

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

STARRY GROUP HOLDINGS, INC. *et al.*¹

Debtor.

Chapter 11

Case No. 23-10219 (KBO)

(Jointly Administered)

Related to D.I.s 311, 378, 408 & 412

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF AMERICAN TOWERS
LLC AND APPLICABLE AFFILIATES TO CONFIRMATION OF SECOND
AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF STARRY
GROUP HOLDINGS, INC. AND ITS DEBTOR AFFILIATES**

American Towers LLC, on behalf of itself and any of its applicable affiliates (collectively, “ATC”), as a creditor and party-in-interest in the above-captioned, jointly administered bankruptcy cases (collectively, the “*Bankruptcy Cases*”), hereby files this objection (the “*Limited Objection*”) to confirmation of the *Second Amended Joint Chapter 11 Plan of Reorganization of Starry Group Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 407] (the “*Amended Plan*”). In support of this Limited Objection, ATC respectfully represents as follows:

INTRODUCTION AND BACKGROUND

1. On February 20, 2023 (the “*Petition Date*”), Starry Group Holdings, Inc. and its affiliated debtors (collectively, the “*Debtors*”) each filed a voluntary petition under title 11 of the

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Amended Plan.



United States Code (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) commencing the Bankruptcy Cases.

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

3. On the Petition Date, the Debtors filed two omnibus motions seeking the rejection of certain executory contracts and unexpired leases [Docket Nos. 19, 20], and filed a third omnibus motion seeking rejection of certain executory contracts and unexpired leases on April 20, 2023 [Docket No. 336] (collectively, the “**Initial Rejection Motions**”). The Initial Rejection Motions proposed the rejection of numerous ATC Agreements, and were granted on March 20, 2023 [Docket No. 161] and March 23, 2023 [Docket No. 189] (the “**Rejection Orders**”).³

4. On April 10, 2023, the Debtors filed the *Notice of Possible Assumption & Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 311], which included the Schedule of Contracts and Leases and Proposed Cure Cost (the “**Cure List**”). The Cure List proposed assumption of certain of the Agreements, and proposed cure amounts for each Agreement identified to be assumed.

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

³ As of the filing of this Limited Objection, the Court has not yet ruled on the third omnibus motion, though ATC anticipates an order will soon enter. ATC reserves all rights with respect to the third omnibus motion, including but not limited to filing an amended proof of claim to account for rejection damages.

6. On May 1, 2023, ATC filed its *Objection to Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 378] (the “**Cure Objection**”), asserting amounts needed to cure defaults on various Agreements the Debtors intend to assume.

7. On May 5, 2023, GTP Structures I, LLC (“**GTP**”), an affiliate of ATC, filed its *Motion for Entry of an Order Confirming that the Automatic Stay Does Not Apply to its Proposed Tender of Defense and Indemnity to its Insurer(s), of, in the Alternative, Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1) Authorizing it to Tender Defense and Indemnity to Preserve its Rights under All Available Insurance Coverage* [Docket No. 398] (the “**Motion for Relief**”), requesting, among other things, entry of an Order confirming that the automatic stay of 11 U.S.C. § 362(d)(1) does not apply to its proposed tender of defense and indemnity (on the behalf of GTP, GTP’s parent, and the Property owner, and the Property manager of 2800 Neilson Way – North Tower in Santa Monica, California (the “**Property**”)) to their insurer(s), or, in the alternative, granting relief from the automatic stay and authorizing it to tender their defense and indemnity to the insurer(s) to preserve their rights under all available insurance coverage. As set forth in more detail in the Motion for Relief, GTP and Starry were parties to a certain *Rooftop License Agreement (Transmit Center) - American Tower Site No. 375387* (the “**Rooftop Agreement**”) that granted Starry, Inc. a non-exclusive license and right to use certain interior space and rooftop areas of the Property to locate Starry’s telecommunications equipment (the “**Rooftop Agreement**”). Pursuant to the Rooftop Agreement, Starry agreed to, among other things, provide insurance for the GTP, its parent, the Property owner and the Property management company by including them as “additional insureds” under Starry’s liability policies (the “**Policies**”). Prepetition, a number of lawsuits related to Starry’s equipment on the Property were brought against GTP, its parent, the

Property owner, and/or the Property management company. GTP filed the Motion for Relief so that it could tender its tender of defense and indemnity to the insurer(s). As of the filing of this Limited Objection, the Motion for Relief remains pending.⁴

8. The Debtors filed the Amended Plan on May 8, 2023. The Amended Plan provides, *inter alia*, (i) that all Executory Contracts not previously assumed, rejected, or otherwise subject to a motion to assume or reject shall be assumed as of the Effective Date (*see* Amended Plan, Art. V.A); (ii) general unsecured creditors who vote in favor of the Amended Plan and consent to Third Party Releases will receive a *pro rata* share of allocated funds (*see* Amended Plan, Art. IV.B(4)(c)); and (iii) the Reorganized Debtors or, if applicable, the Plan Administrator may set off or recoup against any Allowed Claim and its respective distributions (*see* Amended Plan, Art. IX.F) ; and (iv) all entities are enjoined from commencing or continuing in any manner claims, Causes of Action, or liabilities that have been compromise, released, exculpated or settled against the Debtors or the Reorganized pursuant to the Plan (*see* Amended Plan, Art. IX.E).

9. Also on May 8, 2023, the Debtors filed the *Notice of Filing of Plan Supplement* [Docket No. 408] (the “*Plan Supplement*”). The Plan Supplement included the Assumed Contracts List and Rejected Contracts List. Numerous ATC Agreements were included on the Assumed Contracts List.

10. On May 9, 2023, the Debtors filed the *Notice of Supplemental Cure Schedule* [Docket No. 412] (the “*Supplemental Cure Schedule*”⁵), which removed one ATC Agreement from the Cure List.

LIMITED OBJECTION

⁴ GTP reserves all rights with respect to the Motion for Relief.

⁵ The Amended Plan, the Rejection Motions, the Assumption List, the Plan Supplement, and the Supplemental Cure Schedule are hereinafter collectively referred to as the “*Plan Documents*.”

11. As presently drafted, the Plan Documents do not provide ATC with sufficient clarity as to which Agreements are being assumed and which Agreements are being rejected. Likewise, the Plan Documents do not contain sufficient detail as to the cure amounts for the Agreements proposed to be assumed by the Debtors.⁶

12. Based on the Plan Documents, several ATC Agreements have already been rejected, and various additional Agreements are expected to be assumed upon the Effective Date if the Amended Plan is confirmed. Through the Cure Objection, ATC reserved its rights with respect to those ATC Agreements and related cure amounts identified on the Cure List; however, no cure amounts are listed in the Plan Supplement with respect to the Assumed Contracts List. By this Limited Objection, ATC objects to any cure amounts that are either understated or omitted, and asserts the amounts needed to cure defaults of the ATC Assumed Agreement as set forth on the attached **Exhibit A**.⁷

13. Further, the Amended Plan provides for a preservation of setoff rights for the Reorganized Debtor and, if appointed, the Plan Administrator. *See* Amended Plan, Art. IX.F. The Plan does not provide for the preservation of similar rights for creditors. The Bankruptcy Code preserves all applicable setoff rights between the parties under state law. *See* 11 U.S.C. § 553. In order to satisfy the requirements of 11 U.S.C. § 1129(a)(1), the Debtors therefore must preserve ATC's setoff rights, rather than implicitly or explicitly overriding them. *See, e.g., In re Ditech Holding Corp.*, 606 B.R. 544, 598-97 (Bankr. S.D.N.Y. 2019) (parties resolved objections to plan by providing preservation of setoff and recoupment rights for creditors in accordance with state law and 11 U.S.C. § 553).

⁶ By way of example, one Agreement has been identified both in a Rejection Motion and on the Cure List.

⁷ The amounts listed on Exhibit A include amounts needed to cure defaults for those Agreements identified on the Assumed Contract List, as well as amended cure amounts for those Agreements identified in the Cure Objection.

14. Finally, the Amended Plan provides that all entities are enjoined from commencing or continuing in any manner claims, Causes of Action, or liabilities that have been compromised, released, exculpated or settled against the Debtors or the Reorganized pursuant to the Plan. By this Limited Objection, ATC and its subsidiary GTP object to the extent the injunction set forth in the Amended Plan seeks to enjoin GTP from tendering its defense and indemnity on its behalf, its parent's behalf, on behalf of the Property owner, and/or the Property management company to the insurers under the Policies to preserve their respective rights under the Policies.

RESERVATION OF RIGHTS

15. Nothing in this Limited Objection is intended to be, or should be construed as, a waiver by ATC of any of its rights under the Amended Plan, any of the Plan Documents, the Bankruptcy Code, or applicable law. ATC hereby reserves the right to further amend, modify, or supplement this Limited Objection at any time. Finally, ATC also reserves all its rights as a creditor in the Bankruptcy Cases.

CONCLUSION

16. For the foregoing reasons, ATC objects to the Amended Plan, and reserves its rights, as set forth herein.

Dated: May 15, 2023

Respectfully Submitted,

/s/ Joseph H. Huston, Jr.

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