Debtors

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 20th day of March, 2014, he caused a true and correct copy of the foregoing document to be served upon (i) counsel to the Committee, (ii) the U.S. Trustee, (iii) the FCC and (iv) all parties appearing on the Limited Service List maintained in these chapter 11 cases via first class U.S. mail, postage prepaid.

/s/Jeremy B. Reckmeyer

Jeremy B. Reckmeyer

EXHIBIT A

Plan Amendment

EXHIBIT B

Trust Agreement

**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., <i>et al.</i> ,	§	
	§	Jointly Administered
Debtors.	§	

ORDER GRANTING DEBTORS' MOTION FOR AUTHORITY TO (I) MAKE IMMATERIAL POST-CONFIRMATION AMENDMENT TO DEBTORS' FOURTH AMENDED JOINT CHAPTER 11 PLAN PURSUANT TO 11 U.S.C. § 1127(B) AND (II) ENTER INTO TRUST AGREEMENT WITH RESPECT TO CERTAIN FCC LICENSES

Upon the Motion for Authority to (i) Make Immaterial Post-Confirmation Amendment to Debtors' Fourth Amended Joint Chapter 11 Plan Pursuant to 11 U.S.C. § 1127(b) and (ii) Enter into Trust Agreement with Respect to Certain FCC Licenses (the "Motion")³ filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors")⁴ and the Court being satisfied that the relief requested in the Motion is necessary and is in the best interests of the Debtors and their respective estates and creditors; and it appearing that sufficient notice of the

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

⁴ The Debtors in these chapter 11 cases are: (i) FiberTower Network Services Corp.; (ii) FiberTower Corporation; (iii) FiberTower Licensing Corp.; and (iv) FiberTower Spectrum Holdings LLC.

Motion has been given, and that no other or further notice is required; and upon all of the proceedings had before the Court; and the Court having found that the amendments to the Plan are not material or adverse to Holders of Claims against and Interests in the Debtors; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED AS FOLLOWS:

1. The Motion is hereby granted.
2. The Debtors are hereby authorized, pursuant to, among other things, the terms of the Plan, the Confirmation Order and Section 1127(b) of the Bankruptcy Code, to amend the Plan as provided in the Motion and such amendment shall be binding on all Holders of Claims against and Interests in the Debtors and all other parties in interest in these chapter 11 cases and otherwise.
3. The Debtors are hereby authorized, pursuant to, among other things, Sections 363(b)(1) and 105(a) of the Bankruptcy Code, to enter into and perform under the Trust Agreement.
4. Thomas Scott is authorized to serve as the Trustee under and in accordance with the terms of the Trust Agreement. The Debtors are authorized to take all actions as may be necessary to facilitate the implementation of the Trust. The Trust shall continue to be subject to the jurisdiction of this Court until the termination of the Trust on the terms set forth in the Trust Agreement. If, during the pendency of such continuing supervision, the Trustee seeks to implement a transaction outside the ordinary course of business, the Trustee shall be required to obtain the approval of the Court and to serve notice on the Reorganized Debtors and the parties named on the Limited Service List maintained in these cases.

5. The Bankruptcy Court shall retain jurisdiction with respect to any and all matters relating to the Trust, the Trust Agreement and the interpretation and enforcement of this Order.

6. The Debtors shall serve a copy of this Order on the parties appearing on the Limited Service List within five (5) days from the date this Order is entered on the docket.

END OF ORDER