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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., <i>et al.</i> ,	§
	§ Jointly Administered
Debtors.	§
	§
	§
FIBERTOWER NETWORK SERVICES	§ Adversary No. 12-4104
CORP. <i>et al.</i> ,	§
	§
Debtors.	§
	§
v.	§
	§
FEDERAL COMMUNICATIONS	§
COMMISSION,	§
	§
Defendant.	§

**DEBTORS' EMERGENCY MOTION (I) TO ENFORCE AUTOMATIC  
STAY AGAINST THE FEDERAL COMMUNICATIONS COMMISSION  
OR, IN THE ALTERNATIVE, (II) FOR INJUNCTIVE RELIEF  
BARRING THE ACTUAL CANCELLATION OF THE  
DEBTORS' SPECTRUM LICENSES UNTIL SUCH TIME AS A  
FINAL, NON-APPEALABLE ORDER HAS BEEN ENTERED  
IN RESPECT OF CANCELLATION OF THE LICENSES**

TO: THE HONORABLE D. MICHAEL LYNN,  
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors” or “FiberTower”),<sup>1</sup> for their Emergency Motion (i) to Enforce Automatic Stay Against the Federal Communications Commission (the “FCC” or the “Commission”) or, in the Alternative, (ii) for Injunctive Relief Barring the Actual Cancellation of the Debtors’ Spectrum Licenses Until Such Time as a Final Non-Appealable Order has Been Entered in Respect of Cancellation of the Licenses (the “Motion”), respectfully represent:

1. The Debtors’ Licenses<sup>2</sup> are central to their reorganization effort. Without these Licenses - - all as set forth in the *Verified Complaint for Declaratory and Injunctive Relief* (the “Complaint”) and the *Declaration of Kurt Van Wagenen in Support of the Complaint* (the “Van Wagenen Declaration”), each filed simultaneously herewith, and in the *Declaration of Kurt Van Wagenen in Support of Chapter 11 Petitions and First Day Motions* [Main Case Docket No. 2] (the “First Day Declaration”) - - the Debtors’ reorganization efforts will be irreparably harmed and derailed.

2. It has come to the Debtors’ attention that the FCC intends imminently to cancel the Debtors’ Licenses on the grounds that the Debtors have not met the substantial service conditions placed on most of their Licenses to operate in the 24 GHz and 39 GHz bands. As set forth at length in the Memorandum of the Law (the “Brief”) filed in support hereof, the FCC’s actions to terminate or revoke the Debtors’ Licenses are not within the purview of section 362(b)(4) of the Bankruptcy Code.

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Complaint.

3. If the Debtors' Licenses are cancelled or revoked, the Debtors' reorganization efforts will be irreparably harmed. Moreover, the Debtors would likely no longer be able to provide backhaul and related services to customers because the Debtors would not be entitled to use cash to fund operations.<sup>3</sup> As a consequence, the threatened FCC action, if it occurs, would not only result in the loss of the bulk of the Debtors' Spectrum Portfolio, it would very likely put mobile networks, first responder networks, government networks, school networks, and other operations in direct jeopardy and risk.

4. By this Motion, the Debtors request immediate entry of an Order of this Court enforcing (i) the automatic stay of section 362 and (ii) this Court's *Order Directing Parties to (i) Comply with Section 362 And Other Provisions of the Bankruptcy Code and (ii) Continue to Perform Under Terms of Contracts and Leases* [Main Case Docket No. 76]. In the alternative, the Debtors request immediate entry of a temporary restraining order and a preliminary injunction against the FCC precluding the actual termination of the Debtors' licenses until such time as a final non-appealable order has been entered in respect of the cancellation of the Licenses.

5. Immediate entry of an Order enforcing the automatic stay or, in the alternative, a temporary restraining order or injunction, is required to ensure that the value of the Debtors and their respective estates, and their reorganization efforts, are not irreparably harmed. If the Licenses are cancelled, the Debtors will be irreparably harmed and their reorganization efforts, which are the subject of a consensual and confirmable proposed plan, would likely be derailed.

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<sup>3</sup> License cancellation would constitute a "Termination Event" under section 7.1(a)(vi) of the Plan Support Agreement which, in turn, would constitute a "Termination Date" under paragraph 4(a)(1) of the *Final Order (i) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code and (ii) Providing Adequate Protection to Secured Parties Pursuant to Sections 361, 362 and 363 of the Bankruptcy Code* [Main Case Docket No. 219].

6. In support of the Motion, the Debtors rely on the allegations in the Complaint, the Van Wagenen Declaration, the First Day Declaration and the Brief. For the reasons set forth therein, the Debtors respectfully request that the Court grant the Motion.

7. Notice of this Motion has been provided to (i) the FCC's General Counsel, (ii) counsel to the Committee, (iii) counsel to the United States Trustee for the Northern District of Texas and (iv) counsel to the ad hoc committee of the Debtors' 9.00% Senior Secured Notes due 2016. 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 23rd day of August, 2012.

**ANDREWS KURTH LLP**

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*Counsel to the Debtors*

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of August, 2012, he caused a true and correct copy of the foregoing document to be served on the General Counsel to the FCC, counsel to the ad hoc committee of the Debtors' 2016 Notes, counsel to the Committee and counsel to the United States Trustee for the Northern District of Texas, all via electronic mail and overnight mail, as set forth below.

/s/Jason S. Brookner

Jason S. Brookner

<p>Federal Communications Commission 445 12th Street, SW Washington, D.C. 20554 Attention: Sean Lev, General Counsel Email: <a href="mailto:sean.lev@fcc.gov">sean.lev@fcc.gov</a></p>	<p>Stroock &amp; Stroock &amp; Lavan LLP 180 Maiden Lane New York, New York 10038 Attention: Sayan Bhattacharyya Matthew Garofalo Email: <a href="mailto:sbhattacharyya@stroock.com">sbhattacharyya@stroock.com</a> <a href="mailto:mgarofalo@stroock.com">mgarofalo@stroock.com</a></p> <p>Haynes and Boone LLP 201 Main Street, Suite 220 Fort Worth, Texas 76102 Attention: Stephen Pezanosky Email: <a href="mailto:stephen.pezanosky@haynesboone.com">stephen.pezanosky@haynesboone.com</a></p> <p><b>Counsel to Ad Hoc Group of 2016 Notes</b></p>
<p>Otterbourg Steindler Houston &amp; Rosen PC 230 Park Avenue New York, New York 10163 Attention: David M. Posner Email: <a href="mailto:dposner@oshr.com">dposner@oshr.com</a></p> <p>Cole Schotz Meisel Forman &amp; Leonard PA 301 Commerce Street, Suite 1700 Fort Worth, Texas 76102 Attention: Michael D. Warner Email: <a href="mailto:mwarner@coleschotz.com">mwarner@coleschotz.com</a></p> <p><b>Counsel to the Committee</b></p>	<p>Office of the United States Trustee 1100 Commerce Street, Room 9C60 Dallas, Texas 75242 Attention: Meredyth Kippes Elizabeth Ziegler Email: <a href="mailto:meredyth.a.kippes@usdoj.gov">meredyth.a.kippes@usdoj.gov</a> <a href="mailto:elizabeth.ziegler@usdoj.gov">elizabeth.ziegler@usdoj.gov</a></p>

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

In re:	§	Chapter 11
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FIBERTOWER NETWORK SERVICES	§	Case No. 12-44027-DML-11
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FIBERTOWER NETWORK SERVICES	§	Adversary No. 12-4104
CORP. <i>et al.</i> ,	§	
	§	
Debtors.	§	
	§	
v.	§	
	§	
FEDERAL COMMUNICATIONS	§	
COMMISSION,	§	
	§	
Defendant.	§	

**ORDER GRANTING DEBTORS' EMERGENCY MOTION (i) TO ENFORCE  
AUTOMATIC STAY AGAINST THE FEDERAL COMMUNICATIONS COMMISSION  
OR, IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF BARRING  
THE ACTUAL CANCELLATION OF THE DEBTORS' SPECTRUM LICENSES  
UNTIL SUCH TIME AS A FINAL NON-APPEALABLE ORDER  
HAS BEEN ENTERED IN RESPECT OF CANCELLATION OF THE LICENSES**

Upon the Emergency Motion (i) to Enforce Automatic Stay Against the Federal Communications Commission (the "FCC" or the "Commission") or, in the Alternative, (ii) for

Injunctive Relief Barring the Actual Cancellation of the Debtors' Spectrum Licenses Until Such Time as a Final Non-Appealable Order has Been Entered in Respect of Cancellation of the Licenses (the "Motion") filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"),<sup>1</sup> the Debtors' Verified Complaint for Declaratory and Injunctive Relief, and the Declaration of Kurt Van Wagenen in Support of Verified Complaint for Declaratory and Injunctive Relief; and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A); and it appearing that sufficient notice of the Motion has been given, and that no other or further notice is required; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is<sup>2</sup>

**ORDERED AS FOLLOWS:**

1. Pending further Order of this Court, the automatic stay of section 362(a) of the Bankruptcy Code applies to the FCC and the Debtors' Licenses.

2. The FCC is hereby automatically stayed, precluded and enjoined from taking any action to cancel or revoke the Debtors' Licenses or otherwise divest the Debtors of their Licenses pending further Order of this Court and, pending further Order of the Court, the FCC shall comply with this Court's *Order Directing Parties to (i) Comply with Section 362 And Other Provisions of the Bankruptcy Code and (ii) Continue to Perform Under Terms of Contracts and Leases* [Main Docket No. 76].

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion or the accompanying Memorandum of Law, as may be appropriate.

3. The Debtors shall promptly serve a copy of this order on the FCC to ensure actual receipt as soon as possible.

### END OF ORDER ###