Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
International Section 214 Authorization for	)	File Nos. ITC2142001042700255
Assignment of Transfer of Control of	)	ITC2142015100800236
Northwest Missouri Cellular Limited	)	
Partnership	)	
	)	
To: Chief, International Bureau	)	

SUPPLEMENT TO PETITION TO DENY OR
INFORMAL REQUEST FOR COMMISSION ACTION

Nicholas Robb, as court-appointed receiver for Oregon Farmers Mutual Telephone Company ("Oregon Farmers") (hereinafter "Mr. Robb"), by his attorneys, hereby submits this Supplement to his attached October 16, 2015 Petition to Deny or Informal Request for Commission Action ("Petition"), to furnish a copy of the attached November 19, 2015 Order of the Circuit Court of Holt County, Missouri establishing the time table for an evidentiary hearing to determine the rights associated with the general partnership interest of Oregon Farmers in the Northwest Missouri Cellular Limited Partnership. This hearing is scheduled to take place on March 31, 2016.[1]

Please direct any questions to the undersigned.

[1] Mr. Robb is also taking this opportunity to associate the new file number assigned to the captioned application (ITC2142015100800236). It does not appear that this application has been the subject of a public notice seeking comment.

Respectfully submitted,

NICHOLAS ROBB, RECEIVER

By: /s/ John A. Prendergast
John A. Prendergast
Salvatore Taillefer, Jr.
His Attorneys

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Dated: November 27, 2015

IN THE CIRCUIT COURT OF HOLT COUNTY, MISSOURI

Townes Missouri, Inc.	)	
	)	Case No. 14HO-CC00011
Petitioner.	)	
	)	
vs.	)	
	)	
Northwest Missouri Holdings, Inc., et al	)	
	)	
Defendants	)	

ORDER

On this day the Court takes up the Receiver's Motion to Enforce Receiver Order and for Declaration of Rights by Receiver and the Motion to Intervene and Amended Motion to Intervene filed by Northwest Missouri Cellular Limited Partnership ("Cellular Partnership") and Motion for Continuance. After consideration of the Receiver's Motion and the motions regarding intervention, other filings in this case, and arguments by the Receiver and interested parties, the Court finds and states as follows:

1. The Court grants the Amended Motion to Intervene and Motion for Continuance filed by the Cellular Partnership.
2. The Cellular Partnership is hereby a party to the above-captioned case.
3. The Court retains jurisdiction to determine Oregon Farmers Mutual Telephone Company's general partnership interest in the Cellular Partnership.
4. The Court will hear evidence and arguments on Receiver's Motion to Enforce Receiver Order and for Declaration of Rights by Receiver, and determine Oregon Farmers Mutual Telephone Company's general partnership interest in Cellular Partnership. The Receiver is to make parties to this determination all parties having an interest in Cellular Partnership not otherwise a party to this action. Leave is granted to Receiver to file such

amended motion as may be necessary so that the issue of what interest, including the possibility of a general partnership interest in Cellular Partnership, or remaining interest in the same, is being conveyed to Plaintiff by reason of its settlement agreement with Defendants and such other issues as Receiver may identify so that all disputed issues can be declared.

5. This Court finds that it has jurisdiction to hear these issues and declare the rights of the parties as the Receiver and all assets he controls are located in Missouri and the initial parties have previously submitted themselves to the jurisdiction of this Court.

6. As soon as possible after the last entry of appearance of a party or 30 days after the service of the last of the parties, the Receiver is directed to initiate a phone conference for purposes of scheduling in anticipation of an evidentiary hearing to take place March 31, 2016.

SO ORDERED.

11/19/2015

Judge Roger Prokes

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
International Section 214 Authorization for Assignment of Transfer of Control of Northwest Missouri Cellular Limited Partnership	)	File No. ITC2142001042700255
	)	
To: Chief, International Bureau	)	

PETITION TO DENY OR INFORMAL REQUEST FOR COMMISSION ACTION

Nicholas Robb, as court-appointed receiver for Oregon Farmers Mutual Telephone Company ("Oregon Farmers") (hereinafter "Mr. Robb" or the "Receiver"), by his attorneys and pursuant to Section 63.20(d) of Commission's rules,[1] hereby petitions the Commission to deny the above-captioned application for Commission consent to the alleged involuntary transfer of control of Northwest Missouri Cellular Limited Partnership ("the Partnership") or, in the alternative, withhold action pending a determination by the appropriate forum on the question as to whether the partnership interest of Oregon Farmers was extinguished by the filing of a petition for bankruptcy under Chapter 11 of the Bankruptcy Code that was dismissed as inappropriate less than sixty days later. As demonstrated below, the Partnership erroneously claims that Oregon Farmers' partnership interest has been extinguished; and in any event, the Commission is not the appropriate authority to resolve this issue, which is governed by Chapter 11 of the Bankruptcy Code.

[1] 47 C.F.R. §63.20(d). In the event that the Commission determines that the formal petition to deny process does not apply to the referenced application, then the relief specified herein is requested pursuant to Rule Section 1.41.

On October 8, 2015, the Partnership filed an application/notification of pro forma transfer of control, claiming that an involuntary transaction had occurred on April 6, 2015 as a result of the automatic withdrawal by Oregon Farmers from the Partnership by operation of Delaware law and the Partnership organizational documents.[2] Based on filings by the Partnership in state court proceedings, it is apparent that this claim is based on the theory that the Oregon Farmers partnership interest was extinguished as a matter of Delaware law upon the filing of a petition for bankruptcy. Although the Partnership fails to provide any legal citations to support its position in its filing, there is substantial authority addressing the situation in which a state statute specifies that a debtor is no longer a general partner of a partnership or a member of a limited liability company because of the filing of a voluntary petition; and this authority confirms that the Bankruptcy Code preempts state law and Section 541(c)(1) makes these so-called "ipso facto" provisions unenforceable.[3]

In particular, the Partnership's filing neglects to state that the petition for bankruptcy upon which it apparently relies was dismissed by the Bankruptcy Court via an oral ruling on May 26, 2015 as wrongful.[4] The bankruptcy court found that the purpose of the filing was to gain a litigation advantage in the dispute between the debtors and the secured party that was owed millions of dollars. From start to finish, the alleged "bankruptcy" lasted fifty days. At no time did the Partnership or the debtors inform the bankruptcy court that they considered the interest of Oregon Farmers to be forfeited, nor did they ever seek to lift the automatic stay to seek enforcement of the alleged "ipso facto" provision.

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[2] The Partnership takes the position that the above-captioned application is intended to "correct" the information in the July 14, 2015 application filed under ULS File No. 0006865646. The Partnership did not consult with the Receiver on the September 1 application .

[3] *See e.g. In re Virginia Broadband, LLC*, 498 B.R. 90, 95-97 (Bankr. W.D. Va. 2013); *Sheehan v. Warner (In re Warner)*, 480 B.R. 641, 655 (Bankr. N.D.W.V. 2012); *In re Daugherty Constr. Inc.*, 188 B.R. 607, 614 (Bankr. D. Neb. 1995).

[4] An Emergency Motion for Stay of the petition dismissal was subsequently denied by the U.S. District Court for the District of Delaware. *See* attached June 11, 2015 Order at 3-4.

It would stand reason on its head to allow the Partnership to deprive Oregon Farmers' court-appointed receiver of this valuable asset by means of a wrongfully filed and quickly dismissed bankruptcy petition. The Bankruptcy Code and Delaware case law make clear that Congress intended to place the debtor back into the *status quo ante* following an involuntary dismissal of a bankruptcy petition. Under Section 349(3) of the Bankruptcy Code, the dismissal of a bankruptcy case automatically "revest[s] the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title." ***Delaware courts have held that, "[u]nless a court indicates otherwise, the general effect of an order of dismissal is to restore the status quo ante. It is as though the bankruptcy case never has been brought."***[5] Therefore, the Oregon Farmers general partnership and limited partnership interests remain valid. Despite any state law or contractual provision to the contrary, the Bankruptcy Code required the Partnership to "revest" the partnership interests in Oregon Farmers, and Delaware precedent agrees. Therefore, the basis of the transfer of control described in the Partnership's filing is invalid. The Commission should note all of the important events that were not disclosed in either of the Partnership's filings.

Finally, the Commission is not the appropriate forum to settle the issue presented. "The FCC itself consistently maintains the position that it has no jurisdiction over the private contract rights and obligations of parties, even though the subject matter of such contracts concerns broadcasting facilities."[6] In ruling on a dispute about the proper interpretation of an agreement regarding radio station facilities, the FCC noted that this was the "sort of dispute which cannot be

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[5] *See Phillips v. Hove*, Case No. 3644-VCL (Del. Ch. July 19, 2011)(*quoting In re Lewis & Coulter, Inc.*, 159 B.R. 188, 190 (Bankr. W.D. Pa. 1993)(emphasis in original).

[6] *Hanover Radio, Inc. v. Ninety-Two Point Seven Broadcasting, Inc.*, 2 Va. Cir. 84, 86, 1982 Va. Cir. LEXIS 16 (Va. Cir. 1982) (retaining jurisdiction in state court over an alleged breach of settlement agreement regarding FCC license).

resolved by the Commission and is best left to the local courts."[7] Since the matter at hand involves the Partnership's organizational documents, including the partnership agreement, if it does not deny the application outright the Commission should withhold action until the controversy presented is settled.

Because the instant pleading provides the Commission with a showing that the Oregon Farmers' cellular partnership is still valid, and because the status of the Oregon Farmers partnership interest is a matter of controversy even when viewed in the light most favorable to the Partnership, it is respectfully requested that the Commission deny the transfer of control described in the above-captioned proceeding or, in the alternative, withhold action thereon pending a resolution of the matter in the appropriate forum. Absent a resolution of these issues, it cannot be said that Oregon Farmers was deemed to have irrevocably and involuntarily withdrawn from the Partnership or that there was an increase in the size of the remaining partnership interests.

Respectfully submitted,

NICHOLAS ROBB, RECEIVER

By: _____

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Dated: October 16, 2015

[7] *In re John F. Runner, Receiver (KBIF)*, 36 Rad. Reg. 2d (P & F) 773, 778 (1976).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: NORTHWEST MISSOURI HOLDINGS, INC., *et al.*,	:	Bankr. Case No. 15-10728-BLS Jointly Administered
NORTHWEST MISSOURI HOLDINGS, INC., OREGON FARMERS MUTUAL TELEPHONE CO., OREGON FARMERS MUTUAL LONG DISTANCE, INC., and SOUTH HOLT CABLEVISION, INC.,	:	
Appellants,	:	
v.	:	Civ. No. 15-470-LPS
TOWNES MISSOURI, INC.,	:	
Appellee.	:	

MEMORANDUM ORDER

At Wilmington this 11th day of June, 2015, having reviewed Appellants' Emergency Motion for Stay Pending Appeal (D.I. 4) and Appellee's objection (D.I. 6),

IT IS HEREBY ORDERED that, for the reasons stated below, the Emergency Motion for Stay Pending Appeal is **DENIED**.

Background.[1] Appellants filed for Chapter 11 bankruptcy relief in the United States Bankruptcy Court for the District of Delaware on April 6, 2015. (D.I. 4 at ¶ 5) Townes Tele-Communications, Inc. and Townes Missouri Two, Inc. (collectively, "Townes") hold over 99% of the Appellants' debts. (D.I. 6 at ¶ 7) Prior to bankruptcy, and after Appellants defaulted on those debts, Townes had secured a judgment in Missouri state court. (*Id.*) Also prior to

[1] Because the Court writes primarily for the benefit of the parties, the Court presumes reader familiarity with the pertinent background facts and case history.

bankruptcy, Townes had initiated receivership proceedings, but these state court proceedings were stayed by the bankruptcy pursuant to 11 U.S.C. § 362(a).

On April 22, 2015, Townes filed a motion to dismiss Appellants' bankruptcy. The Bankruptcy Court conducted an evidentiary hearing on May 18, 2015. (D.I. 4 at ¶ 10) The parties presented evidence from Charles Lake, an officer and director of all four Appellant entities, and Johnny Ross, general manager of Townes Communications. (D.I. 6-1 at 27, 46) Via an oral ruling on May 26, 2015, the Bankruptcy Court granted dismissal under 11 U.S.C. § 1112. (D.I. 6-2 at 2) This lifted the automatic stay, and the Missouri state court has scheduled a hearing for June 15, 2015, at which Townes will be pressing its application for appointment of a receiver. (D.I. 3) Appellants unsuccessfully moved in the Bankruptcy Court for an emergency stay pending appeal. (D.I. 6 at ¶ 10)

Standard of Review. Appeals from the Bankruptcy Court are governed by 28 U.S.C. § 158. Pursuant to § 158(a), district courts have mandatory jurisdiction to hear appeals "from final judgments, orders, and decrees" and discretionary jurisdiction over appeals "from other interlocutory orders and decrees." 28 U.S.C. § 158(a)(1) and (3). In conducting its review of the issues on appeal, the Court reviews the Bankruptcy Court's findings of fact for clear error and exercises plenary review of questions of law. *See Am. Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999).

Federal Rule of Bankruptcy Procedure 8007(b) permits this Court to consider a stay pending appeal. The party seeking such a stay has the burden of proof on each of the following factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay

> will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Republic of Philippines v. Westinghouse Elec. Corp., 949 F.2d 653, 658 (3d Cir. 1991). No factor is dispositive; the court must weigh all relevant factors. *See In re Freedom Commc'ns Holdings, Inc.*, 2009 WL 4506553, at *1 (D. Del. Dec. 4, 2009).

Discussion.

1. Likelihood of Success on the Merits. The Bankruptcy Court dismissed Appellants' case under 11 U.S.C. § 1112 after applying the relevant *Primestone* factors.[2] *See In re Primestone Inv. Partners L.P.*, 272 B.R. 554, 557 (D. Del. 2002); *see also* D.I. 6-2 at 8 ("The focus of the *Primestone* inquiry is whether the debtors sought to achieve objectives outside the legitimate scope of the bankruptcy laws when filing for protection under Chapter 11."). When the Court addresses the merits of this appeal, it will review the Bankruptcy Court's grant of dismissal for an abuse of discretion. *See In re SGL Carbon Corp.*, 200 F.3d 154, 159 (3d Cir. 1999). Thus, Appellants' burden is to prove that they will likely succeed in proving that the Bankruptcy Court's decision contained "a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." *Int'l Union, UAW v. Mack Trucks, Inc.*, 820 F.2d 91, 95 (3d Cir. 1987).

"Likelihood of success on the merits means that a movant has a substantial case, or a strong case on appeal." *In re Polaroid Corp.*, 2004 WL 253477, at *1 (D. Del. Feb. 9, 2004)

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[2] The following factors compelled the Bankruptcy Court to dismiss this case: (i) it is a two-party dispute, (ii) there is no meaningful prospect of reorganization, (iii) Townes holds 99% of the claims, and (iv) other unsecured creditors did not participate in the case. (D.I. 6-2 at 8–9) The Bankruptcy Court reached its conclusion notwithstanding its recognition that "voluntary Chapter 11 cases should be dismissed under Section 1112 sparingly and with great caution." (*Id.* at 4)

(internal quotation marks omitted). In attempting to show likelihood of success, Appellants point to three purported errors in the Bankruptcy Court's decision. (D.I. 4 at ¶ 13)

First, Appellants allege that the Bankruptcy Court incorrectly determined that they would not be able to confirm a plan of reorganization because the Townes entities could block any proposed plan. (*Id.*) Appellants suggest that if they successfully avoid Townes' lien, they could relegate the resulting unsecured claim into its own class, and thus prevent Townes from unilaterally blocking plan confirmation. (*Id.*) The Court finds this argument unpersuasive. Appellants admitted that they intend to file a plan of liquidation, not a plan of reorganization. (D.I. 6-1 at 29) A liquidation plan can further a valid bankruptcy purpose, but only if that plan will maximize the value of the debtor's estate. *See In re Crown Vill. Farm, LLC*, 415 B.R. 86, 92 (Bankr. D. Del. 2009). The testimony in the record indicates that if Townes acquires the Appellants, the payout to the other creditors will be greater than in a liquidation. (*Compare* D.I. 6-1 at 34, *with* D.I. 6-1 at 11, 14, 66) Thus, Appellants' theoretical argument offers no basis to question the Bankruptcy Court's finding that there is no meaningful prospect of reorganization.[3]

Second, Appellants argue that the Bankruptcy Court erred by finding that this case is a two-party dispute given that the Townes entities are legally distinct from one another. (D.I. 4 at ¶ 16) The Court finds that the record supports the Bankruptcy Court's conclusion that the two entities are functionally equivalent. Mr. Ross testified in the Bankruptcy Court that he has authority to speak on behalf of Townes II, that Townes completely owns Townes II, and that both entities support dismissal of the bankruptcy. (*See* D.I. 6-1 at 71) Appellants have not shown a likelihood of success on this point.

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[3] The Court also finds it unlikely that Appellants could meet the requisite reasonableness standard for separately classifying Townes' resulting unsecured claim, given that the purpose for doing so would appear to be to gerrymander an affirmative vote. *See Matter of Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987).

Third, Appellants argue that the Missouri state court will not likely grant a receivership. (D.I. 4 at ¶18) Because the Bankruptcy Court did not factor the likelihood of a receivership into its analysis of the *Primestone* factors, the Court finds this point immaterial.

Accordingly, Appellants have not demonstrated a likelihood that the Bankruptcy Court abused its discretion by dismissing their case.

2. Whether the Applicant Will be Irreparably Harmed. "To constitute irreparable harm . . . an injury cannot be speculative; it must be certain, great, and actual." *In re ANC Rental Corp.*, 2002 WL 1058196, at *2 (D. Del. May 22, 2002) (citing *Sprint Corp. v. DeAngelo*, 12 F. Supp. 2d 1188, 1194 (D. Kan. 1998)). Appellants argue that if Townes is successful in the receivership proceedings, Appellants will suffer irreparable harm because their appeal will become moot. (D.I. 4 at ¶¶ 22–23)

This argument is unpersuasive for at least two reasons. First, Appellants simultaneously contend that Townes has no basis to appoint a receiver (and therefore the Missouri court will likely not appoint a receiver). (*See id.* at ¶¶ 18–19)[4] Second, as already explained, Appellants have not made a strong showing that they are likely to succeed on appeal. Appellants' argument, thus, relies solely on their potential loss of an appeal, and "equitable mootness of an appeal, without more, does not constitute irreparable harm." *In re New Century TRS Holdings, Inc.*, 2009 WL 1833875, at *2 (D. Del. June 26, 2009).

3. Substantial Injury to the Other Interested Parties. Townes claims that a stay will cause substantial injury because its collateral will continue to diminish in value if it cannot exercise its

[4] The Bankruptcy Court did not "speculate on the appointment of a receiver" and explained that its dismissal "was not based on . . . in-depth analysis of Missouri receivership law or other remedies that might be available to creditors in those proceedings." (June 8, 2015 transcript at 20) It further stated: "it was my full and confident expectation that dismissal would lead to further proceedings in the Missouri State Court. . . . Whatever remedy is ordered by that Court will be determined in accordance with applicable law." (*Id.* at 20-21)

state court rights. (D.I. 6 at ¶ 20) Appellants, however, represent that they will continue making adequate protection payments to preserve Townes' collateral. (D.I. 4 at ¶ 25) Though the attendant delay associated with a stay may cause some injury to Townes, the Court is not persuaded this injury will be substantial. Appellants have met their burden on this factor.

4. Public Interest. Appellants contend that the public has an interest in the correct application of the law, which supports a stay in this case. (D.I. 4 at ¶ 26) (citing *Ams. United for Separation of Church & State v. City of Grand Rapids*, 922 F.2d 303, 306 (6th Cir. 1990)) While the Court agrees with Appellants that the public has an interest in correct application of the law, the Court has determined that in this case Appellants failed to show a likelihood that the Bankruptcy Court misapplied the law. Moreover, as a general matter, "[t]here is always a strong public interest in having lawsuits move forward to resolution as speedily as possible." *Castle v. Crouse*, 2004 WL 1490336, at *5 (E.D. Pa. July 2, 2004). Given that this is at least largely a two-party dispute, the Court finds that the public interest favors allowing this matter to move forward towards a resolution in the more appropriate forum – Missouri state court. *See, e.g., In re Shar*, 253 B.R. 621, 636–37 (Bankr. D.N.J. 1999) (explaining that state courts, not bankruptcy courts, are more appropriate for strictly two-party disputes).

5. Conclusion. On balance, Appellants have not met their burden to show that the pertinent factors weigh in favor of granting a stay. Accordingly, the Court will deny Appellants' Emergency Motion for Stay Pending Appeal.

Honorable Leonard P. Stark
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, John A. Prendergast, an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, do hereby certify that on this 16th day of October, 2015, I caused a copy of the foregoing "Petition to Deny or Informal Request for Commission Action" to be served as follows:

Via First-Class Mail and E-Mail:

Gregory W. Whiteaker, Esq.
Herman & Whiteaker, LLC
6720 B Rockledge Drive, Suite 150
Bethesda, MD 20817

John A. Prendergast

Dated: October 16, 2015

CERTIFICATE OF SERVICE

I, John A. Prendergast, an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, do hereby certify that on this 27th day of November, 2015, I caused a copy of the foregoing "Supplement to Petition to Deny or Informal Request for Commission Action" to be served as follows:

Via First-Class Mail:

Gregory W. Whiteaker, Esq.
Herman & Whiteaker, LLC
6720 B Rockledge Drive, Suite 150
Bethesda, Maryland 20817

/s/ John A. Prendergast
John A. Prendergast

Dated: November 27 2015