

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

STARRY GROUP HOLDINGS, INC., *et al.*,

Debtor.

Chapter 11

Case No. 23-10219 (KBO)

(Jointly Administered)

Hearing Date: October 18, 2023 @ 2:00p.m(ET)

Objections Due: October 13, 2023 @ 4:00p.m. (ET)

**APPLICATION OF AMERICAN TOWERS LLC FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

American Towers LLC, on behalf of itself and its wholly owned subsidiaries (individually and collectively, “*ATC*”), files this Application (the “*Application*”) for allowance and payment of ATC’s administrative expense claim (the “*Administrative Claim*”), pursuant to 11 U.S.C. § 503(a), for the value of licensing fees owing by the above-captioned debtors (the “*Debtors*”) on or after the Petition Date (defined below). In support of this Application, ATC submits (i) the *Declaration of Margaret Robinson in Support of the Application of American Towers LLC for Allowance and Payment of Administrative Expense Claim* attached hereto as Exhibit A and incorporated herein, and (ii) a proposed order attached hereto as Exhibit B, and respectfully states as follows:

Introduction and Background

1. On February 20, 2023 (the “*Petition Date*”), Starry Group Holdings, Inc. and its affiliated debtors each filed voluntary petitions under title 11 of the United States Code (the “*Bankruptcy Code*”), in the United States Bankruptcy Court for the District of Delaware (the “*Court*”) commencing these jointly administered chapter 11 cases.



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2. Pursuant to various license agreements between debtor Starry, Inc. (“**Starry**”) and ATC (collectively, the “**Agreements**¹”), ATC licenses the right to use and occupy space at Tower Facilities in exchange for, among other things, License Fees paid to ATC for Starry’s use of the Licensed Spaces.

3. On the Petition Date, the Debtors filed two omnibus motions seeking the rejection of certain executory contracts and unexpired leases [D.I.s. 19, 20], and filed a third omnibus motion seeking rejection of certain executory contracts and unexpired leases on April 20, 2023 [D.I. 336] (collectively, the “**Rejection Motions**”). The Rejection Motions proposed the rejection of numerous ATC Agreements (the “**Rejected Agreements**”). On March 20, 2023, March 22, 2023, and April 20, 2023, the Court entered orders granting the Rejection Motions [D.I.s. 161, 189, and 336].

4. On April 17, 2023, ATC timely filed Proof of Claim No. 125 in Starry’s chapter 11 case (the “**Initial Claim**”). The Initial Claim asserted rights of setoff, recoupment, and other equitable rights to the fullest extent available. The Initial Claim reserves all of ATC’s rights and preserves all defenses in connection therewith.

5. On June 9, 2023, ATC amended the Initial Claim (the “**Amended Claim**”). The Debtors subsequently objected to the Initial Claim as having been amended and superseded. [D.I. 571]. By order entered on August 3, 2023, the Court sustained the Debtors’ objection; accordingly, only the Amended Claim remains.

6. On March 31, 2023, the Court entered an order [D.I. 271] approving the adequacy of the Disclosure Statement and authorizing the Debtors to commence solicitation of acceptances and rejections to the Plan.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreements.

7. On May 15, 2023, ATC filed its *Limited Objection and Reservation of Rights of American Tower LLC and Applicable Affiliates to Confirmation of Second Amended Joint Chapter 11 Plan of Reorganization of Starry Group Holdings, Inc. and its Debtor Affiliates* [D.I. 421] (the “**Limited Objection**”). In its Limited Objection, ATC asserted amounts owing on account of those Agreements listed in the Debtors’ *Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [D.I.I. 311] and *Notice of Filing of Plan Supplement* [D.I. 408] (the “**Assumed Agreements**”).

8. On May 26, 2023, the Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming Third Amended Joint Chapter 11 Plan of Reorganization of Starry Group Holdings, Inc. and its Debtor Affiliates* [D.I. 487] (the “**Confirmation Order**”), confirming the Debtor’s *Third Amended Joint Chapter 11 Plan of Reorganization of Starry Group Holdings, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [D.I. 459] (as modified and together with all exhibits and supplements thereto, the “**Plan**”). Pursuant to the Plan, all executory contracts not previously assumed or rejected will be deemed assumed as of the Effective Date. Plan, Art. IV.B.

9. The Debtors subsequently filed its *Notice of (A) Entry of Order Confirming and (B) Effective Date of Third Amended Joint Chapter 11 Plan of Reorganization of Starry Group Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [D.I.. 656] on August 31, 2023 (the “**Effective Date**”).

10. The Plan provides that administrative expenses will be paid in full on the Effective Date, or as the parties otherwise agree.

Jurisdiction

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue in this Court is proper pursuant to 28 U.S.C. § 1408.

12. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

13. The statutory bases for the relief requested herein are sections 105(a) and 503(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

Relief Requested

14. By this Application, ATC seeks an allowed administrative expense claim of not less than \$21,783.00 for post-petition services provided to the Debtor in the ordinary course of business. This amount represents licensing fees accrued based on the Debtors' use of the Licensed Spaces from (1) the filing of the Limited Objection through the Effective Date for each Assumed Agreement and (2) the Petition Date through the Effective Date for each Agreement to be assumed through the Plan. The use of the Licensed Spaces directly benefitted the Debtors and their estates, as it permitted the Debtors to continue to operate their business without interruption. ATC is therefore entitled to an administrative priority claim pursuant to 503(b) and 507(a) of the Bankruptcy Code for the Debtors' post-petition obligations accrued under the Agreements.

15. Section 503(b) of the Bankruptcy Code provides that, upon the request of a party in interest, and "[a]fter notice and a hearing, there shall be allowed administrative expenses . . . including . . . the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). To qualify as an administrative expense under section 503(b)(1)(A), a claimant must demonstrate that the expense arises out of a transaction between the debtors and claimant, and that the transaction directly benefitted the debtors. *In re U Lock, Inc.*, Case No. 22-20823,

2023 WL 308210, at *3 (Bankr. W.D. Penn. Jan. 17, 2023); *In re Bluestem Brands, Inc.*, Case No. 20-10566, 2021 WL 3174911, at *5 (Bankr. D. Del. July 27, 2021). The Third Circuit has held that “[a]n administrative expense claim is entitled to priority under Section 503(b)(1)(A) if: (1) there was a post-petition transaction between the claimant and the estate, and (2) those expenses yielded a benefit to the estate.” *In re Energy Future Holdings Corp.*, 990 F.3d 728, 741-42 (3d Cir. 2021) (internal quotations omitted).

16. The use of the Licensed Spaces by the Debtors in the post-petition period benefitted the Debtors by enabling them to continue operating their businesses as debtors in possession. Absent use of the Licensed Spaces, the Debtors likely would have experienced interruption in its regular business, as it would have been unable to provide internet services to its customers and derive revenue. Because ATC’s continued relationship with the Debtors post-petition directly benefitted the Debtors and their estates, ATC is entitled to an administrative expense claim in an amount representing the services provided to the Debtors between the Petition Date and the Effective Date.

17. Although ATC expects the Debtors to pay any outstanding post-petition License Fees in full, this Application is being filed out of an abundance of caution to preserve ATC’s rights. ATC also reserves the right to request immediate payment of its Administrative Claim.

Reservation of Rights

18. ATC reserves the right to amend or supplement this Administrative Claim, or its filed proof of claim, at any time and in any manner and reserves all rights it may have under applicable law and the Bankruptcy Code, including, without limitation, the right to amend this Administrative Claim or to seek a judicial estimation of any unliquidated amounts asserted herein pursuant to 11 U.S.C. § 502(c) at any time.

WHEREFORE, ATC respectfully requests that the Court enter an order (i) allowing the Administrative Claim in the amount of \$21,783.00 accounting for License Fees accruing following the filing of the Petition, and (ii) granting ATC such other and further relief as may be just and fitting under the circumstances.

Dated: September 29, 2023

Respectfully Submitted,

/s/ Joseph H. Huston, Jr.

Joseph H. Huston, Jr. (No. 4035)

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*Attorneys for American Towers LLC and its
Applicable Affiliates*

Exhibit A

Declaration of Margaret Robinson

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

STARRY GROUP HOLDINGS, INC., *et al.*,

Debtor.

Chapter 11

Case No. 23-10219 (KBO)

(Jointly Administered)

**DECLARATION OF MARGARET ROBINSON IN SUPPORT OF APPLICATION FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

I, Margaret Robinson, declare and state as follows pursuant to 28 U.S.C. § 1746:

1. I am the Vice President, Operations Support, UST Legal of American Towers LLC (“*ATC*”), which maintains offices at 10 Presidential Way, Woburn, MA 01801. In the course of my duties, I am familiar with and have access to the agreements, billing statements, invoices and other documents created and maintained by ATC in the ordinary course of its business. I submit this declaration in support of ATC’s *Application of American Towers LLC for Allowance and Payment of Administrative Expense Claim* (the “*Application*”¹). If called as a witness, I could and would testify competently to the matters set forth in this Declaration.

2. Prior to the Petition Date, debtor Starry, Inc. (“*Starry*”) and ATC entered into various License Agreements (collectively, the “*Agreements*”), pursuant to which ATC licensed the right to use and occupy space at Tower Facilities in exchange for, among other things, License Fees paid to ATC for Starry’s use of the Licensed Spaces. The Agreements obligated Starry to comply with the terms and conditions set forth therein, including payment of the License Fees.

3. ATC filed and subsequently amended a proof of claim on account of amounts owing under the Agreements, as well as damages arising under those Agreements rejected by the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

Debtors. Additional ATC Agreements were subsequently rejected, and ATC filed an amended proof of claim accounting for additional rejection damages (with the Initial Claim, the “***Pre-Petition Claim***”).

4. ATC has continued to perform under the Agreements, and Starry continues to accrue amounts owed following the filing of the Petition (the “***Post-Bankruptcy Balance***”). The Post-Bankruptcy Balance represents the outstanding obligations to ATC owing under the Agreements, and more specifically for the Debtors’ use of the Licensed Spaces from (1) the filing of the Limited Objection through the Effective Date for each Assumed Agreement and (2) the Petition Date through the Effective Date for each Agreement to be assumed through the Plan. A breakdown of the Post-Bankruptcy Balance is attached hereto as Schedule 1.

I declare under penalty of perjury that the foregoing is true and correct.

Date: September 28, 2023

/s/ Margaret Robinson
Margaret Robinson

Schedule 1 to Declaration of Margaret Robinson in Support of Application
for Allowance and Payment of Administrative Expense Claim

<u>Location Number</u>	<u>Tower Name</u>	<u>Administrative Expense Claim</u>
208715	1625 Rockaway Parkway	\$ 1,943.66
208715	1625 Rockaway	\$ 7,774.64
208738	2311 Southern Blvd.	\$ 194.36
276630	9550 Flair Drive RT CA	\$ 3,193.00
375369	401 Wilshire Blvd., Santa Monica, CA	\$ 4,264.42
375367	12400 Wilshire Blvd.	\$ 1,742.48
381644	Young Men's Christian Association	\$ 47.90
415992	FOREST PARK TX	\$ 2,622.54
TOTAL		\$ 21,783.00

Exhibit B

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

STARRY GROUP HOLDINGS, INC., *et al.*,

Debtor.

Chapter 11

Case No. 23-10219 (KBO)

(Jointly Administered)

Related to D.I. _____

**ORDER GRANTING APPLICATION OF AMERICAN TOWERS LLC FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

THIS MATTER came before the Court on the *Application of American Towers LLC for Allowance and Payment of Administrative Expense Claim* (the “**Application**”). Upon review of the Application and supporting documents, and following adequate notice to all parties in interest as required by Rule 4001(d) of the Federal Rules of Bankruptcy Procedure, it is hereby ORDERED:

1. The Application is granted.
2. Starry is obligated to pay ATC the amount of \$21,783.00 for post-petition services received in the ordinary course of business pursuant to the Agreements.
3. ATC is entitled to an administrative priority claim in the amount of \$21,783.00 pursuant to 503(b) and 507(a) of the Bankruptcy Code.

Dated: October, 2023

Hon. Karen B. Owens
UNITED STATES BANKRUPTCY JUDGE

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the indicated date, the undersigned filed and served the foregoing Application for Allowance and Payment of an Administrative Expense using the Court's CM/ECF system, which will automatically send email notification of such filing to all attorneys of record registered to receive such notice.

Dated: September 29, 2023
Wilmington, DE

/s/ Joseph H. Huston, Jr.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

STARRY GROUP HOLDINGS, INC., *et al.*,

Debtor.

Chapter 11
Case No. 23-10219 (KBO)
(Jointly Administered)
Hearing: October 18, 2023
@ 2:00 p.m (ET)
Objections Due: October 13, 2023
@ 4:00p.m. (ET)

**NOTICE OF APPLICATION OF AMERICAN TOWERS LLC FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

PLEASE TAKE NOTICE THAT:

1. On September 29, 2023, American Towers LLC, on behalf of itself and its wholly owned subsidiaries (individually and collectively, “ATC”), filed its Application (the “*Application*”) for allowance and payment of ATC’s administrative expense claim (the “*Administrative Claim*”), pursuant to 11 U.S.C. § 503(a), 2023, with the U.S. Bankruptcy Court for the District of Delaware (the “**Court**”).

2. Any objection or other response to the Motion must be filed in writing with the Court, through its CM/ECF electronic filing system or the Clerk of the U.S. Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served on counsel to the Liquidating Trustee by **4:00 P.M. (EDT), on Friday October 13, 2023** (the “**Objection Deadline**”).

3. The Court will not consider any objection or other response to the Motion that is not filed with the Court by the Objection Deadline.

4. A hearing on the Motion is scheduled to be held on **October 18, 2023 at 2:00 A.M. (ET)**, before the Honorable Karen B Owens, in the U.S. Bankruptcy Court for the District of Delaware, 824 North Market Street, Courtroom No. 3, 6th Floor, Wilmington, Delaware 19801, in person.

5. **If you fail to respond to the Motion in accordance with this notice, the Court may grant the relief requested in the Motion without further notice or a hearing.**

Dated: September 29, 2023
Wilmington, Delaware

Respectfully Submitted,

/s/ Joseph H. Huston, Jr.
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Applicable Affiliates*