

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:

STELERA WIRELESS, LLC,
Debtor.

Case No. 13-13267
(Chapter 11)

**DEBTOR'S MOTION TO EXTEND EXCLUSIVE PERIODS TO FILE AND
SOLICIT A PLAN OF REORGANIZATION, WITH BRIEF, AND
WITH NOTICE OF OPPORTUNITY OF HEARING**

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 no later than 14 days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant/movant's attorney [and others who are required to be served] and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

The 14 day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

**NOTICE OF HEARING
(TO BE HELD ONLY IF A RESPONSE IS FILED)**

Notice is hereby given that if a response to the Debtor's Motion to Assume and Assign Certain FCC Licenses with Brief in Support and Notice of Opportunity for Hearing is filed in the manner, and within the time limits, stated above, the hearing on the Objection shall be held on November 7, 2013 at 1:30 p.m., in the Second Floor Courtroom of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102. **If no response is timely filed and the Court grants the requested relief prior to the above-referenced hearing date, the hearing will be stricken from the docket of the Court.**

Pursuant to 11 U.S.C. § 1121(d), Stelera Wireless, LLC, Debtor-in-Possession (“Debtor”) files this motion (the “Motion”) respectfully requesting that this Court enter an Order extending its exclusive periods within which to file a Chapter 11 plan and to solicit acceptances thereon (the “Exclusive Periods”). In support of this Motion, Debtor shows the Court:

A. Jurisdiction and Venue.

1. Debtor filed its petition under Chapter 11 of the United States Bankruptcy Code on July 18, 2013 (the "Petition Date").
2. Debtor continues to operate its remaining business and manage its affairs as debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108.
3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334.
4. This matter presents a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
5. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
6. The statutory predicate for the relief requested herein in Bankruptcy Code section 1121(d).

B. Debtor’s Background.

7. Debtor was incorporated in Delaware in 2006, with its primary place of business located in Oklahoma City, Oklahoma.
8. Debtor specialized in providing broadband services to consumers and businesses in rural markets in the United States.
9. To provide the broadband services, Debtor obtained certain Advanced Wireless Services Licenses from the Federal Communications Commission (the “FCC Licenses”).

10. Debtor's current Manager, Timothy J. Duffy ("Mr. Duffy") came to Debtor in 2008; even then, the company was operating at unsustainable losses.

11. In 2010, Debtor sold FCC Licenses it owned, but was not utilizing, to raise capital because its subscription base had never cash-flowed the company's operating expenses.

12. 2011 saw Debtor in continued financial distress. Efforts were made to make Debtor profitable, but they were ultimately unsuccessful. Additional FCC License sales were contemplated and discussed with acquirers during 2011. However, at that time market giants AT&T and T-Mobile were moving forward with merger plans, which absolutely depressed the market for FCC License sales. Consequently, Debtor could not elicit reasonable interest in its FCC Licenses.

13. By fall of 2012, Debtor was all but out of options. In late 2012, Debtor entered into negotiations with Cellco Partnership d/b/a Verizon Wireless ("Verizon") to sell FCC Licenses. These negotiations culminated in a stalking horse agreement described below.

14. On or about May 31, 2013, Debtor ceased all regular business operations.

15. Debtor's only assets with known value are the FCC Licenses.

16. Prior to Debtor's bankruptcy, Debtor obtained a loan from the United States of America, on behalf of itself and by and through the Department of Agriculture, Rural Utilities Service and the Department of Justice (collectively the "Government") in the approximate amount of up to \$35,000,000.00 (the "Government Loan").

17. Debtor granted the Government a first and preferred security interest in all of its FCC Licenses and other assets to secure repayment of the Government Loan.

18. The Government Loan is Debtor's largest single debt, and its only secured debt. Debtor currently owes approximately \$24,181,109.56 in principal and interest under the Government Loan.

19. Interest on the Government Loan is accruing at approximately \$1,899.43/day, assuming the debt is fully secured.

20. To date, approximately 57 creditors have filed Proofs of Claim, in the aggregate amount of \$25,112,519.72, \$23,981,669.78 of which represents a previously filed Proof of Claim by the Government.

21. Debtor understands that the Government will be filing an amended Proof of Claim to reflect its current debt amount.

22. Debtor believes it has unsecured debt in the range of approximately \$7 – \$10 million dollars.

C. Debtor's Post Bankruptcy Auctions of its FCC Licenses.

23. Debtor knew before filing bankruptcy that the only way for it to realize any meaningful value for its assets was to sell its FCC Licenses through one or more sales.

24. Shortly after filing Bankruptcy, Debtor finalized a written stalking horse agreement for the auction sale and assignment of a specified portion of its FCC Licenses (the "Selected FCC Licenses") to Verizon for the sum of \$18,000,000.00 pursuant to a License Purchase Agreement.

25. Auction of the Selected FCC Licenses occurred on Monday, October 14, 2013, and resulted in a total of 69 bids being made in accordance with the Bidding Procedures previously approved by this Court.

26. The auction culminated in a winning bid of \$32,200,000.00 (a net of \$31,500,000.00 after Verizon's right to credit bid is deducted) that was well in excess of the opening price.

27. Moreover, shortly after finalizing the Verizon Purchase Agreement, Debtor finalized a separate written stalking horse agreement for the auction sale and assignment of the remainder of its FCC Licenses (the "Remainder FCC Licenses") to Atlantic Tele-Network, Inc. ("ATNI") for the purchase price of \$3,875,000.00 pursuant to a License Purchase Agreement.

28. The ATNI auction is scheduled for November 20, 2013.

29. A hearing to approve that auction sale is scheduled for November 22, 2013.

D. Relief Requested.

30. Currently, the time in which Debtor has exclusive right to file a plan ends on November 15, 2013, while the exclusive solicitation period ends January 14, 2013.

31. The Debtor hereby seeks an order, pursuant to 11 U.S.C. § 1121(d), extending the Exclusive Periods until February 15, 2014 (to file a plan), and April 14, 2014 (to solicit votes thereon), without prejudice to the Debtor's right to seek further extensions should the need arise.

32. Debtor has completed the Verizon auction, and will complete the ATNI auction by mid-November. However, neither sale will "close" until the purchasers, Verizon and the winning bidder of the ATNI auction, obtain FCC approval of the sales. The approval process will take at least 90 days for each, meaning Debtor will not receive proceeds from these sales until January, February or March of 2014.

33. Once these sales have formally closed, and Debtor has actually received the proceeds therefrom, the Debtor will be in the position to file a liquidating plan of reorganization.

34. Based upon the Verizon auction, it is entirely possible that Debtor could return 100% to its unsecured creditors depending upon the results of the ATNI auction.

35. 11 U.S.C. § 1121(b) provides that only the debtor may file a plan of reorganization during the initial 120 days of its case. 11 U.S.C. § 1121(c)(3) also provides that if such a plan is filed, then the debtor has the exclusive right to solicit acceptances thereon for 180 days after the petition date.

36. Debtor respectfully requests that this Court extend the Exclusive Periods, as provided for above, to allow it to close the auction sales, ensuring there will actually be money to fund a liquidating plan, and to negotiate, finalize, and file what it hopes will be a consensual a liquidating plan and accompanying disclosure statement.

37. 11 U.S.C. § 1121(d) provides that a court may extend the Debtor's exclusive opportunity to file a plan and to solicit acceptances thereon "for cause," after notice and hearing. Although the term "cause" is not defined in the Bankruptcy Code, the legislative history indicates that it is to be viewed flexibly "in order to allow the debtor to reach an agreement." H.R. Rep. No. 95, 95th Cong., 1st Sess. 232 (1997); *In re Public Serv. Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D. N.H. 1988) ("[T]he legislative intent [of Bankruptcy Code section 1121(d) . . . [is] to promote maximum flexibility"); see also *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297-98 (W.D. Tenn. 1987) (noting that this section is designed in order to give the debtor time to reach a consensus with its creditors with regard to a plan of reorganization).

38. In determining whether an extension is warranted, courts consider: (1) the size and complexity of the case; (2) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (3) the existence of good faith progress towards reorganization; (4) whether the debtor is paying its debts as they come due; (5) whether

the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiating with creditors; (7) the length of time the case has been pending; (8) whether the debtor is seeking extension to pressure creditors; and (9) whether unresolved contingencies exist. See *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (finding cause to extend exclusivity where the debtor had been diligent in its attempts to reorganize and extension was not sought for an indefinite period); *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997).

39. When a court considers the enumerated factors in deciding whether to extend the exclusivity periods, it is not limited to the task of counting factors. *In re Dow Corning Corp.*, 208 B.R. at 699. Sometimes certain factors are more relevant, important, or persuasive than others, and sometimes one or more factors determine the particular result. *Id.* The Debtor asserts that these factors justify an extension of the Exclusive Periods in these cases.

The Nature of Debtor's Case
Warrants an Extension of the Exclusive Periods

40. While Debtor's case is not complex in the sense that it is not a reorganization, administration of the Debtor and its bankruptcy has been made cumbersome and been hampered by several facts. First, Debtor has no day to day employees. Its only active representative of any nature is its Manager, Mr. Duffy. Further, Mr. Duffy lives out of state and has other employment.

41. Second, the Committee has created an unnecessarily combative atmosphere to date, with the Debtor being constantly required to respond to various pleadings and other matters.

42. Third, on August 28, 2013, with respect to the Verizon sale, the Court entered the Order (a) Approving Bidding and Sale Procedures; (b) Approving Form and Manner of Notices;

(c) Approving Form of License Purchase Agreement, Including Breakup Fee and Expense Reimbursement; (d) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale; and (e) Granting Related Relief (Doc.70 (the “Bid Procedures Order”). The Bid Procedures Order authorized the Committee to investigate the liens of the United States and to assert a challenge to the United States’ liens on or before October 28, 2013. On October 23, 2013, the Court entered the *Order Granting Committee Motion for Order Extending Challenge Period as it Applies to the United States* (Doc. 197), extending the Committee’s deadline to assert a challenge to the claim and lien of the United States up to and including December 31, 2013. Any challenge filed by the Committee could significantly re-shift the payment structure of a potential liquidating plan.

43. Fourth, until the Verizon auction concluded on October 14, 2013, there was no serious need to consider a liquidating plan. Debtor’s obligation to RUS was known to be approximately \$24,000,000.00, but recovery from the two auctions was only “guaranteed” to be a combined \$21,875,000.00, leaving no money to fund a liquidating plan.

The Debtor’s Progress in the Case and Need of Sufficient Time Warrant an Extension of the Exclusive Periods

44. As discussed above, the Debtor has made substantial progress in this case through the outcome of the Verizon auction, and with respect to obtaining approval of the procedures for the ATNI auction. The Debtor seeks an extension of the Exclusive Periods, among other things, to afford time to close the two auction sales, to analyze whether the auction results will allow for other asset sales such as tower equipment, and to formulate what will hopefully be a consensual liquidating plan of reorganization.

45. Further, until the results of the Verizon auction, it did not appear that Debtor would be in the position to file a liquidating plan. Therefore, it did not expend resources in that

direction. Now that it appears Debtor will have approximately \$10,000,000.00 above the amount needed to satisfy the Government Loan, it makes economic sense to begin focusing on a liquidating plan.

Debtor's Good Faith, Payment of Ongoing Debts, and Prospects for Filing a Viable Plan Warrant an Extension of the Exclusive Periods

46. Debtor has acted in good faith to preserve the value of its assets both before bankruptcy and after. It has added value to unsecured creditors by its actions, and has sought to minimize costs to the bankruptcy estate where possible.

47. Debtor has no ongoing operational costs, and has garnered approximately \$10,000,000.00 above the amount needed to pay the Government Loan.

48. Further, believes it will have approximately \$10,000,000.00 or more to distribute to unsecured creditors, and possibly equity holders. Thus, Debtor will be able to present a viable liquidating plan.

Progress with Creditors, Length of Bankruptcy Case and Lack of Harm to Creditors or Other Parties-in-Interest Warrant an Extension of the Exclusive Periods

49. The extension of the Exclusive Periods requested herein will not harm the Debtor's creditors or other parties-in-interest. The Debtor is making progress internally towards developing the terms of a plan, and the Debtor will reach out to particular creditor constituencies regarding such terms.

50. This is the Debtor's first request to extend the Exclusive Period, and only approximately three months have elapsed since Debtor filed bankruptcy.

51. The Debtor is not seeking this extension as a means to pressure creditors. Rather, Debtor's previous efforts have been focused on the auction sales and in minimizing costs due since Debtor was so deeply administratively insolvent until only recently. Debtor seeks this

extension as a means of obtaining adequate time to devote resources to developing a plan of liquidation that will benefit all creditors and interest holders.

Unresolved Contingencies Exist That Warrant an Extension of the Exclusive Periods

52. Significant issues should be resolved before an adequate liquidating plan can be finalized, filed, and confirmed.

53. The Committee now has until the end of December in which to challenge the Government's liens. Extending Debtor's Exclusive Periods will allow Debtor a better sense of whether a challenge will occur, and how such circumstance might best fit into a plan.

54. Further, Debtor may be able to return 100% to unsecured creditors based upon ATNI auction results and a review of claims filed in this case. This circumstance would further benefit unsecured creditors by allowing dissolution of the Official Unsecured Creditors' Committee, reducing burdens on Debtor's bankruptcy estate.

55. The requested extensions will also allow Debtor ensure actual receipt of sale proceeds prior to filing a plan.

56. Allowing these matters to occur will allow for a more streamlined plan, thus reducing costs to the bankruptcy estate.

57. As such, the relief requested herein would not unduly delay the reorganization process, but rather would permit the process to move forward in an orderly and expeditious fashion.

58. Without the ability of the Debtor to maintain the exclusive right to file and obtain acceptances of its plan, another party may file a plan solely to disturb the progress of the Debtor in attempting to formulate and negotiate a plan that can appeal to a broad consensus of the all interested parties in this case. For example, a party (such as the Committee) could use the

opportunity to file a competing plan—even a truly unworkable plan—merely to gain unfair leverage over the Debtor or other parties, by forcing the Debtor to devote precious time, money and human resources to defeat such a plan. When it enacted § 1121, Congress was aware of this very issue and determined that a debtor should not be in a position where a renegade creditor could hold a case hostage for its own benefit. Thus, providing the Debtor with additional time to formulate a plan and to obtain acceptances is in the best interests of the Debtor its estate, and its creditors.

59. Termination of the Exclusive Periods at this juncture would defeat the purpose of § 1121 and reduce the likelihood of achieving a consensual plan of reorganization. In addition, there is a significant risk that denial of the requested extension of the Exclusive Periods could have a negative effect on the Debtor's efforts to close the asset sales, and could undermine the gains the Debtor has made since the commencement of this Chapter 11 case, harming not only the Debtor, but also its creditors and other parties-in-interest.

E. Conclusion.

In light of the above, Debtor requests that the Debtors request that this Court enter an order extending the time periods within which the Debtors have the exclusive right to file and solicit a plan as set forth above, and granting Debtor any such further relief as may be just and equitable.

Respectfully Submitted,

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