

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(Central Division)

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In Re: Chapter 11  
NEW COUNTRY WIRELESS, LLC, Case No. 16-42199 (CJP)  
Debtor.

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**STIPULATION AND ORDER CONCERNING INTERIM USE OF CASH COLLATERAL  
AND ADEQUATE PROTECTION**

THIS STIPULATION is made this 4th day of January, 2017, by and between NEW COUNTRY WIRELESS, LLC (the debtor and debtor-in-possession) (collectively, the “**Debtor**”) and NORTHERN BANK & TRUST COMPANY (the “**Lender**”).

**BACKGROUND:**

WHEREAS, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) on December 26, 2016 (the “**Petition Date**”);

WHEREAS, the Lender and the Debtor entered into certain loan arrangements prior to the Petition Date (the documents, instruments, and agreements evidencing such loan arrangements are referred to herein collectively as the “**Loan Documents**”).

WHEREAS, the Lender asserts the obligations of the Debtor to the Lender pursuant to the Loan Documents (the “**Pre-Petition Indebtedness**”) are secured by a first priority perfected security interest in and to the Debtor’s personal property including, without limitation, all accounts, chattel paper, inventory, fixtures, general intangibles, goods, equipment, patents, and trademarks (the “**Collateral**”), as set forth in the Loan Documents;

WHEREAS, the Debtor's Budget (which is annexed hereto and incorporated herein as **Exhibit A** (the "**Budget**")) indicates that the Debtor will require the use of the Lender's cash and non-cash Collateral in order to meet the Debtor's expenses incidental to its operations;

WHEREAS, all of the Debtor's cash and available funds constitute the Lender's cash Collateral, except for funds received from customers in payment of their Verizon bills, which funds the Debtor remits to Amcomm Wireless LLC ("**Amcomm**") for transmittal to Verizon, all pursuant to Verizon's Datascape system ("**Datascape Funds**");

WHEREAS, subject to the terms and conditions of this Stipulation, the Lender is willing to permit the Debtor to use the Lender's cash and non-cash Collateral solely for the purposes set forth in, and in accordance with the terms and conditions of, the Budget and this Stipulation.

NOW, THEREFORE, subject to Bankruptcy Court approval of this Stipulation, it is hereby stipulated and agreed by and between the Debtor and the Lender as follows:

1. **ACKNOWLEDGMENT OF INDEBTEDNESS.** Subject to Paragraph 3 below, the Debtor hereby acknowledges and agrees that:
  - (a) The Debtor is liable to the Lender for the following Pre-Petition Indebtedness as of the Petition Date (collectively hereinafter the "**Claim**"): 

(i) Principal:	\$1,311,180.31
(ii) Accrued Interest:	\$1,392.27
(iii) Loan Fees:	\$110,777.87
  - (iv) Such other interest accruing from and after the Petition Date under the Loan Documents, and all fees, costs, expenses, and costs of collection (including without limitation reasonable attorneys' fees) as set forth in the Loan Documents heretofore or hereafter incurred by the Lender in connection therewith, to the extent allowable pursuant to Section 506(b) the Bankruptcy Code.
  - (b) The Claim is secured by a valid, perfected, and unavoidable first priority security interest in the Collateral and shall constitute an allowed secured claim to the extent provided for under the Bankruptcy Code.

**The Debtor acknowledges, agrees, and understands that certain of the terms and conditions of Paragraph 1 above vary from the requirements of MBLR 4001-2(c)(2, 4) and that such terms and conditions are enforceable against the Debtor to the extent permitted in MBLR 4001-2(d).**

2. WAIVER OF CLAIMS BY THE DEBTOR.

- (a) Subject to Paragraph 3 below, the Debtor hereby acknowledges and agrees that it has no offsets, defenses, claims, or counterclaims against the Lender, or the Lender's officers, directors, employees, attorneys, representatives, parent, affiliates, predecessors, successors, or assigns with respect to the Pre-Petition Indebtedness, or otherwise, and that if the Debtor now has, or ever did have, any offsets, defenses, claims, or counterclaims against the Lender, or its officers, directors, employees, attorneys, representatives, parent, affiliates, predecessors, successors, or assigns, whether known or unknown, at law or in equity, from the beginning of the world through this date, all of them are hereby expressly **WAIVED**, and the Debtor hereby **RELEASES** the Lender and its officers, directors, employees, attorneys, representatives, parent, affiliates, predecessors, successors, and assigns from any liability therefor.
- (b) Subject to Paragraph 3 below, upon entry of this Stipulation as an Order of the Bankruptcy Court, any and all challenges by the Debtor (i) to the validity, sufficiency, priority, or amount of the Claim; (ii) the perfection of the Lender's security interests and liens in the Collateral; and (iii) any and all transfers received by the Lender pre-petition, including but not limited to, claims or challenges pursuant to §§506(c), 544, 547, 548, 549, 550, and 553 of the Bankruptcy Code shall be forever barred.

**The Debtor acknowledges, agrees, and understands that certain of the terms and conditions of Paragraph Error! Reference source not found. above vary from the requirements of MBLR 4001-2(c)(2, 4, 14) and that such terms and conditions are enforceable against the Debtor to the extent permitted in MBLR 4001-2(d).**

3. BAR DATE. Notwithstanding the provisions of Paragraphs 1 and 2, above, any subsequently appointed Creditors' Committee or Trustee, may file an objection to the amount of the Lender's Claim or file (or seek authority to file, as the case may be) a complaint on behalf of the estate under §§ 544, 547, 548, 549, 550 or 553 of the Bankruptcy Code challenging the validity, priority, or extent of the Lender's security interest in the Collateral or otherwise seeking to avoid or recover any transfers received by the Lender. Any such objection or complaint (as is applicable) shall set forth the basis for the objection or complaint, and the reason why the Claim should not be allowed in full. If no such objection or complaint (as is applicable) is filed: (a) by the Creditors' Committee on or before sixty (60) days after Bankruptcy Court approval of the retention of counsel to the Creditors' Committee, or if no such Committee has been formed then (b) by a Trustee on or before sixty (60) days after the appointment of a Trustee, any and all challenges by any party to the Claim, the Lender's security interest or liens against the Collateral or transfers received by the Lender including, but not limited to, those under §§ 506(c), 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code shall be forever barred.

**The Debtor acknowledges, agrees, and understands that certain of the terms and conditions of Paragraph Error! Reference source not found. above vary from the requirements of MBLR 4001-2(c)(2, 4) and that such terms and conditions are enforceable against the Debtor to the extent permitted in MBLR 4001-2(d).**

4. USE OF CASH COLLATERAL.

- (a) Subject to the terms and conditions of this Stipulation, the Debtor may use the Lender's cash and non-cash Collateral solely to pay its ordinary and necessary business expenses as set forth on the Budget. The Debtor warrants and represents that the Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in connection with this Chapter 11 case and the operation of the Debtor's business for the period set forth in the Budget.
- (b) In no event shall the Debtor use any of the Lender's cash Collateral to pay any items:
  - (i) not contained in the Budget, except as approved by the Court after written notice to the Lender and a hearing, or after written request to the Lender and the Lender's written approval;
  - (ii) in excess of one hundred and fifteen percent (115%) of the amount set forth in the Budget, whether by line item, category, or in the aggregate from the Petition Date (the "**Permitted Expense Variance**"); and
  - (iii) in advance of the week in which such item is scheduled to be paid under the Budget.
- (c) The Debtor shall at all times maintain cash receipts of at least eighty percent (80%) of the aggregate amount set forth in the Budget whether by line item, category, or in the aggregate from the Petition Date (the "**Permitted Receipts Variance**", and together with the Permitted Expense Variance, collectively, the "**Permitted Variance**")
- (d) The Debtor agrees not to knowingly or intentionally incur any administrative expenses other than as set forth in the Budget (subject to the Permitted Variance), exclusive of professional fees approved by the Bankruptcy Court pursuant to 11 U.S.C. § 330, 331, or 503(b) and fees payable pursuant to 28 U.S.C. §1930, without the prior written consent of the Lender or approval by the Bankruptcy Court after notice to the Lender and a hearing.

5. ADEQUATE PROTECTION. In consideration of and as adequate protection for any diminution in the value of the Lender's cash and non-cash Collateral:

- (a) The Lender is hereby granted a security interest to the extent of any diminution in the value of the Lender's cash and non-cash Collateral in all of the Debtor's post-petition assets other than Datascape Funds, including, but not limited to, accounts, inventory, equipment, general intangibles, and goods, motor vehicles, real estate, and leasehold interest as well as all products and proceeds thereof (collectively, the "**Post-Petition**

**Collateral**”). The lien granted to the Lender herein may not be primed by any other lien or encumbrance, whether by order of the Bankruptcy Court or the passage of time. The lien and security interest granted herein shall be deemed valid and perfected notwithstanding the requirements of non-bankruptcy law with respect to perfection, and although not required of the Lender, the automatic stay imposed by §362 of the Bankruptcy Code is hereby modified to the extent necessary for the Lender to perfect the security interest granted herein. The post-petition grant of the security interest shall be supplemental of, and in addition to, the security interest, which the Lender possesses pursuant to the Loan Documents. Notwithstanding anything contained herein, the Post-Petition Collateral shall not include any cause of action or proceeds thereof recovered pursuant to Chapter 5 of the Bankruptcy Code.

- (b) The lien and security interest created herein shall continue in full force and effect until the Claim has been paid in full, including all principal and, to the extent authorized by §506(b) of the Bankruptcy Code, such interest, fees, costs, and expenses, including reasonable attorneys’ fees, whether currently existing or hereafter accrued and incurred, as provided for by the Loan Documents.
- (c) The lien and security interest granted and created herein and the priorities of same shall not be affected by the incurrence of indebtedness pursuant §364 of the Bankruptcy Code, or otherwise. **The Debtor acknowledges, agrees, and understands that the provisions of this subsection vary from MBLR 4001-2(c)(9).**
- (d) The Debtor acknowledges and agrees that no expenses of administration of the Debtor’s estate shall be charged pursuant to §506(c) of the Bankruptcy Code, or otherwise, against the Collateral or the Post-Petition Collateral, provided, however, that this waiver shall not be binding upon any subsequently appointed Trustee. Nothing contained in this Stipulation shall be deemed to be the consent by the Lender, whether express or implied, to any claims against the Collateral or the Post-Petition Collateral under § 506(c) of the Bankruptcy Code. **The Debtor acknowledges, agrees, and understands that the provisions of this subsection vary from MBLR 4001-2(c)(4).**
- (e) If and to the extent (i) the Collateral used by the Debtor *less* (ii) the reduction in the Pre-Petition Indebtedness exceeds the value of the Post-Petition Collateral (the “**Post-Petition Shortfall**”), then the Lender shall have a claim under §503(b) of the Bankruptcy Code in the amount of the Post-Petition Shortfall which shall, pursuant to §507(b) of the Bankruptcy Code, have priority over all other claims entitled to priority under §507(a)(2), with the sole exception of quarterly fees due to the United States Trustee pursuant to 28 U.S.C. §1930.
- (f) The Debtor shall maintain all necessary insurance, including, without limitation, fire, hazard, comprehensive, public liability, and workmen’s compensation as may be currently in effect, naming the Lender as loss payee with respect thereto and with respect to any other such insurance the Debtor elects to obtain. The Debtor shall provide the Lender, upon entry of this Stipulation as an Order of the Bankruptcy Court, with proof of all such coverage, as well as prompt notification of any change in such coverage which may hereafter occur.

- (g) The Lender shall have the right to inspect the Collateral as well as the Debtor's books and records during normal business hours.
- (h) In order to enhance the Lender's ability to monitor the Collateral, the Debtor shall at all times maintain its bank accounts with the Lender.
- (i) On the fifteenth (15<sup>th</sup>) day of each month commencing on January 15, 2017, the Debtor shall make payments to the Lender in the amount equal to one month's interest accrued on the outstanding principal balance of the Pre-Petition Indebtedness at the applicable non-default rate, which payments shall be applied to the Pre-Petition Indebtedness in accordance with the terms and conditions of the Loan Documents (and which payments shall be subject to reallocation by this Court after notice and a hearing).

6. AUTOMATIC PERFECTION.

(a) This Stipulation and the Loan Documents shall be sufficient and conclusive evidence of the priority, perfection, attachment, and validity of all of the Bank's security interests in, and liens on, the Post-Petition Collateral and the liens and security interests granted and created herein shall, by virtue of this Stipulation, constitute valid, automatically perfected and unavoidable security interests, with the priorities granted hereunder, without the necessity of creating, filing, recording, or serving any financing statements or other documents that might otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect (i) the security interests and liens granted to the Bank under this Stipulation, or (ii) the adequate protection replacement liens and security interests granted herein to the Bank, for all purposes, including, without limitation, the payment of all principal, interest, and other fees, including reasonable attorneys' fees and expenses of the Bank in connection with the Debtor's use of cash Collateral.

(b) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of the Bank's liens and security interests authorized, ratified, or created by this Stipulation, or otherwise would impose filing or registration requirements with respect to such replacement liens, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, otherwise applicable federal law, and the judicial power of the Bankruptcy Court.

(c) By virtue of the terms of this Stipulation, to the extent that the Bank has filed Uniform Commercial Code financing statements, entered into control agreements, collateral access agreements, or otherwise perfected the Bank's interest in the Collateral under the name of the Debtor, such filings and other actions and agreements shall be deemed to properly perfect its liens and security interests in the Collateral under this Stipulation without further action by the Bank.

7. FINANCIAL REPORTING. The Debtor shall furnish to the Lender such financial and other information as the Lender shall reasonably request including, but not limited to the following:

- (a) By Tuesday of each week, commencing January 10, 2017, each of the following financial reports:

- (i) A report which sets forth in reasonable detail:
    - (A) total sales for the prior week;
    - (B) total collections for the prior week;
    - (C) comparison of the Debtor's actual performance during the prior week with the Budget and the projections contained therein;
    - (D) a schedule of all outstanding checks or payments issued by the Debtor; and
    - (E) a statement of the value at cost of all categories of the Debtor's inventory; and
  - (ii) An accounts receivable aging as of the close of business on Friday of the prior week;
- (b) Any financial information and pleadings filed with the Bankruptcy Court, shall be served upon the Lender and its counsel within one (1) business day after such information or pleading has been filed with the Bankruptcy Court. Electronic service through the Court's ECF system will suffice for this purpose.
  - (c) All other financial information and reports prepared by the Debtor in the ordinary course of its business, including any financial information required by the Bankruptcy Court or by the Operating Guidelines and Reporting Requirements of the United States Trustee's Office, including a monthly profit and loss statement.
  - (d) All other reports and financial information required by the Loan Agreement or historically provided to the Lender, and any additional reports as may be reasonably requested by the Lender from time to time.
8. NOTICE. Any notice or correspondence required to be sent hereunder shall be forwarded by email at the addresses set forth below, and by overnight delivery, and shall be deemed given upon the earlier of (i) successful email transmission, or (ii) one (1) day after being deposited with a nationally recognized overnight delivery courier (FedEx, UPS, etc.), and addressed as follows:

If to the Lender:

Northern Bank & Trust Company  
275 Mishawum Road  
Woburn, MA 01801  
Attn: James J. Mawn, Jr., President & CEO

With copies to:

Alexander G. Rheaume, Esquire

Rierner & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
arheume@riernerlaw.com

If to the Debtor:

New Country Wireless, LLC  
420 Boston Post Road  
Sudbury, MA 01776  
Attn: Charbal Yousef

With copies to:

Daniel C. Cohn, Esquire  
Murtha Cullina LLP  
99 High Street, 20th Floor  
Boston MA 02110  
dcohn@murthalaw.com

9. TERMINATION. The Debtor's right to use its assets, sell its inventory, and use the Lender's cash and non-cash Collateral shall terminate ("**Termination**") upon the earliest of:
- (i) January 31, 2017;
  - (ii) The Debtor's failure to maintain all necessary insurance as required by paragraph 5(f) above; or
  - (iii) At the Lender's option, upon the occurrence of any Termination Event, as set forth in Paragraph 10 below.
- (b) The Debtor hereby stipulates and agrees that upon Termination, the Lender shall be entitled to a hearing on a Motion for Relief from the Automatic Stay upon an expedited basis. **The Debtor acknowledges, agrees, and understands that the provisions of this subsection vary from MBLR 4001-2(c)(5).**
- (c) Upon Termination, the Debtor shall immediately cease using the Lender's cash Collateral and noncash Collateral, and the Debtor shall cause all funds received to be deposited in a segregated account provided, however, nothing herein shall be deemed a waiver of the Debtor's right to seek authority to use cash Collateral in accordance with Sections 361 and 363 of the Bankruptcy Code.
10. TERMINATION EVENTS . The occurrence of any one or more of the following shall constitute a termination event (a "**Termination Event**") under this Stipulation:
- (a) The material breach by the Debtor of any of the terms, conditions, or covenants of this Stipulation, which is not cured to the reasonable satisfaction of the Lender within three



- (3) business days of receipt by the Borrower of written notice of such breach from the Lender;
- (b) If, commencing week ending January 23, 2017 as shown on the Budget, and continuing for each week thereafter, the Debtor's actual weekly sales on a cumulative basis are less than eighty percent (80%) of the projected weekly sales on a cumulative basis, as set forth in the Budget for such period;
  - (c) The Debtor shall not suffer a loss on an accrual basis during any month as measured by the profit and loss statement provided by the Debtor to the Lender pursuant to this Stipulation;
  - (d) The filing of an objection to the Lender's Claim or the filing by the Debtor of a complaint against the Lender concerning the Pre-Petition Indebtedness in the Bankruptcy Court;
  - (e) If the Debtor conducts any sales or discounts any inventory out of the ordinary course of its business;
  - (f) The cancellation or termination of the Debtor's agreements with Amcomm;
  - (g) The return by the Debtor of any material portion of the Debtor's inventory pursuant to § 546(g) of the Bankruptcy Code without the prior written consent of the Lender;
  - (h) The appointment of a Trustee for the Debtor pursuant to § 1104 of the Bankruptcy Code;
  - (i) The conversion of this Case to a case under Chapter 7 of the Bankruptcy Code;
  - (j) The dismissal of this Case;
  - (k) The appointment of an examiner with any of the powers of a Trustee for the Debtor; or
  - (l) The allowance of a Motion for Relief from the Automatic Stay allowing a creditor of the Debtor to foreclose upon any material asset of the Debtor.

**The Debtor acknowledges, agrees, and understands that certain of the provisions of the above subsections may vary from MBLR 4001-2(c)(13) and that such provisions are enforceable against the Debtor to the extent permitted in MBLR 4001-2(d).**

- 11. FURTHER ASSURANCES. The Automatic Stay is hereby modified to permit the Lender and the Debtor to carry out the terms and conditions of this Stipulation, and the Debtor is hereby authorized to execute any additional agreements as may be deemed necessary to further effectuate and confirm the terms and conditions this Stipulation.
- 12. MODIFICATION. The Lender and the Debtor may agree to nonmaterial modifications or amendments to this Stipulation without further Order of the Bankruptcy Court. Further, the

Lender and the Debtor may modify the Budget from time to time by agreement without further order of the Court.

13. EXTENSION OF STIPULATION. The Lender, in its sole and exclusive discretion, may extend this Stipulation without further Court hearing or further order of the Bankruptcy Court. If the Lender determines to do so, it shall provide written notification of such extension to all parties-in-interest.

[signatures on following page]

14. COURT APPROVAL, CONDITIONS TO EFFECTIVENESS. This Stipulation shall not be effective until the entry of an Order of the Bankruptcy Court approving and authorizing the Debtor to enter into this Stipulation.

The Debtor

NEW COUNTRY WIRELESS, LLC

By its counsel Murtha Cullina LLP

/s/ Daniel C. Cohn  
Daniel C. Cohn, Esquire  
Murtha Cullina LLP  
99 High Street, 20th Floor  
Boston MA 02110  
dcohn@murthalaw.com

The Lender

NORTHERN BANK & TRUST COMPANY

By its Counsel Riemer & Braunstein LLP

/s/ Alexander G. Rheume  
Alexander G. Rheume  
Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
(617) 523-9000  
arheume@riemerlaw.com

Exhibit A  
(Budget)