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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.	§

DEBTORS' MOTION TO MODIFY FINAL CASH COLLATERAL ORDER

The above-captioned debtors and debtors in possession (collectively, the "Debtors"),¹ for their Motion (the "Motion") to *Modify 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* [Docket No. 219] (the "Cash Collateral Order"), respectfully represent:²

JURISDICTION AND VENUE

1. 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), (M) and (O).

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

¹The 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.

²Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Cash Collateral Order.

INTRODUCTION

3. 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 of the United States Code (the “Bankruptcy Code”).

4. An official committee of unsecured creditors (the “Committee”) was appointed by the Office of the United States Trustee (the “US Trustee”) on July 26, 2012. No trustee or examiner has been appointed.

5. 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.

BACKGROUND

6. On August 21, 2012, this Court entered the Cash Collateral Order which, among other things, authorized the Debtors to use Cash Collateral with the consent of the Consenting Noteholders and the First Lien Trustee and solely in accordance with an approved Budget.³ Since that time, certain events have taken place which necessitate revisions and/or modifications to the Cash Collateral Order. In particular, and as set forth in greater detail in the Debtors’ *Motion For Approval of Binding Term Sheet With Participating Carriers For Migration of Services Off Debtors’ Backhaul Network And Wind-Down of Debtors’ Business* [Docket No. 413] (the “Carrier Motion”), the FCC has denied the Debtors’ pending applications for extension and/or waiver of certain license build out requirements (the “Applications”), thus resulting in the cancellation of the vast majority of the Debtors’ 24 GHz and 39 GHz spectrum licenses.⁴

³The most recently approved Budget was filed with the Court on October 12, 2012. See Notice of Modified 13-Week Budget [Docket No. 325].

⁴The Court entered an order on September 27, 2012, precluding the FCC from re-assigning any of the Debtors’ cancelled Licenses or taking any action that might impair the Debtors’ rights to contest or appeal cancellation of the licenses. See Docket No. 40 in Adv. Pro. 12-4104.

7. As set forth more fully in the Carrier Motion, the Debtors sought approval of a binding term sheet ("Term Sheet") which sets forth the parameters for an orderly migration of customers off of the Debtors' backhaul network, and the ultimate wind-down of the Debtors' backhaul business.⁵ Accordingly, the direction of these chapter 11 cases is now very different from the reorganization originally contemplated by the Debtors upon the filing of these cases - - as set forth more fully in the first day affidavit of Kurt Van Wagenen and the Plan Support Agreement ("PSA") entered into with certain holders of the First Lien Notes attached thereto, *see* Docket No. 2. Given these changed circumstances, certain revisions to the Cash Collateral Order are necessary.

8. As the Court is aware, the Cash Collateral Order provides that a "Termination Date" will occur if the FCC cancels the Debtors' FCC spectrum licenses. *See generally* Cash Collateral Order ¶ 4(a)(i) (providing for a Termination Date in the event the PSA is terminated *other than* pursuant to section 7.1(a)(xv)(A) thereof; in turn, section 7.1(a)(vi) of the PSA provides that a "Noteholder Termination Event" thereunder occurs if the FCC denies the Debtors' request for an extension or waiver of the safe harbor construction rules, an "FCC License Termination Event"). On November 7, 2012, the FCC denied the Applications, thereby causing an FCC License Termination Event.

9. Despite the impending wind-down of the Debtors' business (on terms inconsistent with the current Budget) and the occurrence of an FCC License Termination Event, the Consenting Noteholders and the First Lien Trustee have agreed to allow the Debtors to continue to use Cash Collateral on a consensual basis. Subject to the approval of this Motion, the Debtors,

⁵The Court approved the Carrier Motion on November 28, 2012. The Consenting Noteholders and the First Lien Trustee reserved their rights with respect to the Budget and the Cash Collateral Order both through filings with the Court and at the hearing to consider the Carrier Motion.

the First Lien Trustee and the Consenting Noteholders have agreed to a new 13-Week budget, which is attached hereto as Exhibit A, consistent with the terms of the Cash Collateral Order. In exchange, the Debtors have agreed to provide the First Lien Trustee and the Consenting Noteholders with additional adequate protection,⁶ in the form of (i) an initial \$12 million distribution to the First Lien Trustee within three business days after entry of an order approving this motion; and (ii) subsequent monthly distributions of excess cash going forward (each, as explained more fully below).

10. The Debtors, the First Lien Trustee and the Consenting Noteholders have agreed to distribution of cash in excess of what the Debtors believe is necessary to the operation of the business through the wind-down period contemplated in the Carrier Motion. The Debtors have calculated this amount to be \$12 million. After making the \$12 million distribution, the Debtors will have approximately \$12.5 in cash on hand, and the proceeds of the monthly payments to be made by the Participating Carriers (and others) under the Term Sheet, during the wind-down period. The Debtors believe that the remaining cash will provide sufficient liquidity to fund the wind-down period, as illustrated by the modified budget.

11. In addition, the Debtors, the First Lien Trustee and the Consenting Noteholders have agreed to a monthly distribution of excess cash, which will ensure that there is continued adequate protection, and will also ensure that the Debtors continue to have sufficient cash on hand to operate during the wind-down period. The amount of excess cash to be distributed will be calculated as follows: starting with the week ending February 1, 2013, and then on every fourth (4th) Friday thereafter, the Debtors will review the ending cash balance as of the Friday

⁶Paragraph 6(d) of the Cash Collateral Order permits the Secured Parties to “seek further or additional adequate protection in the event the adequate protection provided herein proves to be inadequate.” Cash Collateral Order ¶ 6(d).

for that week and the preceding three weeks (thus, a four week look-back in total). If the lowest ending cash balance for any one of these four weeks exceeds \$9 million (during the first four week period ending February 1, 2013), \$8 million (during the second four week period ending March 1, 2013), \$7 million (during the third four-week period ending March 29, 2013), \$6 million (during the fourth four week period ending April 26, 2013), and \$5 million (during every four-week period thereafter) (in each case, the “Threshold Amount”) the Debtors will distribute to the First Lien Trustee, for the benefit of the First Lien Noteholders, the difference between the Threshold Amount and the lowest weekly cash ending balance during such four-week period in excess of the Threshold Amount.

12. By way of example, assume the ending weekly cash balances for the first four week period are \$12 million, \$13 million, \$9.5 million and \$10 million. The lowest cash balance in excess of \$9 million (the initial Threshold Amount) is \$9.5 million and, thus, \$500,000 will be distributed to the First Lien Trustee. To the extent the lowest weekly cash balance for any four week look-back period is equal to or less than the Threshold Amount for such four-week period, no distribution will be made to the First Lien Trustee for the period in question.

13. Finally, the Committee’s Challenge Period under the Cash Collateral Order has expired without any challenge having been filed. Accordingly, among other things, (i) the Secured Obligations constitute allowed secured claims for all purposes, (ii) the liens granted in favor of the First Lien Secured Parties are legal, valid, binding, enforceable and perfected first priority liens for all purposes in the Chapter 11 Cases and any Successor Case and (iii) the release of the Claims and Defenses against the Released Parties is binding on all parties in interest in the Chapter 11 Cases and any Successor Case. *See* Cash Collateral Order ¶ 15(c). In light of this, and given that the Consenting Noteholders require the turnover of “excess cash” as

a condition to the continued use of Cash Collateral and allowing the Debtors to execute the wind-down contemplated in the Carrier Motion, there is a valid basis to authorize this distribution.

14. The Debtors therefore request that the Court modify the Cash Collateral Order to (i) amend and restate paragraph 4(a)(i) thereof to provide that the FCC License Termination Event is not a Termination Date, and (ii) amend and restate paragraph 6(a) of the Cash Collateral Order to provide for (a) the turnover of \$12 million to the First Lien Trustee, for the benefit of the First Lien Noteholders, and (b) monthly payments of excess cash as additional adequate protection.

RELIEF REQUESTED

15. By this Motion, the Debtors respectfully request entry of an Order modifying the Cash Collateral Order, embodying the Debtors' agreement with the Consenting Noteholders for the continued use of cash collateral, as described herein.

AUTHORITY

16. Section 105(a) of the Bankruptcy Code grants the Court broad authority to carry out the provisions of both the Bankruptcy Code and provides that "[t]he court may issue any order . . . that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). In addition, Rule 60(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Rule 9024 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") allows the Court to revisit and modify a previously entered order for "any other reason that justifies relief" therefrom.

17. Although section 105 does not provide the Court with the powers of a roving equity commission, *In re Mirant Corp.*, 378 F.3d 511, 523 (5th Cir. 2004) (quoting *In re Southmark Corp.*, 49 F.3d 1111, 1116 (5th Cir. 1995)), no such relief is being sought herein. Instead, this Motion seeks to advance the substantive provisions of the Bankruptcy Code - -

section 363 - - and section 105(a) merely serves as a buttress for this Court's authority to enter the relief requested herein.

18. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless "(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and a hearing, authorizes such use in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2).

19. The Consenting Noteholders and the First Lien Trustee have agreed to allow the Debtors to continue to use Cash Collateral despite conditions that would otherwise constitute "Termination Dates" under the Cash Collateral Order, but only on the conditions set forth herein. Given the changed circumstances and the accommodations made by the Consenting Noteholders and the First Lien Trustee, the Debtors submit that the First Lien Trustee and the Consenting Noteholders are entitled to additional adequate protection, and that the proposed amendment is warranted under the circumstances. Further, the Committee's Challenge Period expired, causing the prepetition liens granted in favor of the First Lien Secured Parties to become binding upon the Debtors and each party in interest, including the Committee. The Court, thus, has the power and authority to grant the requested relief.

NOTICE

20. Notice of this Motion has been provided to the parties appearing on the Limited Service List maintained in these chapter 11 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 this Motion and (ii) granting such other and further relief as may be just and proper.

Respectfully submitted this 13th day of December, 2012.

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Counsel to the Debtors

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of December, 2012, he caused a true and correct copy of the foregoing document to be served on the parties appearing on the Limited Service List maintained in these chapter 11 cases via first class U.S. mail, postage prepaid and, where possible, via electronic mail.

/s/ Jason S. Brookner
Jason S. Brookner

Exhibit A

FiberTower Corporation
Chapter 11 Cashflow Forecast

Description	Week Ending												
	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst
	12/8/2012	12/15/2012	12/22/2012	12/29/2012	1/5/2013	1/12/2013	1/19/2013	1/26/2013	2/2/2013	2/9/2013	2/16/2013	2/23/2013	3/2/2013
Beginning bank balance	28,220,751	26,250,609	28,195,088	24,971,345	12,546,345	9,647,732	9,068,488	13,059,751	12,656,976	9,271,793	8,701,018	8,337,098	12,486,377
Estimated cash receipts	466,531	103,244	-	-	-	74,080	4,902,054	-	-	-	74,080	4,902,054	-
Operating Disbursements:	(2,436,673)	(408,766)	(973,742)	(425,000)	(2,898,613)	(653,324)	(910,791)	(402,775)	(3,326,695)	(570,775)	(438,000)	(752,775)	(2,868,505)
Non-recurring one-time cash receipts	-	2,250,000	-	-	-	-	-	-	-	-	-	-	-
Management fee	-	-	-	-	-	-	-	-	-	-	-	-	-
Distribution to creditors	-	-	(2,250,000)	(12,000,000)	-	-	-	-	(58,488)	-	-	-	(327,098)
Estimated ending bank balance	26,250,609	28,195,088	24,971,345	12,546,345	9,647,732	9,068,488	13,059,751	12,656,976	9,271,793	8,701,018	8,337,098	12,486,377	9,290,774

FiberTower Corporation
Chapter 11 Cashflow Forecast

Description	Week Ending												
	Frstet 12/8/2012	Frstet 12/15/2012	Frstet 12/22/2012	Frstet 12/29/2012	Frstet 1/5/2013	Frstet 1/12/2013	Frstet 1/19/2013	Frstet 1/26/2013	Frstet 2/2/2013	Frstet 2/9/2013	Frstet 2/16/2013	Frstet 2/23/2013	Frstet 3/2/2013
Beginning bank balance	28,220,751	26,250,609	28,195,088	24,971,345	12,546,345	9,647,732	9,068,488	13,059,751	12,656,976	9,271,793	8,701,018	8,337,098	12,486,377
Estimated cash receipts	466,531	103,244	-	-	-	74,080	4,902,054	-	-	-	74,080	4,902,054	-
Operating Disbursements:													
Payroll	-	(175,000)	-	(175,000)	-	(348,324)	-	(232,775)	-	(232,775)	-	(232,775)	-
Taxes	(138)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)
Utilities (olectricity, telephone, etc.)	(9,403)	(30,000)	(30,000)	(30,000)	(50,000)	(30,000)	(30,000)	(30,000)	(50,000)	(30,000)	(30,000)	(30,000)	(50,000)
Insurance	(61,081)	-	-	-	(80,000)	-	-	-	(80,000)	-	-	-	(80,000)
Travel & Expense	(42,087)	(5,000)	(5,000)	(5,000)	(5,000)	(55,000)	(5,000)	(5,000)	(5,000)	(55,000)	(5,000)	(5,000)	(5,000)
Vehicle lease	-	(22,000)	-	-	-	-	(22,000)	-	-	-	(22,000)	-	-
Contractors	(22,488)	(40,000)	(60,000)	(40,000)	(65,000)	(40,000)	(40,000)	(40,000)	(65,000)	(40,000)	(40,000)	(40,000)	(65,000)
Fiber service rent	(150,596)	-	-	-	(809,737)	(100,000)	(150,000)	-	(1,222,927)	(125,000)	(150,000)	-	(809,737)
Site rent	(1,695,519)	-	-	-	(1,688,768)	-	-	-	(1,688,768)	-	-	-	(1,688,768)
Office rent	(69,710)	-	-	(75,000)	-	-	-	-	(75,000)	-	-	-	(75,000)
Other operating disbursements	-	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
Warehousing costs	(42,672)	-	-	-	(43,000)	-	-	-	-	(43,000)	-	-	-
Misc. (office supplies, FedEx, etc.)	(19,537)	-	(10,000)	(25,000)	(5,000)	(5,000)	(5,000)	(20,000)	(5,000)	(5,000)	(5,000)	(20,000)	(5,000)
Key employee incentive plan	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating cash flow	(1,646,701)	(218,756)	(155,000)	(400,000)	(2,796,505)	(554,244)	4,600,054	(377,775)	(3,231,695)	(570,775)	(217,920)	4,534,279	(2,818,505)
Restructuring Costs:													
Estate professional fees	(87,605)	(25,000)	(472,190)	(25,000)	(62,108)	(25,000)	(403,791)	(25,000)	(55,000)	-	(86,000)	(285,000)	(10,000)
"2016 Notes" professional fees	-	(21,766)	(346,553)	-	-	-	(145,000)	-	-	-	-	(100,000)	-
Spectrum appeal & advocacy	(235,835)	(40,000)	-	-	(40,000)	-	(60,000)	-	(40,000)	-	(60,000)	-	(40,000)
Restructuring costs	(323,441)	(86,766)	(818,742)	(25,000)	(102,108)	(25,000)	(608,791)	(25,000)	(95,000)	-	(146,000)	(385,000)	(50,000)
Estimated ending bank balance	26,250,609	25,945,088	27,221,345	24,546,345	9,647,732	9,068,488	13,059,751	12,656,976	9,271,793	8,701,018	8,337,098	12,486,377	9,617,872
Other non-operating transactions:													
Non-recurring one-time cash receipts	-	2,250,000	-	-	-	-	-	-	-	-	-	-	-
Management fee	-	-	-	-	-	-	-	-	-	-	-	-	-
Distribution to creditors	-	-	(2,250,000)	(12,000,000)	-	-	-	-	(58,488)	-	-	-	(327,098)
Estimated ending cash balance - no churn	26,250,609	28,195,088	24,971,345	12,546,345	9,647,732	9,068,488	13,059,751	12,656,976	9,271,793	8,701,018	8,337,098	12,486,377	9,290,774

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:	§ Chapter 11
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FIBERTOWER NETWORK SERVICES	§ Case No. 12-44027-DML-11
CORP., <i>et al.</i> ,	§
	§ Jointly Administered
Debtors.	§

**ORDER GRANTING DEBTORS' MOTION TO MODIFY FINAL CASH
COLLATERAL ORDER**

Upon the Motion (the "Motion") to Modify 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 [Docket No. 219] (the "Cash Collateral Order") filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and the Court having jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the Motion being a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M) and (O); and it appearing that good and sufficient notice of the Motion has been given and that no other or further notice is required; and after due deliberation and good cause appearing therefor, it is

ORDERED as follows:¹

1. The Motion is granted, as set forth herein.
2. Paragraph 4(a)(i) of the Cash Collateral Order is hereby amended and restated in

its entirety as follows (new language appears in **bold underline italics**):

“(i) the termination of the Plan Support Agreement, other than the termination as a result of the occurrence of a Termination Event (as defined in the Plan Support Agreement) under clause **7(a)(vi) or (xv)(A)** thereof”²

3. Paragraph 6(a) of the Cash Collateral Order is hereby amended and restated in its

entirety as follows (new language appears in **bold underline italics**):

“(a) Adequate Protection Payments. As adequate protection, the Debtors are authorized and directed to pay (A) to the First Lien Trustee, ongoing payment in cash on a current basis, no less than monthly, and including any amounts incurred prior to the Petition Date, of the reasonable and documented fees, costs and expenses of the First Lien Trustee in connection with the Chapter 11 Cases (including, without limitations, the fees and expenses of Reed Smith LLP and Haynes and Boone, LLP as counsel for the First Lien Trustee); (B) to the Consenting Noteholders, ongoing payment in cash on a current basis, no less than monthly, and including amounts incurred prior to the Petition Date, of the reasonable and documented fees and expenses of the Consenting Noteholders in connection with the Chapter 11 Cases (including, without limitation, the fees and expenses of Stroock & Stroock & Lavan LLP and Haynes and Boone, LLP as counsel to the Consenting Noteholders); **(C) to the First Lien Trustee, for the benefit of the First Lien Noteholders, a cash payment in the amount of \$12 million; and (D) to the First Lien Trustee, for the benefit of the First Lien Noteholders, cash payments on the fourth (4th) Friday of each Monthly Period, commencing with the Monthly period ending February 1, 2013, in an amount equal to the Excess Cash (defined below) calculated during such Monthly Period.** All of the amounts to be paid pursuant to the foregoing clauses (A) and (B) shall be paid regardless of whether such amounts accrued prior to the Petition Date (if any such

¹Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Motion

²The footnote at the end of paragraph 4(a)(i) of the Cash Collateral Order remains in full force and effect, notwithstanding the revision to said paragraph herein.

amounts have accrued and are unpaid) or after the Petition Date, whether or not such amounts are included in the Budget (and the Budget shall be adjusted accordingly), and shall be paid without further motion, fee application, or order of the Court; provided, however, that counsel to the Committee shall be provided with a summary statement showing the amount of the fees and expenses to be paid pursuant to this Paragraph 6(a) and no payments shall be made until the expiration of five (5) business days following the delivery of such statement and no objection by the Committee in writing having been raised with respect thereto. The Debtors shall pay all amounts not subject to an objection. Nothing herein shall be deemed to alter the terms of the First Lien Indenture or the First Lien Trustee's rights thereunder or to give the Committee or any other party (aside from the First Lien Noteholders) any right or standing to object to the application of such payments pursuant to the terms of the First Lien Indenture. Notwithstanding anything contained in this Final Order or in the preceding sentence, in the event that the First Lien Obligations are determined by a final nonappealable order of this Court (with specific findings in support thereof) to be under-secured, then, notwithstanding the grant of adequate protection under this Final Order, any adequate protection payments made hereunder during the Chapter 11 Cases to the First Lien Trustee or the Consenting Noteholders shall be subject to recharacterization as repayments of principal amounts owed to the First Lien Secured Parties. **"Excess Cash" shall be calculated as follows: calculated as of the last Friday of every Monthly Period (beginning with the Monthly Period ending February 1, 2013), the amount of cash (if any) that the Debtors' lowest weekly cash balance for any week (calculated as of Friday of such week) during such Monthly Period exceeds (i) for the Monthly Period ending February 1, 2013, \$9 million; (ii) for the Monthly Period ending March 1, 2013, \$8 million; (iii) for the Monthly Period ending March 29, 2013, \$7 million; (iv) for the Monthly Period ending April 26, 2013, \$6 million; and (v) for every Monthly Period thereafter, \$5 million.**

4. The Debtors shall make the cash payment referenced in paragraph 6(a)(C) of the Cash Collateral Order (as amended hereby) within three (3) days following entry of this Order.

5. Except as set forth herein, all other provisions of the Cash Collateral Order shall remain unchanged and in full force and effect.

END OF ORDER