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COUNSEL FOR THE LITIGATION TRUSTEE

**UNITED STATES BANKRUPTCY COURT  
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.	§	

**NOTICE OF FILING OF REPORT OF THE  
LITIGATION TRUSTEE OF THE FIBERTOWER LITIGATION TRUST**

PLEASE TAKE NOTICE THAT Peter S. Kravitz, the litigation trustee (the "*Litigation Trustee*") for the FiberTower Litigation Trust (the "*Litigation Trust*"), the trust established for the benefit of holders of Allowed General Unsecured Claims pursuant to the confirmed plan of reorganization for the above-captioned debtors and debtors in possession hereby submits the attached *Report of the Litigation Trustee of the FiberTower Litigation Trust* (the "*Report*"), attached hereto as Exhibit A, pursuant to Section 4.9(d) of the FiberTower Litigation Trust Agreement.

PLEASE TAKE FURTHER NOTICE THAT the Litigation Trustee has filed Report with the Bankruptcy Court pursuant to pursuant to Section 4.9(d) of the FiberTower Litigation Trust Agreement and will send the attached report to all known beneficiaries of the Litigation Trust.

PLEASE TAKE FURTHER NOTICE THAT the Litigation Trustee will distribute the funds of the Litigation Trust as described in the Report and the Litigation Trust will terminate by its terms upon the entry of a final decree in the above-captioned chapter 11 cases.

DATED: November 19, 2014

By: /s/ Michael D. Warner  
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COUNSEL FOR THE LITIGATION TRUSTEE

**Exhibit A**

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

In re	§	Chapter 11
	§	
FIBERTOWER NETWORK SERVICES CORP., <i>et al.</i> ,	§	Case No. 12-44027-DML-11
	§	
	§	(Jointly Administered)
	§	
Debtors.	§	

**REPORT OF THE LITIGATION TRUSTEE  
FOR THE FIBERTOWER LITIGATION TRUST**

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Peter S. Kravitz, as the litigation trustee (the “*Litigation Trustee*”) for the FiberTower Litigation Trust (the “*Litigation Trust*”), the trust established pursuant to the confirmed plan of reorganization for the above-captioned debtors and debtors in possession (collectively, the “*Reorganized Debtors*,” and, before the effective date of the confirmed plan of reorganization, the “*Debtors*”), hereby submits this report pursuant to Section 4.9(d) of the FiberTower Litigation Trust Agreement (the “*Trust Agreement*”).

**Consummation of the Plan**

1. On January 27, 2014, the Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the Joint Chapter 11 Plan* (the “*Confirmation Order*”) [Docket No. 1066]. Among other things, the Confirmation Order confirmed the *Debtors’ Fourth Amended Joint Chapter 11 Plan* [Docket No. 1057] (as may be modified or amended from time to time, the “*Plan*”) <sup>1</sup> thereby authorizing the Debtors or the Reorganized Debtors, as applicable, to implement the Plan in accordance with its terms. On March 31, 2014 (the “*Effective Date*”), the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Debtors consummated the Plan and emerged from protection under chapter 11 of the Bankruptcy Code.<sup>2</sup>

### **Establishment of the Litigation Trust**

2. On the Effective Date, pursuant to Section 6.5 of the Plan, the Reorganized Debtors and the Litigation Trustee entered into the Trust Agreement thereby establishing the Litigation Trust for the benefit of holders of Allowed General Unsecured Claims. The Plan provided for no recovery to the holders of Allowed General Unsecured Claims other than their *pro rata* share of interests in the Litigation Trust. Also on the Effective Date, a trust advisory board (the “*Trust Advisory Board*”) was established to oversee the administration of the Litigation Trust and, in some instances, authorizes the Litigation Trustee to take certain actions. The Trust Advisory Board consists of the following members: (a) Stephen Blauner of Solus Alternative Asset Management LP as the member designated by the Ad Hoc Committee of 2016 Noteholders; (b) Tony D. Cash of Fiberlight LLC as the member designated by the creditors’ committee; and (c) Alan J. Carr as the independent member jointly selected by the creditors’ committee and the Ad Hoc Committee of 2016 Noteholders.

3. Pursuant to the Plan and Trust Agreement, the Reorganized Debtors transferred the Litigation Trust Assets to the Litigation Trust, which consisted of the following: (i) any claims or Causes of Action arising under chapter 5 of the Bankruptcy Code (the “*Avoidance Actions*”) or the proceeds thereof, and (ii) claims against the Debtors’ directors or officers, or the professionals that advised them, arising from the Debtors’ failure to maintain their FCC licenses (the “*Estate D&O Claims*” and together with the Avoidance Actions, the “*Litigation Trust*”).

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<sup>2</sup> On March 31, 2014, the Debtors filed the *Notice of (I) Occurrence of Effective Date of Debtors' Fourth Amended Joint Chapter 11 Plan, (II) Administrative Expense Claim Subsequent Bar Date, (III) Deadline to File Fee Claims, and (IV) Deadline to File Claims Based on Rejection of Executory Contracts or Unexpired Leases Rejected Pursuant to the Plan and the Confirmation Order* [Docket No. 1092].

*Claims*”) or the proceeds thereof (including proceeds from insurance), and (iii) cash in the amount of \$50,000 (the “*Litigation Trust Funds*”).

#### **Investigation of the Litigation Trust Claims**

4. At the direction of the Trust Advisory Board, the Litigation Trustee conducted a review of the Avoidance Actions to determine whether pursuit of the Avoidance Actions was likely to result in a material benefit for general unsecured creditors. The Litigation Trustee and its counsel reviewed payments made within 90 days from the Petition Date and payments to insiders within one year of the Petition Date. The Litigation Trustee and the Trust Advisory Board determined that the pursuit of Avoidance Actions was unlikely to yield significant recoveries for the beneficiaries of the Litigation Trust and that it was a better expenditure of the Litigation Trust’s limited resources to focus solely on the investigation of the Estate D&O Claims. As a result, the Litigation Trustee abandoned the Avoidance Actions pursuant to the terms of the Trust Agreement.

5. On November 7, 2012, the Wireless Telecommunications Bureau (the “*Bureau*”) issued a Memorandum Opinion and Order that found the Debtors failed to show compliance with the substantial service requirements with respect to the majority of the Debtors’ 24 GHz and 39 GHz wide-area spectrum licenses. The Bureau denied the Debtors’ requests for an extension to satisfy or a waiver of the requirements and, as a result, the majority of the Debtors’ FCC licenses were terminated.<sup>3</sup> During the chapter 11 cases, the creditors’ committee filed a motion for standing to pursue the Estate D&O Claims against the Debtors’ current and former directors and officers for breaches of fiduciary duty in connection with the termination of the Debtors’ FCC

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<sup>3</sup> The Debtors sought review and appealed the Bureau’s decision through various proceedings before the FCC and federal courts. Currently, the decision to terminate the Debtors’ licenses is on appeal to the D.C. Circuit Court and the matter is pending.

licenses. The Bankruptcy Court denied the creditors' committee's motion for standing without prejudice.

6. One of the primary purposes for the establishment of the Litigation Trust pursuant to the Plan was to preserve the potential Estate D&O Claims for the benefit of general unsecured creditors. The Trust Advisory Board determined that the Litigation Trustee should conduct an investigation and gather additional facts to determine whether colorable claims exist before making a decision of whether to pursue the Estate D&O Claims. At the direction of the Trust Advisory Board, the Litigation Trustee commenced an investigation and was assisted by its own counsel and two law firms that were willing to pursue the Estate D&O Claims on a contingency fee basis. The investigation included the following:

- Review of minutes and board presentations relating to the meetings of the Board of Directors of the Debtors from August 2007 through July 2012.
- Review of documents and discussions with the law firms that represented the Debtors in connection with FCC matters relating to the requests for renewal of the FCC licenses or waiver of the substantial service requirements;
- Discussions with the Debtors' former chief financial officer regarding the decision not to build-out the FCC licenses and the advice that the Debtors received from their professionals;
- Review of pleadings and correspondence filed with the FCC related to the waiver / extension requests and subsequent appeals;
- Research and analysis of potential statute of limitations defenses;
- Discussions with contingency counsel regarding the merits of the Estate D&O Claims.

7. The Litigation Trustee reported to the Trust Advisory Board during the course of the investigation and held various conference calls with the Trust Advisory Board to discuss the results of the investigation. The Litigation Trustee gathered all available information up until July 17, 2014, which was the two-year anniversary of the Petition Date and the date by which the

Estate D&O Claims would have been commenced to avoid any potential statute of limitation defenses that may have been raised by the defendants. After collective deliberation, the Trust Advisory Board and the Litigation Trustee determined that the Estate D&O Claims should not be pursued. Such decision was primarily based on the findings that the Debtors' directors and officers appeared to have valid defenses to the Estate D&O Claims, including that directors and officers received advice from FCC counsel and acted appropriately given the lack of funds available to the Debtors to pursue the build out of the FCC licenses. Similarly, the Litigation Trustee and the Trust Advisory Board determined that there was a lack of evidence that would support claims of legal malpractice against the law firms that advised the Debtors' directors and officers. As a result, the Trust Advisory Board directed the Litigation Trustee to abandon the Estate D&O Claims.

#### **Distributions from the Litigation Trust**

8. Pursuant to the Plan and Trust Agreement, the Litigation Trustee is responsible for making distributions of net cash income and proceeds to holders of Allowed General Unsecured Claims from the liquidation of the Litigation Trust Assets after payment of Litigation Trust Expenses. Since the Litigation Trustee and Trust Advisory Board determined to abandon Litigation Trust Claims, the only funds available for distribution are the Litigation Trust Funds in the amount of \$50,000. The total amount of General Unsecured Claims scheduled and filed in the chapter 11 cases exceeded \$577 million. In the disclosure statement accompanying the Plan, the Debtors estimated that total amount of Allowed General Unsecured Claims would be between \$4,354,270 and \$44,214,270. The amount of filed claims compared to the Debtors' estimate suggested that significant work was needed to reconcile and object to claims and such expenses would have likely well exceeded the \$50,000 that funded the Litigation Trust.



9. The Litigation Trustee and the Trust Advisory Board determined that it would not be an efficient use of resources to reconcile claims and send distributions since the recovery to creditors would be infinitesimal, if any at all. Indeed, the costs to send such distributions would probably exhaust the funds available to distribute. As a result, the Litigation Trustee, at the direction of the Trust Advisory Board, will distribute the \$50,000 to compensate the Litigation Trustee and its counsel for the fees incurred for the investigation of the Litigation Trust Claims and to pay expenses necessary for the preparation of required tax returns and other reporting obligations. Attached as Exhibit 1 are the current financial statements of the Litigation Trust as required by Section 4.9(d) of the Trust Agreement and the anticipated wind-down budget of the Litigation Trust.

#### **Termination of the Litigation Trust**

10. Pursuant to the Trust Agreement, the Litigation Trust shall terminate on such date when (a) a final decree has been entered closing all of or the last of the Chapter 11 Cases; (b) all Litigation Trust Assets have been distributed; and (c) either (i) the Litigation Trustee and the Trust Advisory Board determine that the administration of the Litigation Trust is not likely to yield sufficient additional proceeds to justify the pursuit of the Litigation Trust Claims or (ii) all claims have been pursued or abandoned pursuant to, and in accordance with, the Trust Agreement. As noted above, all Litigation Trust Assets will have been distributed in accordance with the wind-down budget and the Litigation Trustee has abandoned the Litigation Trust Claims. Accordingly, the Litigation Trust will terminate by its terms upon the entry of the final decree closing the chapter 11 cases.

Dated: November 19, 2014

/s/ Peter S. Kravitz  
Peter S. Kravitz  
Solution Trust  
29209 Canwood Street, Suite 210  
Agoura Hills, CA 91301

*Litigation Trustee for the FiberTower Networks  
Litigation Trust*

**Exhibit 1**

**FiberTower Litigation Trust  
Financial Statement and Wind-Down Budget**

<b>ASSETS</b>	<b>2014</b>
Cash (Unrestricted)	50,000.00
Cash (Restricted)	
Accounts Receivable (Net)	
Inventory	
Notes Receivable	
Prepaid Expenses	
Other (Attach List)	
<b>Total Current Assets</b>	<b>50,000.00</b>
<b>Property, Plant &amp; Equipment</b>	
Real Property & Improvements	
Machinery & Equipment	
Furniture, fixtures & Office Equipment	
Vehicles	
Leasehold Improvements	
Less: Accumulated Depreciation/Depletion	
<b>Total Property, Plant &amp; Equipment</b>	
Due from Affiliates & Insiders	
Other (Attach List)	
<b>Total Assets</b>	<b>50,000.00</b>
<b>Liabilities Not Subject to Compromise (Postpetition Liabilities)</b>	
Accounts Payable	650.00
Taxes Payable	
Notes Payable	
Professional Fees	1076.99
Secured Debt	
Due to Affiliates & Insiders	
Other (Attach List)	
<b>Total Postpetition Liabilities</b>	<b>1726.99</b>
<b>Liabilities Subject to Compromise (Pre-petition Liabilities)</b>	
Secured Debt - Per Plan	
Priority Debt - Per Plan	
Unsecured Debt - Per Plan	44,214,270.00
Other (Attach List) - Per Plan	
<b>Total Pre-petition Liabilities</b>	<b>44,214,270.00</b>
<b>Total Liabilities</b>	<b>44,215,996.99</b>
<b>Equity</b>	
Common Stock	
Retained Earnings (Deficit)	
<b>Total Equity (Deficit)</b>	
<b>Total Liabilities &amp; Owners' Equity</b>	<b>44,215,996.99</b>

**Fibertower Litigation Trust**  
**Wind Down Budget**

<i>Cash Available</i>	50,000.00
<i>Current</i>	
Local Counsel Fees	(1,076.99)
UST Fees	(650.00)
<i>Budgeted</i>	
Local Counsel	(1,100.00)
Counsel to Trustee	(30,198.01)
Trustee	(10,000.00)
Tax Professional	(5,000.00)
Noticing	(1,000.00)
UST Fees	(975.00)
 <i>Balance</i>	 0.00