

**July 17, 2019**

Amy Meredith  
Powell Meredith Communications Co  
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469 279 5531

Marlene Dortch  
Secretary to the Federal Communications Commission  
Washington DC 20054

Michelle Carey  
Media Division  
Federal Communications Commission  
Washington, DC 20554

Victoria McCaulley  
Audio division  
Federal Communications Commission  
Washington, DC 20554

**Received & Inspected**

**JUL 22 2019**

**FCC Mallroom**

**This is in response to the tolling denial and request for a signed court order**

**Request to return or start tolling process and review of past tolling**

**Stations in tolling- under Powell Meredith Communications**

Gulfport MS- Facility Id-142760

South Padre TX facility ID-142727

and Wickenburg AZ- facility Id- 143311 ( see attachment on permits)

All eight properties in estate as referenced by Judge Thurman- All Fm translators initiated in the PMCC account- Gulfport, MS, South Padre, TX Wickenburg, AZ plus five others- Needles, CA, Ruidoso, NM, Cheyenne, Wy, Logan UT and Ruidoso, NM

**Parties involved- Powell Meredith Communications Co or PMCC** which is owned by Amy Meredith

**Community Translator Network, or CTN** was owned by John Barlow and Lorna Skinner now owned by the bankruptcy courts under Trustee Michael Thomson

**Rockwell Media Services or RMS-** owned by Morgan Skinner of Str George UT. Skinner is married to Lorna Skinner that owns part of CTN and John Barlow is his personal attorney. John Barlow currently is a lawyer in Utah but is facing disbarment proceeding in Heber UT courts.

In June 20 2019, I Amy Meredith with Powell Meredith or PMCC filed a request to take court rulings in to effect, this was not meant to be a tolling request but meant for the audio division to look in to two rulings, one a verbal ruling and one a written ruling. The verbal ruling was transcribed and is official. I am re sending that ruling in its entirety along with the transcriptions verified notations.

Although the audio division denied this in a letter sent on July 11, 2019 requesting certain court rulings to extend the tolling. The verbal ruling is official and was transcribed by the courts and even used in an appeal to a higher court and was accepted. The written order is signed by a Federal judge and of course it is dated, I've never seen a court order in the proceeding not dated. The audio division treated this as a tolling request and denied it and made a request for a signed and dated court ruling from a judge with competency and directed to the FCC with facility ID numbers in order to reinstate the tolling.

First off I feel this may be an FCC policy and is not part of the written Federal codes for tolling that was established by congress. I don't think the exact facility ID numbers are necessary and the cities and mention of the service should be enough, especially since the three permits in this tolling are the only FM translators permits in the PMCC account. The exact facility ID numbers should not hold up a tolling process, the specific courts in this case have the facility ID numbers in filings that reference these.

The FM translator permits that were used for the bankruptcy claims order came from property that John Barlow specific and asked for as part of the estate and they fall under the code of the Automatic Stay Order. These came from what the courts called the October contract which was a contract that the FCC used to transfer five of the other permits inside the estate ( **see October contract**).

**These are the Federal guideline the FCC is under for construction-**

47 CFR § 73.3598 - Period of construction.

B) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

(1) Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes);

(2) The grant of the permit is the subject of administrative or judicial review (i.e., petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement; or

(3) A request for international coordination, with respect to an original construction permit for a new DTV station, has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received, or the licensee or permittee is challenging the response from Canada or Mexico on the grounds that the facility as approved would not permit the station to serve the population that is both approved by the Commission and served by the station's TV (analog) facility to be vacated by June 12, 2009.

**Letter B number 2** applies to this situation, where a bankruptcy judge is a Federal judge with competent jurisdiction. A bankruptcy court is a court of equity, the FCC is not, even they admitted in a ruling against me that matters like this should go in front of a civil court and they have and I have proved certain matters in this case that need to be taken in as the rule of law by a Federal judge.

Under the bankruptcy court rules I was not allowed to control these permits, which meant building them and in fact a motion for sanctions was filed against me on this for starting construction on the Gulfport CP. That matter has yet to be decided on. Construction was delayed by the fact that these three permits were placed in another companies bankruptcy estate under federal bankruptcy code 541 and until a judge removed them I had no control over them. The control of the permits then shifted throughout this case from CTN DIP under John Barlow, to CTN under Trustee Michael Thomas that just very recently released these three from the bankruptcy estate and back in my hands with only two weeks left to build. Had I built and sold them or benefited from them in any way then I would have most likely faced criminal action for stealing from a bankruptcy estate and then if convicted I couldn't hold a license anyway since that would be a felony. Bottom line is that I had lost control of these and could not build them until they were returned to me in July of 2019.

CTN under Barlow had also argued with the courts and provided evidence that with the Power of attorney ( which was forged) that I lost my rights to these three stations long ago so that issue falls under the issue of the grant and ownership rights of them. Barlow claimed that with this agreement he was able to get these three reinstated by Michael Wagner of the audio division even after the had been dismissed and was able to transfer the other five in to the CTN account without any sort of act of agreement on my part for a transfer of consummation. I have mentioned this in past pleadings and provided evidence of this as well. This power of attorney was an attachment to another contract that the FCC accepted for transfer of 5 FM permits in Jan 2014. Barlow told the courts that he was unable to transfer the applications due to the fact that they were not yet granted. Therefore Barlow was protesting the grant in to the PMCC name at the bankruptcy level and not the FCC level but in essence its the same proceeding.

Since the last time I had updated the audio division on the tolling the situation has changed quite a bit. The three permits inside the tolling were placed inside a bankruptcy estate in 2015 by John Barlow the former manager of CTN. In 2016 he filed an adversary proceeding to take over the 3 permits inside the estate. Inside that Adversary proceeding he also filed a motion to turn over property which were these three permits inside the estate. This information I have turned in to the audio division. Since this time CTN was converted to a chapter 7 liquidation status and the courts appointed Trustee Michael Thomson. Thomson was working on an auction for the three permits inside the estate but had too may other lawsuits from the former managers holding the transfers up. Since this time he has filed an Abandonment order with the courts and it has been accepted and the property has now as of July 9 2019 returned to PMCC, the problem is I only have three weeks to build these. I could not build them before because they were under the ownership of the courts inside the CTN bankruptcy estate.

## Background-

These three permits in the PMCC name were granted on Jan 29 2016 but we already placed inside the CTN bankruptcy estate on Dec 2 2015.

While they might be in the PMCC name if I were to sell them or build them I could have faced civil fines and even a criminal penalty. I really did want to sell these to get the other two protesters off my back for good but I could not.

All three of these permits were removed from an auction sheet for FM translator 83 auction. They were removed by a third party processor with Rockwell Media Services, named Morgan Skinner. Payment records show that Morgan Skinner paid the filing fees for two of these permits as well as five others inside the PMCC account. The two Skinner paid for were the Wickenburg AZ and the South Padre TX permit. In May of 2015 I received a threatening letter from John Barlow and Morgan Skinner that forced me to process the Gulfport MS station. After talking it over with my Utah lawyer I decided to process the station instead of facing more threats of litigation and harassment from these two.

These three are part of an APA agreement along with five others that was filed with the FCC for transfer in January of 2014, the FCC did not transfer these three because they were not yet grants. This contract is part of many different lawsuits but was used to transfer five permits through the PMCC database. PMCC did not place it there or alter the agreement or file three more similar amendments through the PMCC FTN account.

This agreement was used by John Barlow and Morgan Skinner to initiate the first lawsuit against Amy Meredith and Powell Meredith Communications Company. The first lawsuit was filed in April of 2014 in St George UT in Judge Jeffery Wilcox court room, this lawsuit was Morgan Skinner, Rockwell Media Services, John C Barlow and Community Translator Network VS Amy Meredith, Scott Powell and Powell Meredith Communications Company. This lawsuit is asking for conjunctive relief of the three FM translator permits as part of this proceeding. This lawsuit is still active and pending.

The second legal proceeding filed was filed in December of 2015 which was a bankruptcy chapter 11 re organization for Community Translator Network. The contract filed at the FCC on January 12 2014 was also used to declare the three permits in this estate as part of a bankruptcy estate.

Under Federal bankruptcy law, 11 US Code 541, on December 2 2015 when the bankruptcy was initially filed the three permits became part of the estate when placed there by John C Barlow attorney for CTN.

The statutes of Federal Code, 28 U.S.C.A. § 157. Section 157(b) gives the courts authority to place this property in to the estate (**see explanation**). I have talked with my lawyer and other bankruptcy attorneys that until the judge releases this property or turns it over to the estate that the owner of the property is kept in limbo and can not sell or control, which means building these permits, or I could face civil and criminal action. It is important to note the US Department of Justice is involved in this case and it would not be smart to try to blatantly attempt a crime in front of them and then say, well the audio division disagrees with me and says I have to build these or lose them. I would be in an orange jumpsuit with some of the others in this case.

Shortly after filing the bankruptcy, Barlow filed for a Motion to turn over the permits and a Motion to Recover Property. These had never been ruled on and I suspect will now be dismissed since the Trustee has dismissed the Adversary proceeding that these were filed under.

We were reluctant at that point to turn over the property for several reasons, one being that John Barlow claimed someone other than himself had access to the Community Translator Debtor in possession account and had been moving properties in and out of that account. For example, three debtor in possession permits in Kanosh UT, St George UT and Greenville, UT were moved from the CTN DIP account in to Americast Media, which is a company owned by Morgan Skinner. John Barlow made a live testimony declaring that he did not file these transfers even though his name is on the electronic form and did not even know about them and dismissed them one year later after he found them in the database. Someone also sold three of the PMCC permits out of the DIP account in Needles, CA Ruidoso, NM and Roseburg OR. Those stations were never turned in to the courts until one year later and Barlow also claims he did not file the transfer on those as well and in fact claims he never filed a transfer ever at the FCC, including the one where five permits went from the PMCC account to CTN. These were all reasons that John Barlow lost his managing rights at CTN and the case was converted to liquidation.

Initially PMCC fought the turn over's of the three permits in this estate but when Judge William Thurman ruled in a claims order that all eight of these are part of the estate inside the claim process and he even backs it up by saying PMCC is to get 2500 down and 20,000 total which is eight permits. This is backed up with a written claim order that I already submitted but I will resubmit with the transcription information. The Claim order also is dated and signed by the judge, this proves that these are in the estate of Community Translator ( **see official dated claims order and judges ruling**).

Once the three permits as part of this tolling were placed in the bankruptcy estate is when the Automatic Stay order kicks in even without a written court order, in fact there is no written court order for the Automatic stay because its written in to the Federal Code bankruptcy code 362. The Automatic Stay order is for debtors to seek automatic relief in a bankruptcy of its assets. CTN declared the three PMCC as their assets and it became part of the estate(**See automatic stay order rules**).

During the course of the bankruptcy John Barlow filed for turn over under the 542 and 543 US Federal code bankruptcy laws. These pleading were never decided upon because the bankruptcy went in to conversion and then immediately afterwards Barlow Filed an appeal in the 10<sup>th</sup> District courts under Judge Jill Parish. This was filed in June of 2017 and not dismissed until Feb 2018.

The Third legal proceeding was inside the bankruptcy proceeding which was an adversary proceeding, CTN VS PMCC which was filed in April of 2016 ( **see Adversary proceeding**). In this proceeding CTN was during PMCC for various reasons one was to turn over the three permits inside the CRN estate. The Adversary litigation containing the property of this tolling request was dismissed in July of 2019 ( **see adversary release**).

This is where the fourth and five litigation effort on this case hit, both in Texas where Barlow and Skinner asked for injunction relief against PMCC by granting each the same three permits that are part of this tolling.

The fact that Barlow and Skinner were seeking injunction relief as third party beneficiaries of estate property prompted a Show Cause Hearing in front of Judge William Thurman where BOTH Skinner and Barlow agreed to dump the injunction relief part of their lawsuit. The injunction relief is the three

properties that Barlow placed himself inside the estate and then decided he wanted them back. Barlow and Skinner agreed to drop the part of injunction relief to avoid a contempt charge.

As you can see written by the Trustee in this case Michael Thomson, he also believes that Skinner and Barlow violated the bankruptcy codes by bringing suit in a Texas court to remove the permits out of the bankruptcy estate ( **See show cause hearing filing**).

Meanwhile this case surrounds some major fraudulent activities as both Skinner and Barlow are being sued for embezzlement by the Court appointed Trustee and even managed to get their expert witness sued along the way( **See lawsuit paperwork**).

I had to be overly cautious to not be part of these proceedings as I did not place these people in my life they just ended up there by getting in to my Frn account and being able to convince my ex husband that he still owned the company and he was able to help them process and transfer these stations. Although records show they never compensated him for and once again filed a fake consummation. They did try to finally pay for a station they stole from him in 2009 in Vernal UT with stolen bankruptcy funds and that has created an entire new situation. This may have been part of the deal to get them pertinent information on me to get in to the account, but I wont know until the investigation is completed.

All of this was based on fraud from day one in July 2013 when the CORES dept allowed Morgan Skinner in to the PMCC FRN account and he was allowed to forge my name on electronically and physically and was able to create 8 permits in my name five which he stole out of the account and three which he had placed in to a bankruptcy estate.

I pray that the audio division understand what is going on in this matter and see that I really could not have legally built or sold these and stayed out of civil and criminal problems. I also feel its in the best interest of the public to reinstate the original tolling so I can sell them or at least donate them so they can become services.

Regards

 7/17/19

Amy Meredith

Powell Meredith Communications Co



Federal Communications Commission  
Washington, D.C. 20554

July 11, 2019

*In reply refer to:*  
**1800B3-VM**

Ms. Amy Meredith  
Powell Meredith Communications Company  
7884 Peacock Lane  
Frisco, TX 75035

In re: W270CS, Gulfport, MS  
Facility ID No. 142760  
  
K221GE, Wickenburg, AZ  
Facility ID No. 143311  
  
K287BP, South Padre Island, TX  
Facility ID No. 142717

Dear Ms. Meredith:

I am writing in response to your June 20, 2019 letter and various emails you have sent to me and Michelle Carey. Although your letter does not contain a specific request, we will treat it as a request for tolling or further waiver of the construction period for the referenced construction permits held by Powell Meredith Communications Company (PMCC). Based on the information you have provided, we deny any request for tolling or waiver and remind you that the three referenced permits will expire on July 29, 2019 if construction is not completed by that date.

Each of PMCC's tolling requests has failed to provide sufficient documentation to prove construction is prevented due to the causes enumerated in Section 73.3598(b) of the Rules.<sup>1</sup> **The three referenced permits expire at 3:00 a.m. on July 29, 2019. The construction permits will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration.**

Your letter dated June 20, 2019 raises concerns about our letter dated October 4, 2018 in which we cancelled a previously granted request for tolling. Although we subsequently granted a six-month waiver of the expiration of your construction permits to afford you additional time to construct, you have raised concern about our use of the phrase "false claim" in our letter. That phrase was not intended to assert that you had intended to deceive the FCC or that you had engaged in illegal conduct. Rather, we were pointing out, based on the information available to us, that the referenced stations were not eligible for tolling based on state or federal litigation.

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<sup>1</sup> Pursuant to Section 73.3598(b) of the rules, tolling of the construction period can be granted under the following circumstances not within the control of the permittee: 1) Act of God, defined in terms of natural disasters (e.g., tornado, flood, hurricane, earthquake); 2) Administrative or judicial review of the grant of the permit; 3) Litigation related to a necessary governmental requirement for construction or operation of the station; and 4) Failure of a condition precedent on the permit (e.g., requirement of international coordination, or prior channel substitution of another station). See 47 CFR § 73.3598(b); *1998 Biennial Regulatory Review—Streamlining of Mass Media Application Rules and Processes*, Report and Order, 13 FCC Rcd 23056, 23090, para. 84 (1998), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17540, para. 39 (1999).

If PMCC is not able to complete construction or operate the Stations due to a cause not under its control and recognized under Section 73.3598(b), PMCC is required to submit a new request for tolling prior to the July 29, 2019 expiration date. Any new tolling request must include a **signed and dated order of a court of competent jurisdiction that (i) explicitly references the permits by call sign or Facility ID number, (ii) articulates clearly and directly the encumbrance that prevents PMCC from constructing, operating or divesting the Stations, and (iii) directs the Commission to toll the construction permit.** The order must also indicate the date on which the encumbrance was established in order to determine the start date of tolling.

Any new request for tolling must be sent by letter to Secretary, FCC, 445 12 St., S.W., Washington, DC 20554 with a courtesy copy by e-mail to [Victoria.McCauley@fcc.gov](mailto:Victoria.McCauley@fcc.gov).

You also must notify the Commission within 30 days of any pending court matter relating to any of the Stations being resolved. *See* 47 CFR § 1.65.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Shuldiner", with a long horizontal flourish extending to the right.

Albert Shuldiner  
Chief, Audio Division  
Media Bureau



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### Application Search Details

**File Number:** BNPFT-20150518AFL  
**Call Sign:** W270CS  
**Facility Id:** 142760  
**FRN:** 0006018212  
**Applicant Name:** POWELL MEREDITH COMMUNICATIONS COMPANY  
**Frequency:** 101.9  
**Channel:** 270  
**Community of License:** GULFPORT, MS  
**Application Type:** ORIGINAL CONSTRUCTION PERMIT  
**Status:** GRANTED  
**Status Date:** 01/29/2016  
**Expiration Date:** 07/29/2019  
**NCE Supplement Date:**  
**Tolling Code:**  
**Application Service:** FX  
**Disposed Date:** 01/29/2016  
**Accepted Date:** 05/21/2015  
**Tendered Date:** 05/21/2015  
**Amendment Received Date:** 05/20/2015  
**Last Public Notice:** 02/03/2016  
**Last Report Number:** 48663  
**Authorization** [View Authorization](#)  
**Engineering Data** [View Engineering Data](#)  
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### Application Search Details

File Number:	BNPFT-20130827AEC
Call Sign:	K221GE
Facility Id:	143311
FRN:	0006018212
Applicant Name:	POWELL MEREDITH COMMUNICATIONS COMPANY
Frequency:	92.1
Channel:	221
Community of License:	WICKENBURG, AZ
Application Type:	ORIGINAL CONSTRUCTION PERMIT
Status:	GRANTED
Status Date:	01/29/2016
Expiration Date:	07/29/2019
NCE Supplement Date:	
Tolling Code:	
Application Service:	FX
Disposed Date:	01/29/2016
Accepted Date:	09/17/2013
Tendered Date:	03/10/2014
Amendment Received Date:	03/10/2014
Last Public Notice:	02/03/2016
Last Report Number:	48663
Authorization	<a href="#">View Authorization</a>
Engineering Data	<a href="#">View Engineering Data</a>
Legal Actions	<a href="#">View Legal Actions</a>
PN Comment	<a href="#">Public Notice Comment</a>
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### Application Search Details

File Number:	BNPFT-20130826AGH
Call Sign:	K287BP
Facility Id:	142717
FRN:	0006018212
Applicant Name:	POWELL MEREDITH COMMUNICATIONS COMPANY
Frequency:	105.3
Channel:	287
Community of License:	SOUTH PADRE ISLAND, TX
Application Type:	ORIGINAL CONSTRUCTION PERMIT
Status:	GRANTED
Status Date:	01/29/2016
Expiration Date:	07/29/2019
NCE Supplement Date:	
Tolling Code:	
Application Service:	FX
Disposed Date:	01/29/2016
Accepted Date:	03/18/2014
Tendered Date:	10/18/2013
Amendment Received Date:	10/17/2013
Last Public Notice:	02/03/2016
Last Report Number:	48663
Authorization	<a href="#">View Authorization</a>
Engineering Data	<a href="#">View Engineering Data</a>
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## ASSIGNMENT AGREEMENT

October  
agreement

**THIS ASSIGNMENT AGREEMENT** (this "Agreement") is made and entered into as of the 22nd day of October 2013 by and between Powell-Meredith Communications Company, a Texas company in good standing and Scott Powell and Amy Meredith collectively hereinafter ("PMCC") and Community Translator Network, LLC a subsidiary of Rockwell Education Foundation, Inc., a Utah non-profit corporation in good standing hereafter ("CTN").

### Recitals

**WHEREAS**, Powell-Meredith Communications has before the Federal Communications Commission applications for FM translator Construction Permits as described in Exhibit "A";

**WHEREAS**, CNT desires to acquire the FM Translator Construction Permits upon grant by the FCC; and

**WHEREAS**, FCC approval is required for the proposed transaction contemplated hereunder.

### Agreement

**IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN**, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Assignment. Subject to the terms and conditions outlined herein, PMCC agrees to sell and CTN agrees to buy the Construction Permits ("CPs") for the new FM Translator stations as described in Exhibit "A", as follows:
2. Consideration. The Purchase Price for the CP's is as described in Exhibit "A" attached hereto.
3. Deposit. Concurrently with the execution of this Agreement, PMCC acknowledges the payment of the Deposit as described in Exhibit "A"
4. Assignment Application. It is specifically understood and agreed that the consummation of this Agreement is subject to the consent of the FCC without conditions materially adverse to PMCC or CTN. Upon the execution of this Agreement, the parties shall proceed to prepare and file FCC Form 345 (the "Assignment Application") with the FCC for approval and prosecute said Assignment Application with diligence. PMCC and CTN agree to cooperate with each other and use their best efforts to obtain the requisite

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consent and approval promptly and carry out the provisions of this Agreement. CTN agrees to be responsible for the FCC fees associated with this transaction.

5. Closing. CTN agrees abide by the services agreement dated July 1, 2013 less the Deposit by CTN referenced in Paragraph (a) following the FCC grant (the "Order") approving the assignment from PMCC to CTN or when the grant becomes a "Final Order"; and provided further, that the parties shall not be obligated to proceed to Closing if (1) the Order includes conditions materially adverse to CTN or PMCC; or (2) the conditions precedent to Closing have not been satisfied or waived. For purposes of this Agreement, the term "Final Order" shall mean a final order of the Commission which is not reversed, stayed, enjoined or set aside, and with respect to which no timely request for stay, reconsideration, review, rehearing or notice of appeal or determination to reconsider or review is pending, and the time for filing any such request, petition or notice of appeal or for review by the Commission, and for any reconsideration, stay or setting aside by the Commission on its own motion or initiative, has expired. Upon Closing, PMCC agrees to provide to CTN an instrument of conveyance suitable to CNT upon Closing.

6. Broker. The PMCC and CTN acknowledge and agree that there is no broker involved in this transaction.

7. Exclusivity and Confidentiality. PMCC agrees that from the date hereof that it will not seek to transfer or sell to, or entertain any offers to buy from, third parties, respectively, the broadcast authorizations. And further, PMCC and CTN agree to keep confidential the terms of this Agreement, except with respect to any disclosure required by law or the FCC rules.

8. FCC Qualifications. CTN represents warrants and covenants that it is qualified to be a licensee and hold the FCC authorizations which are the subject of this Agreement.

9. Transfer Fees and Taxes. CTN shall be solely responsible for any and all bulk transfer fees, transfer taxes, sales taxes or other taxes, assessments and the FCC fees associated with prosecution of the Assignment Application.


10. Section 73.1150 Statement. Pursuant to FCC Rule 73.1150, PMCC has retained no right of reversion of the permits covered in this Agreement as described in Exhibit "A". There is no right to reassignment of the permits in the future, and PMCC has not reserved the right to use the facilities in the future for any reason whatsoever.

11. Miscellaneous. This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof and supersedes any prior Agreement with respect thereto whether it in writing or otherwise. This Agreement may be amended only


in writing by an instrument duly executed by both parties. This Agreement is to be construed and enforced under the laws of the State of Utah with venue for any action brought to enforce this Agreement to be exclusively in the federal or state courts located in the State of Utah, Washington County. This Agreement may be executed in counterparts. The undersigned represent and warrant that, respectively, they have received authority to sign this Agreement and to legally bind their respective companies to perform all of the terms hereof.

WHEREFORE, the parties whose names and addresses appear below have caused this Agreement to be executed by them as of the date first above written.

**POWELL MEREDITH COMMUNICATIONS - "PMCC"**

 11/21/13  
By: Amy Meredith, President  
5308 Knox Drive  
The Colony, TX 75056-  
[amymeredithradiolane@gmail.com](mailto:amymeredithradiolane@gmail.com)

\_\_\_\_\_  
Amy Meredith, an Individual

  
By: Scott Powell, an Individual  
1742 Regal Drive  
Johnstown, PA 15904  
[therealscottpowell@yahoo.com](mailto:therealscottpowell@yahoo.com)

**COMMUNITY TRANSLATOR NETWORK - "CTN"**

\_\_\_\_\_  
By: John Christian Barlow, Trustee  
321 Mall Drive R290  
St. George, UT 84790  
[JCB@JohnChristianBarlow.com](mailto:JCB@JohnChristianBarlow.com)

in writing by an instrument duly executed by both parties. This Agreement is to be construed and enforced under the laws of the State of Utah with venue for any action brought to enforce this Agreement to be exclusively in the federal or state courts located in the State of Utah, Washington County. This Agreement may be executed in counterparts. The undersigned represent and warrant that, respectively, they have received authority to sign this Agreement and to legally bind their respective companies to perform all of the terms hereof.

WHEREFORE, the parties whose names and addresses appear below have caused this Agreement to be executed by them as of the date first above written.

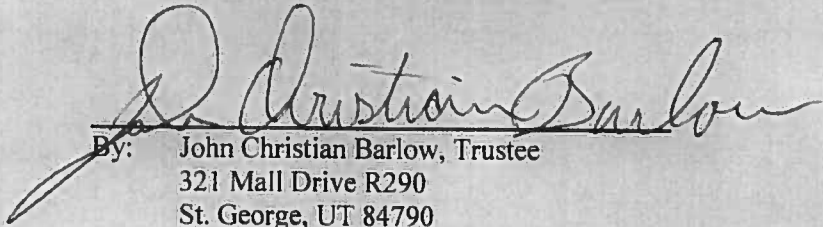
**POWELL MEREDITH COMMUNICATIONS - "PMCC"**

By: Amy Meredith, President  
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Amy Meredith, an Individual

By: Scott Powell, an Individual  
1742 Regal Drive  
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**COMMUNITY TRANSLATOR NETWORK - "CTN"**

  
By: John Christian Barlow, Trustee  
321 Mall Drive R290  
St. George, UT 84790  
[JCB@JohnChristianBarlow.com](mailto:JCB@JohnChristianBarlow.com)

**EXHIBIT "A"**

**FM Translator Application**

<b>Location, Facility ID Number</b>	<b>Total</b>	<b>Deposit</b>	<b>At Closing</b>	<b>Status</b>
Wickenburg, AZ Channel 224 (FIN: 143311)	\$2,500	\$2,500	\$0	Construction Permit BNPFT-20130827AEC
Needles, CA, Channel 262 (FIN: 142491)	\$2,500	\$2,500	\$0	Construction Permit BNPFT-20130826AHU
Gulfport, MS, Channel 268 (FIN: 142760)	\$2,500	\$2,500	\$0	Pending Application BNPFT-20030317ATJ
Roseburg, OR, Channel 292 (FIN: 142743)	\$2,500	\$2,500	\$0	Construction Permit BNPFT-20130826AHC
Ruidoso, NM, Channel 285 (FIN: 142745)	\$2,500	\$2,500	\$0	Construction Permit BNPFT-20130826ADU
South Padre Island, TX, Channel 287 (FIN: 142717)	\$2,500	\$2,500	\$0	Construction Permit BNPFT-20130826AGH
Logan, UT, Channel 229 (FIN: 143532)	\$2,500	\$2,500	\$0	Construction Permit BNPFT-20130827AAU
Cheyenne, WY, Channel 287 (FIN: 143430)	\$2,500	\$2,500	\$0	Construction Permit BNPFT-20130826AHJ

AM



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# Sections 542 and 543—Turnover of Property of the Estate (2016)

By Bruce Grohsgal\* and Gregory J. Flasser (<http://www.bayardlaw.com/attorney/gregory-j-flasser>)\*\*

## I. INTRODUCTION

Section 542 of the Bankruptcy Code generally requires a noncustodial entity who has possession, custody, or control of property of the estate that the trustee may use, sell, or lease under § 363, or that the debtor may exempt under § 522, to deliver to the trustee the property or the value of the property, and to account for such property.<sup>1</sup> Section 543 similarly requires a custodian with knowledge of the commencement of the case to deliver such property and the proceeds of such property to the trustee and account for such property.<sup>2</sup> This paper reports on opinions regarding turnover published since the 2015 update.<sup>3</sup>

## II. JURISDICTION AND AUTHORITY OF THE BANKRUPTCY COURTS

### Jurisdiction and Authority — Generally

Bankruptcy jurisdiction is essentially in rem, based on the district court's exclusive jurisdiction over all property, wherever located, of the debtor's estate.<sup>4</sup> The court's jurisdiction begins on the filing of the bankruptcy case and for most purposes ends when the property is transferred from the estate or reverts in the debtor<sup>5</sup> or the case is dismissed.<sup>6</sup> The bankruptcy court stands in the district court's shoes with respect to its jurisdiction over estate property, by virtue of the standing order of reference from its district court, and has exclusive jurisdiction over property of the debtor's estate.<sup>7</sup>

The statutory framework for this jurisdiction is set forth in 28 U.S.C.A. § 157. Section 157(b) gives bankruptcy judges the statutory authority to enter final judgments on certain "core" matters arising under or arising in the bankruptcy case. "Core" matters expressly include "orders to turn over property of the estate."<sup>8</sup>

Under § 157, a bankruptcy judge does not have authority to enter a final judgment on a matter that is not core but is merely “related to” the bankruptcy case. A ubiquitous example of a non-core action is a suit by a debtor to recover a disputed prepetition account receivable. The bankruptcy judge may hear a non-core, “related to” matter, but it cannot enter final judgment on it unless the district court has referred the matter to the bankruptcy court and the parties have consented to the bankruptcy court’s authority to enter final judgment. Absent such referral and consent, the bankruptcy judge may only submit its proposed findings of fact and conclusions of law to the district court. The district judge following its de novo consideration of both the facts and the law, then enters or declines to enter the final judgment.<sup>9</sup>

It follows from this jurisdictional foundation that a turnover action with respect to estate property is a core proceeding, and the jurisdictional statute that governs bankruptcy proceedings expressly so provides.<sup>10</sup>

The Supreme Court threw this statutory regime into Constitutional chaos when it issued its 2011 opinion in *Stern v. Marshall*.<sup>11</sup> *Stern* held that because the bankruptcy courts are established under Article I rather than Article III of the Constitution, and bankruptcy judges do not have lifetime tenure as required for Article III judges, that a bankruptcy judge may have statutory authority but not the Constitutional authority to enter a final order on some matters defined as “core” in § 157(b). The Supreme Court would later describe this type of proceeding as “a so-called ‘*Stern* claim,’ that is, ‘a claim designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter.’”<sup>12</sup>

The true characterization of any specific turnover claim for jurisdictional purposes was problematic before *Stern*, and has become more so since that case was decided. The bankruptcy court’s authority to enter a final judgment on the turnover count of a complaint depends entirely on whether the turnover action involves a straightforward surrender of estate property, or is more properly characterized as another kind of dispute, such as a prepetition contract claim, that is only “related to” the bankruptcy case. Only in the former case can the bankruptcy court enter final judgment. Accordingly turnover complaints continue to be closely scrutinized, especially in the wake of the Supreme Court’s *Stern* decision.

The court in *Dynamic Drywall, Inc. v. McPherson Contractors, Inc.* confronted this recurring issue. The Chapter 11 debtor sued for turnover based on its allegation that the defendant had converted miscellaneous equipment belonging to the debtor. The defendant moved to withdraw the reference so that the district court rather than the bankruptcy court would decide the litigation. The bankruptcy court concluded that the Chapter 11 debtor’s claims were not for turnover, but were merely “non-core state law claims, including the state law conversion claim.”<sup>13</sup> Accordingly, the bankruptcy court recommended that the district court withdraw the reference with respect to the litigation. The district court accepted the bankruptcy court’s recommendation and withdrew the reference.<sup>14</sup>

The same result was reached in *In re Garrison*. Garrison, the Chapter 11 debtor, sued HSBC for turnover, alleging breach of contract and fiduciary duty against HSBC, claiming that HSBC withheld payment of “co-investment” distributions. HSBC moved to withdraw the reference. Garrison converted his case to Chapter 7, and the Chapter 7 trustee did not oppose HSBC’s motion.<sup>15</sup> The court found that Garrison’s claims arose “not out of his bankruptcy or the resolution of the claims process but out of a contractual relationship between HSBC” and Capital Group, the beneficial sole owner of which was Garrison. The court found that the claims did not

arise out of Garrison's bankruptcy, and though resolution of the claims might affect the bankruptcy case, this fact did "not sanction their adjudication in bankruptcy court absent the consent of HSBC." Therefore, the court granted HSBC's motion to withdraw the reference."<sup>16</sup>

Suits on a debtor's prepetition accounts receivable generally are not core and thus, absent the parties' consent, the bankruptcy court does not have authority to enter final judgment on such claims. The debtor in *In re SurfaceMax, Inc.* entered into a prepetition subcontract with Precision. The subcontract authorized Precision to submit any dispute under the subcontract to arbitration. The debtor filed a Chapter 11 bankruptcy petition and sued Precision for amounts owing under the subcontract, seeking turnover of those amounts and of personal property. The debtor's case was converted to Chapter 7.<sup>17</sup> Precision sought arbitration of the debtor's claims.<sup>18</sup>

The *SurfaceMax* court noted that in a bankruptcy proceeding, "courts look to the "core" or 'non-core' nature of the underlying claim in determining whether to enforce an arbitration provision."<sup>19</sup> The court stated that a principal purpose of the Bankruptcy Code is to resolve disputes over the debtor's assets and obligations in one forum, rather than by piecemeal litigation and conflicting judgments.<sup>20</sup>

The court held that the debtor's claim for turnover of accounts receivable that arose pre-petition under state law was not core. The claim for turnover of the personal property, in contrast, was core. Nevertheless, in the interest of efficiently adjudicating all claims between the parties, the court also referred the debtor's claim for turnover of the personal property to arbitration, reasoning that "[e]xtracting this claim from the remainder of the Complaint would prevent the arbitrator from squaring all claims between the parties and determining a liquidated amount owed either by Precision or the Debtor." The court stayed the adversary proceeding until the arbitration was completed.<sup>21</sup>

Alter ego and corporate veil piercing actions pose special jurisdictional problems. The bankruptcy judge has jurisdiction and authority over property of the estate. But if the debtor secreted or otherwise transferred estate property to an alter ego or similar entity, is the property still estate property subject to turnover, or is all that remains a state law claim for recovery?

The bankruptcy court in *In re Tolomeo* cited *Stern* in concluding that a turnover claim based on alter ego and veil-piercing claims was not constitutionally core (though *Stern* did not involve either of those legal doctrines).

In *Tolomeo* the assignees of potential bankruptcy estate claims sued the Chapter 7 debtor's spouse and corporations owned solely by his spouse, seeking a declaration that the spouse's and corporations' assets were property of debtor's bankruptcy estate. In support, the plaintiffs asserted that the defendants were alter egos of debtor, and requested that the court pierce the veil of the corporate defendants and direct turnover of defendants' assets to trustee. The assignees filed a motion for judgment on the pleadings.<sup>22</sup>

The *Tolomeo* court noted that, though turnover orders are statutorily defined as core matters pursuant to 28 U.S.C.A. § 157(b)(2)(E), alter ego and veil-piercing under *Stern* are not issues that "stem[ ] from the bankruptcy itself or would necessarily be resolved in the claims allowance process."<sup>23</sup> Nor had the defendants consented to the court's jurisdiction and authority. The court treated the claims as non-core and stated that it would issue make proposed findings of fact and conclusions of law on the questions of alter ego and veil-piercing for de novo review by the district court.<sup>24</sup> The court further ruled that it would address the plaintiffs' turnover request after

the district court's entry of a final order adjudicating the alter ego and veil-piercing issues, as appropriate.<sup>25</sup> The court then, after an extensive analysis, recommended that district court find, under Illinois law, that corporations owned solely by debtor's spouse were the alter egos of debtor and that their corporate veils should be pierced.<sup>26</sup>

By comparison, the bankruptcy court in *In re Roussos* perfunctorily stated that it had "jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 and General Order No. 13-05 of the U.S. District Court for the Central District of California" over turnover and other claims involving alter egos and fraud on the court.<sup>27</sup> At issue in *Roussos* was whether a 21-year old bankruptcy sale of two properties could be set aside for fraud on the court under Fed.R.Civ.P. 60(d)(3).<sup>28</sup> The bankruptcy court that approved the sale relied upon declarations submitted by the Roussos brothers in their individual Chapter 11 cases, which falsely stated that the sale was an arms-length transaction, that neither brother held any interest in companies purchasing the properties, and that the properties were over-encumbered.<sup>29</sup> The court ruled that, assuming the allegations in the complaint were true, the properties remained property of the estate and as a result "the estate was never divested of its interest in the Properties."<sup>30</sup> The court declined to dismiss the turnover count.<sup>31</sup>

See also *Comu v. King Louie Min., LLC* and *In re Raymond* discussed in § VII below.

### **Jurisdiction after Chapter 11 Plan Confirmation**

The bankruptcy court in *In re Wellesley Realty Associates, LLC* held that § 542(a) is "inapplicable" once property has reverted in the reorganized debtor pursuant to a Chapter 11 plan "because there is no longer a trustee (or debtor-in-possession) to whom property can be delivered and the estate cannot benefit."<sup>32</sup>

### **Sovereign Immunity**

Another area in which difficulties persist is where a turnover proceeding implicates the sovereign immunity from suit of the federal government or a state under the 11<sup>th</sup> Amendment pursuant to *Seminole Tribe of Fla. v. Florida* and its progeny.<sup>33</sup> Neither the bankruptcy court nor the district court has jurisdiction if the defendant is a sovereign that has not consented to suit or agreed in the plan of the Constitutional Convention or by later joining the federal union not to assert a sovereign immunity defense in a bankruptcy proceeding.<sup>34</sup>

The Chapter 7 trustee in *In re Sann* brought an adversary proceeding to compel turnover of certain funds from defendants. The turnover defendants made a counterclaim against the Chapter 7 trustee alleging that the complaint "was presented for the improper purpose of coercing Defendants to deliver funds" which the Chapter 7 trustee was not yet entitled to receive under district court orders. The turnover defendants also filed a third-party complaint against the Department of Justice (DOJ) and the United States Trustee, seeking to hold them liable under the Equal Access to Justice Act (EAJA) and on agency theory for reasonable attorney fees and costs that the defendants had incurred. The DOJ and the U.S. Trustee moved to dismiss third-party complaint.<sup>35</sup> The bankruptcy court granted the motion, finding that the defendants/third-party plaintiffs had failed to show an unequivocally expressed waiver of sovereign immunity, and holding that the federal defendants were immune from suit under the United States' sovereign immunity.<sup>36</sup>

### III. PREEMPTION OF STATE LAW BY THE BANKRUPTCY CODE; PREEMPTION OF THE BANKRUPTCY CODE BY OTHER FEDERAL LAW

The authors are not aware of any significant published opinions since last year's Annual Survey addressing the issues of preemption in connection with turnover actions.

### IV. FORM OF ACTION/SERVICE

Federal Rule of Bankruptcy Procedure 7001(1)<sup>37</sup> includes in the list relief requiring the commencement of an adversary proceeding, "a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee." Thus a request for turnover of estate property from a debtor,<sup>38</sup> and a turnover action for recorded information under § 542(e),<sup>39</sup> may be brought by motion, while Rule 7001(1) requires an action for turnover of property that is not a document, against a third party who is not the debtor, under

§ 542(a) and (b) and § 543(a) to be commenced by an adversary proceeding.<sup>40</sup>

Courts nonetheless have granted turnover relief sought by motion against a third party. In *In re Cypress Health Systems Florida, Inc.* the bankruptcy court determined that a \$50,000 escrow held by a title company was property of the debtor's estate and ordered it to be turned over on the debtor in possession's motion.<sup>41</sup>

Further, many courts have held that § 542(a) is "self-effectuating." The Ninth Circuit Bankruptcy Appellate Panel (BAP) in *In re Cinevision International, Inc.* reiterated its view that: "It has long been the determination of this panel that the turnover provisions of the Bankruptcy Code are to be self-effectuating, subjecting to sanctions a party that willfully fails to comply."<sup>42</sup> A party who does not seek the bankruptcy courts guidance, and unilaterally decides that it does need not turn over the property, does so at the risk that it will be assessed damages or will be sanctioned for violating the automatic stay.<sup>43</sup>

The California bankruptcy court in *In re Perry* held that a party that had repossessed the Chapter 7 debtor's car prepetition had the affirmative duty to end its possession once it learned of the bankruptcy case and that since the car was exempt property, "turnover to the Debtor was appropriate."<sup>44</sup>

A party's obligation to turn over property under § 542(a) is further subject to the "good faith" exception, set forth in § XI below.

### V. STANDING

A debtor in possession, whether under Chapter 11 or Chapter 13,<sup>45</sup> and a Chapter 7 or 11 trustee, each has standing to bring an action under Code § 542.<sup>46</sup> Most courts have held that a Chapter 7 debtor — whose property is under the authority of the trustee — lacks standing.

In *Perry*, the debtor's auto lender had repossessed his car, but had not yet sold it when the debtor commenced his Chapter 7 case a week later. The lender subsequently obtained relief from the stay and sold the car. The bankruptcy court ultimately concluded that the debtor, who was representing himself, had exempted the car. The *Perry* court found "puzzling" the provision of § 542(a) requiring the turnover of exempt property "where it is the chapter 7 debtor who is

seeking turnover from a creditor.” Accordingly, the court noted, some courts have held that a Chapter 7 debtor has standing.<sup>47</sup> The Ninth Circuit BAP had reached the opposite conclusion, though, and the *Perry* court felt itself bound by it.<sup>48</sup>

## VI. BURDEN OF PROOF

The party seeking turnover has the burden of proof,<sup>49</sup> and “must prove that the subject property constitutes property of the estate and that the defendant is in possession of that property.”<sup>50</sup>

The trustee in *In re Auld* filed motions to extend the deadline for filing a complaint to deny the debtor’s discharge and for the turnover of property. The bankruptcy court ruled that the trustee was required “to describe with particularity the property or documents to be turned over.” Because the trustee had sought discovery, or been specific in his requests, his motion for an order directing turnover was denied.<sup>51</sup>

An exception stated by the bankruptcy court in *In re Tate* is the debtor’s burden to raise the issue of the inconsequential value of the property as an affirmative defense.<sup>52</sup>

Presumptions regarding ownership interests in property may shift the burden of proof. In *In re Shapphire*, one spouse had transferred property that was titled in her name to the debtor prepetition. Her spouse alleged that the property belonged to both spouses as community property. Under California law, the owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption can only be rebutted by clear and convincing proof.<sup>53</sup> The bankruptcy court ruled that the challenging spouses’ uncorroborated testimony was insufficient to rebut this presumption.<sup>54</sup>

## VII. SECTION 542(a)—PROPERTY OF THE ESTATE THAT THE DEBTOR MAY USE, LEASE, SELL, OR EXEMPT

### Generally — Property of the Estate

“It is crucial to the trustee’s claim that the asset to be turned over is property of the estate.”<sup>55</sup>

Property rights generally are determined by state law.<sup>56</sup> If under the applicable state law, the debtor has no interest in the property turnover of which is sought, then the court will deny turnover.

Courts have struggled with cases involving disputed title. The bankruptcy court in *In re Nurses’ Registry and Home Health Corporation* recently weighed in, holding that a trustee or debtor in possession has a cause of action for turnover even if title is in dispute and needs to be determined as part of the litigation.<sup>57</sup>

But the bankruptcy court in *In re Soundview Elite Ltd.* reached the contrary determination. The Chapter 11 trustee in *Soundview* filed a complaint by which she sought, among other things, turnover of the net value of the debtor’s investment in its non-debtor subsidiary — which was effectively everything that the subsidiary would have after payment to its creditors, since the debtor was the sole shareholder in the subsidiary.<sup>58</sup> The court stated that “the turnover power can be improperly invoked, especially when it is used as a Trojan Horse for bringing garden variety contract claims; when the property in question is not already property of the estate; or

when the turnover statute is used to recover assets with disputed title when the estate's claim of ownership is legitimately debatable. It is well established that the turnover power may not be used for such purposes."<sup>59</sup> The court ruled that though the matter was close, and the defendant's defenses were largely frivolous (and the court could not even find that they were bona fide), the court could not determine that the cash or property to be delivered to the debtor was "already estate property," or that the debtor's rights was "yet equivalent to recovery of a fixed sum, or tantamount to substituting one kind of asset for another."<sup>60</sup> The court denied the trustee's motion for summary judgment of the turnover count.<sup>61</sup>

*In re Fraterfood Service, Inc.* required application of the Puerto Rico law. The debtor constructed a building and other improvements on its leasehold. The debtor subsequently filed its Chapter 11 case, rejected the lease, and filed a complaint seeking payment of \$1.5M from the landlord for the value of the building and improvements and alleging that the landlord had violated the automatic stay by retaining possession of the building and improvements.<sup>62</sup> The landlord moved to dismiss the complaint and sought Bankruptcy Rule 9011 sanctions against the debtor and its counsel.<sup>63</sup>

The debtor responded that the landlord was obligated to turn over the property under

§ 542(a).<sup>64</sup> The court extensively analyzed the applicable law of the Commonwealth of Puerto Rico, and determined that the debtor in its complaint failed to establish that the debtor had an interest in the building and improvements. The court dismissed the debtor's complaint.<sup>65</sup>

The *Fraterfood* court also found that the debtor's counsel's filing the complaint constituted "dilatatory litigation" the purpose of which was forestall payment to the landlord of the postpetition rent that had accrued prior to the debtor's rejection of the lease. The court granted the landlord's motion for sanctions in part, ordering the debtor's counsel to pay the landlord's legal costs, expenses and fees.<sup>66</sup>

A mere damage claim generally is not determined to be estate property subject to turnover. The Chapter 11 trustee in *In re The Vaughan Company, Realtors*, a real estate brokerage company, sued a competitor and several individuals for the defendants' "alleged improper relocation of certain real estate brokers" who had worked at the debtor to the competitor, and "the subsequent relisting" of the debtor's real estate listings with the new firm. The trustee sought, among other things, turnover of the commissions received on the sales of the re-listed properties. The defendants moved to dismiss.<sup>67</sup>

The court ruled that the commissions were not property of the estate. "Property such as commissions to be recovered for the estate becomes property of the estate only if and when recovered." Even if the trustee had sought to recover the commissions as a voidable post-petition transfer under § 549 or otherwise (which she had not), or prevail on her claim that the listings were wrongfully transferred, the commissions themselves would "never become property of VCR's bankruptcy estate" and thus the trustee could not obtain relief under § 542(a). "A damages award in the amount of the Commissions does not make the Commissions themselves property of the estate" and the trustee's claim under § 542(a) was "not facially plausible."<sup>68</sup>

See also *In re Shapphire Resources, LLC* discussed in § VI above.

**The Property Must be Property That the Debtor May Use, Lease, Sell or Exempt**

### Property that the Debtor May Use, Lease or Sell

The property, to be subject to turnover, must be property that the debtor may use, lease or sell under section 363, which generally means that it is property of the estate under Code § 541.<sup>69</sup>

### Property that the Debtor May Exempt

The application of the turnover provisions to property asserted by the debtor to be exempt is somewhat peculiar, since the debtor's exemption would appear to put the exempt property beyond a trustee's reach even though § 542 requires turnover to the trustee of property that the debtor may exempt.

Courts nonetheless often deny a trustee's request for turnover of property, if the debtor has claimed a proper exemption (see e.g., *In re Perry* discussed in § II above),<sup>70</sup> and conversely grant the trustee's motion for turnover from the debtor if the property is not exempt.

### Types of Property Interests Subject to Turnover

Several opinions in the last year have made the threshold determination of whether the property sought was estate property, with respect to myriad types of property interests, as set forth in the following subsections of this § VII.

#### **Accounts Receivable**

The court in *In re SurfaceMax, Inc.* (discussed in II above) followed the general rule that an action to obtain payment on an account receivable — though actionable — is not a turnover proceeding.<sup>71</sup>

#### **Alimony**

The bankruptcy court in *In re Millette* determined that alimony is a property interest and not a personal right under New Hampshire law, and thus was property of the estate.<sup>72</sup>

#### **Alter Ego Claims**

The trustee in *Comu v. King Louie Min., LLC* alleged that Comu concealed his ownership of Green Automotive Company, Inc., "using, *inter alia*, his undisclosed, *de facto* ownership and control of The Barclay Group, Inc. ('TBG') to hold his Green Auto Stock and thereby avoid detection." The trustee sought turnover of all prepetition assets, including the Green Auto Stock and any proceeds collected from the disposition of those assets.<sup>73</sup>

The bankruptcy court concluded that "TBG was indeed Comu's alter ego, and that, therefore, any pre-petition shares of the Green Auto Stock owned by TBG should have been turned over to the Trustee pursuant to 11 U.S.C. § 542(a)." The court found that Comu had furthered an "elaborate scheme to dissipate TBG's Green Auto Stock—and collect millions of dollars in cash proceeds—that should have been available to his creditors." The court further found value of the stock to be \$5,858,788, which reflected the "actual cash proceeds from the sale of Green Auto stock."<sup>74</sup>



If the property sold was subject to a valid and perfected lien, then the holder of the lien is entitled to the proceeds in payment of its claim, prior to any payment to estate. In *In re Spence* the debtor's boat slip was sold at sheriff's sale. The bankruptcy court found that the condominium association's execution and levy against a boat slip were valid and that it thus held a judgment lien against the proceeds, in the amount of \$37,138. The court ordered payment of \$37,138 to the association and the turnover of the balance of the proceeds to the Chapter 7 trustee.<sup>82</sup>

The debtor in *In re Morev* entered into an agreement with a creditor, Keeler, prepetition. Under the agreement, the debtor assigned his liquor license to Keeler, who agreed to "make maximum effort to sell the license, to recoup \$68,000" which represented the amount that the debtor owed to the Keeler "for the purchase of the liquor license, plus legal costs." Keeler opened an escrow with an escrow company to accomplish the sale, the liquor license was sold, and the sale proceeds were deposited in escrow with the escrow company.<sup>83</sup>

The debtor filed his Chapter 7 petition and the trustee sought turnover of the escrowed funds. The court held that it is "well settled in the Ninth Circuit that where a seller of a liquor license becomes a debtor in a bankruptcy case after the license is sold, but before the proceeds are distributed from escrow, the proceeds become property of the bankruptcy estate and must be distributed in accordance with the bankruptcy priority scheme ... while a state, as the creator of a liquor license, may validly impose conditions on its transferability for the state's own benefit, it may not, consistently with paramount federal law, impose conditions which discriminate in favor of particular classes of creditors."<sup>84</sup>

The escrow company argued that Keeler was entitled to the proceeds, because the debtor had assigned the liquor license to Keeler. The court held that the assignment was neither an outright transfer of, nor a grant of a security interest in, the liquor license. The assignment "was at most a grant by Debtor to Keeler of control of the license for the sole purpose of allowing Keeler to sell the license and to control (not own) the proceeds," and ordered turnover of the proceeds.<sup>85</sup>

In *In re Cypress Health Systems Florida, Inc.* Partner's Healthcare signed a letter of intent prepetition for the purchase of assets of the debtor and paid a \$50,000 deposit to the title company. The sale never closed. The debtor filed its Chapter 11 petition and sought turnover of the \$50,000 deposit.<sup>86</sup>

Partner's Healthcare argued first that the debtor did not schedule the escrow as an asset, and thus had no interest in the funds. The court rejected this argument perfunctorily. Partners Healthcare next argued that the debtor failed to negotiate the sale in good faith. The court found that the letter of intent contained express terms regarding ownership and disposition of the escrow, including that the escrow "would revert permanently to the possession and control" of the debtor under certain circumstances, which the court found had occurred. The court ordered turnover.<sup>87</sup>

### Property of Others

Bankruptcy Code § 541(d) "excludes from the bankruptcy estate the equitable interest in any property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest.

The district court held that the bankruptcy court had authority to order parties to turn over property subject to their control, which should have been included in the bankruptcy estate, and affirmed the monetary judgment in favor of the trustee pursuant to § 542(a).<sup>75</sup>

The bankruptcy court in *In re Raymond* held that control, "even pervasive control, without more, is not a sufficient basis for a court to ignore corporate formalities," and dismissed the trustee's alter ego claims.<sup>76</sup>

See also *In re Tolomeo* and *In re Roussos* discussed in § II above,

### **Avoidable Transfers**

Avoided transfers are subject to turnover, but the courts continue to divide on the question of whether a transfer that is merely avoidable is subject to turnover.

The Chapter 7 trustee in *In re Bruner* sought turnover of a fee paid postpetition to the debtor's criminal defense counsel. The debtor's elderly mother wire-transferred the funds to defendant defense counsel, and the parties hotly disputed whether the debtor was "the true source of the transferred funds." In the court's view the parties had missed a more fundamental point, that: "turnover can only be used to demand return of estate property to the Trustee, not to avoid transfers of what was estate property."<sup>77</sup> The court reasoned that when the debtor "voluntarily surrendered her own title to the money, the estate lost whatever interest it had in the money." Even though the trustee offered substantial evidence that the \$50,000 was the debtor's money and thus may have been estate property before its transfer, the trustee did not avoid the unauthorized postpetition transfer. Thus, no evidence the trustee had adduced could prove that the \$50,000 fee, having been transferred from the estate, was estate property and the fee was not subject to turnover.<sup>78</sup>

But in *In re Roussos*, also discussed in § II above, the court ruled that the transfer of estate property pursuant to a court order under § 363(b) but in fraud on the court "never divested of its interest in the Properties" and declined to dismiss the turnover count.<sup>79</sup>

See also *In re Tolomeo* discussed in § II above.

### **Lease or Disguised Financing**

The trustee in *In re Hunt* sought turnover of certain equipment from the debtor. The debtor objected, asserting that the property was subject to a finance lease with Shephard under Idaho law, pursuant to the terms of which Shephard was the owner of the property until the debtor completed payments to him.<sup>80</sup> The court held that the transaction between the debtor and Shephard was a disguised financing and security interest, and thus that the debtor had an ownership interest in the equipment. As a result, the equipment was property of the estate and the court ordered turnover to the trustee.<sup>81</sup>

### **Proceeds and Escrows**

If property of the estate, subject to turnover, was first sold, then the sale proceeds are subject to turnover. Conversely if the property is not property of the estate, then the proceeds are not subject to turnover.

This order is **SIGNED**.

Dated: December 16, 2016

*William J. Thurman*

WILLIAM T. THURMAN  
U.S. Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy Number: 15-31245
Community Translator Network	Chapter 11
Debtor.	Honorable William T. Thurman

ORDER ON OBJECTION TO PROOF OF CLAIM NO. 8  
AND MOTION TO EXTEND TIME

The Debtor's Objection to Claim No. 8 (the "Objection") [Docket No. 71] and Amy Meredith's Motion to Extend Time (the "Motion") [Docket. No. 168] came on for evidentiary hearing on December 9 and 16<sup>th</sup> of 2016, the Honorable William T. Thurman, United States Bankruptcy Judge, presiding. Knute A. Rife appeared on behalf of Debtor, John T. Morgan appeared on behalf of the United States Trustee, and Geoffrey L. Chesnut appeared on behalf of Amy Meredith. The Court made its findings and conclusions on the record which are incorporated herein.

The Court has considered the pleadings filed in connection with the Objection, representations of counsel at the evidentiary hearing, witness testimony, exhibits and other relevant information of record in this case. Based upon the same, the Court hereby **ORDERS**:

1. The Motion is granted.

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2. The Objection is overruled.

3. Proof of claim No. 8 is allowed for Ms. Meredith. However, the Court will allow further evidence regarding the amount of the claim; particularly, the net proceeds received by Debtor on the eight radio properties to determine the 60/40 split agreed to by Debtor and Ms. Meredith. The parties are ordered to communicate between themselves and either: 1) submit additional briefing on the amount of the claim, or if not acceptable to all; 2) schedule an evidentiary hearing as soon as practicable where they may present evidence as to the amount of the claim.

\_\_\_\_\_**END OF DOCUMENT**\_\_\_\_\_

**DESIGNATION OF PARTIES TO RECEIVE NOTICE**

Service of the foregoing **ORDER** shall be served to the parties and in the manner designated below:

**By Electronic Service:** ECF LIST

**By U.S. Mail** - All parties on the Court's official case MATRIX.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

IN RE: ) CASE NO. 15-31245  
)  
COMMUNITY TRANSLATOR ) COURT HEARING  
NETWORK, LLC, )  
Debtor. ) JUDGE THURMAN  
)  
) ARGUMENT ON OBJECTION  
) TO PROOF OF CLAIM #8  
) FILED BY AMY MEREDITH  
)  
)

TRANSCRIPTION OF ELECTRONICALLY RECORDED PROCEEDINGS  
HELD DECEMBER 16, 2016

2:05 P.M.

\* \* \*

RENEE L. STACY  
Registered Professional Reporter  
Certified Realtime Reporter

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UNITED STATES  
BANKRUPTCY COURT  
DISTRICT OF UTAH  
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A P P E A R A N C E S

FOR THE CREDITOR:      GEOFFREY L. CHESNUT  
(by videoconference)    Attorney at Law  
                             RED ROCK LEGAL SERVICES  
                             491 N. Bluff Street  
                             Suite 201  
                             St. George, UT 84770

FOR THE DEBTOR:        KNUTE RIFE  
                             Attorney at Law  
                             P.O. Box 2941  
                             Salt Lake City, UT 84110

December 16, 2016

2:05 p.m.

(Transcriber's note: Speaker identification may not be accurate with audio recordings.)

P R O C E E D I N G S

THE CLERK: All arise. United States Bankruptcy Court for the District of Utah, the Honorable William T. Thurman presiding, is now in session.

God save the United States of America and this Honorable Court. Please be seated.

Please be seated.

(Audio issues.)

(Discussion off the record.)

(Recess.)

THE CLERK: The court resumes its session. Please be seated.

THE COURT: Good afternoon. Is that better? The parties can hear a little better now? Thank you.

The Court is sitting in Salt Lake City today with a videoconference hookup to St. George.

1 We are here for one matter this afternoon.

2 It is in the Community Translator Network  
3 case, and it is to -- excuse me -- here filed closing  
4 argument on the debtor's objection to claim number 8  
5 filed by Ms. Meredith, and then the Court will be  
6 prepared to rule.

7 Now, I am going to make a -- a statement  
8 right now, and I'm going to modify a ruling I made  
9 the other day, which may affect your arguments, so I  
10 wanted to put that on the record first. And I'm  
11 going to read the transcript that I have, and -- and  
12 I think the ruling will become clear.

13 This is a -- from the recording we copied  
14 down the other day. This is in the -- I'm going to  
15 start it in the middle of the argument.

16 "MR. RIFE: Your Honor, may I -- I've been  
17 allowing this line of questioning to go forward, but  
18 I'm not going to object at this point. We're here on  
19 the proof of claim objection. The object of the  
20 entire hearing is and the evidence being presented  
21 here is, does Ms. Meredith have a claim against the  
22 debtor? I'm not understanding the relevancy of this  
23 line of questioning.

24 "JUDGE: That comes pretty close,  
25 Mr. Chesnut.



1 "MR. CHESNUT: Well, your Honor,  
2 Ms. Meredith testified that she believes that she has  
3 a claim on the assets. My position is, your Honor,  
4 is that we are trying to find out what the value is  
5 and to substantiate the hundred-thousand-dollar  
6 claim. The debtor is saying, at most, that any claim  
7 is worth \$20,000. Our position is, your Honor, is  
8 that the reason why the debtor is asserting such a  
9 low number is because there is self-dealing going on,  
10 and I'm trying to ascertain whether or not there was  
11 self-dealing between a broker and a fiduciary duty  
12 and the debtor, who happened to be represented by  
13 both counsel, by the same counsel.

14 "JUDGE: Okay. The objection goes to  
15 relevance. Objection sustained.

16 "MR. CHESNUT: I have nothing further from  
17 this witness, your Honor."

18 I'm reversing my ruling. The question of  
19 what, if any, the amount of the claim was is  
20 relevant, and so, depending on the way this goes  
21 today as to the closing argument, I may or may not  
22 allow the matter to be reopened to hear additional  
23 evidence as to the amount of the claim, but I'm just  
24 saying that this may shape -- help make an impact on  
25 your arguments today.

1 With that said and with that ruling, I'm  
2 going to allow the parties to proceed.

3 Now, as I read the case law, the creditor  
4 filed the proof of claim. The debtor objected,  
5 shifted the burden back to the creditor to establish  
6 the validity of the claim, so that's the -- that's  
7 the kind of order I think I want to take.

8 Mr. Chesnut, I'm going to ask you to go  
9 forward first, and, Mr. Rife, you may respond, and  
10 then Mr. Chesnut have any rebuttal, if necessary.  
11 And, of course, if somebody wants to say something at  
12 the very end, I'll let you do that, too. But let's  
13 go in that order.

14 Mr. Chesnut, you're up.

15 Let's get appearances first. State your  
16 name, please.

17 MR. CHESNUT: Geoffrey Chesnut for Amy  
18 Meredith.

19 THE COURT: Okay. And here in Salt Lake?

20 MR. RIFE: Knute Rife for the debtor, CTN.

21 THE COURT: All right. Mr. Chesnut, please  
22 proceed.

23 (2:12 p.m. to 2:48 p.m. not transcribed per  
24 request of Mr. Barlow.)

25 THE COURT: Mr. Morgan, I note that you are

1 here for the U.S. Trustee's Office. Do you wish to  
2 weigh in on any of this?

3 MR. MORGAN: Your Honor, I'm unable to -- I  
4 was, unfortunately, unable to hear the evidence at  
5 the prior hearing last week, so I'm here today just  
6 to learn.

7 THE COURT: Okay.

8 MR. MORGAN: Thank you.

9 THE COURT: Thank you. Well, I'll tell you  
10 what I'm going to do. I'm going to take just a  
11 couple of minutes. I want to talk to my clerk about  
12 some matters. Then I'm going to come back on the  
13 record and rule. So can you wait just a few minutes  
14 while I take a short recess? I hope so. All right.  
15 Well, the court will be in brief recess.

16 THE CLERK: All arise.

17 (Recess.)

18 THE CLERK: The court resumes its session.  
19 Please be seated.

20 THE COURT: All right. Are we broadcasting  
21 okay? Okay. Thanks.

22 The matter before the Court today is the  
23 Court's consideration of the debtor's objection to  
24 claim number 8. Sometimes I refer to that in this  
25 ruling as "the objection." The Court held an

1 evidentiary hearing on Friday, December 9th, and  
2 heard oral argument today. Appearances are noted on  
3 the record.

4 Having reviewed the record, the testimony,  
5 and other evidence, and particularly the exhibits,  
6 and the parties' closing arguments, the Court is  
7 prepared to make a ruling.

8 The Court has jurisdiction over this matter  
9 pursuant to 28 USC 157 and 13-34. This is a court  
10 proceeding within the definition of 28 USC 157B-2,  
11 capital B. Venue and notice were also found to be  
12 appropriate in all respects.

13 The voluntary Chapter 11 case of the debtor  
14 was filed on December 1, 2015. The proof of claim  
15 deadline was April 12, 2016. Notice of the proof of  
16 claim deadline was sent to creditors on the official  
17 case mailing matrix on December 15th. That was  
18 docket 14. Powell Meredith Communications  
19 Corporation, or otherwise referred to here as "PMCC,"  
20 is listed on the list of 20 largest creditors --  
21 that's docket number 2 -- and was sent notice of the  
22 proof of claim deadline on December 15th at the  
23 address of 5380 Knox Drive, The Colony, Texas,  
24 75056-2151.

25 PMCC is also scheduled on Schedule EF, part

1 2, as a nonpriority creditor at the same  
2 aforementioned address, with a disputed claim of  
3 \$20,000. That's docket number 7. The claim at  
4 issue, that is, proof of claim number 8, was filed on  
5 April 15th and executed on April 12th, 2016 by Amy  
6 Meredith.

7 Claim number 8 was filed as a scheduled --  
8 as a nonpriority unsecured claim in the amount of  
9 \$100,000 and does not include interest or other  
10 charges.

11 The stated basis for the claim is "Five  
12 radio stations appropriated by debtor without payment  
13 to creditors: Needles, California; Ruidoso, New  
14 Mexico; Roseburg, Oregon; Logan, Utah; Cheyenne,  
15 Wyoming."

16 In claim number 8, Ms. Meredith states she  
17 is a creditor and owner of the radio stations. Claim  
18 number 8 does not include any supporting  
19 documentation.

20 The debtor filed the objection on  
21 October -- on April 21, 2016. That was docket 64.  
22 The debtor primarily argues that claim number 8 is  
23 time barred, was not filed by a creditor of the  
24 debtor, and has no supporting documentation or  
25 evidence to support the claim, and that the debtor

1 has no contractual relationship with Meredith, but,  
2 rather, only PMCC.

3 The debtor renewed the objection on April  
4 26th, 2016, asserting the same facts and also  
5 requesting fines and sanctions against Ms. Meredith  
6 of \$500,000 and five years in prison for allegedly  
7 filing a false proof of claim.

8 Ms. Meredith filed a response to the  
9 objection on May 23rd of this year at docket 94. The  
10 debtor filed a reply on May 27 at docket 95.

11 The Court held a preliminary hearing on the  
12 objection on June 2 of this year. At the preliminary  
13 hearing, the Court set an evidentiary hearing for  
14 August 26 and issued a scheduling order at docket 99.

15 In the interim, the debtor appointed  
16 counsel under 11 USC, Section 327, and stipulated  
17 with PMCC and Ms. Meredith to continue the  
18 evidentiary hearing on the objection until December  
19 9th. That's docket 127.

20 The parties stated that a discovery plan  
21 that sets appropriate dates for discovery, submission  
22 of exhibits, the witness list, and supporting  
23 memoranda would be filed with the Court by August 31.  
24 The parties also stated that "The sanctions motion  
25 scheduled for August 26th, 2016 would be withdrawn

1 and stricken." The Court signed the order on the  
2 parties' stipulation at docket 128.

3 The parties did not submit a discovery plan  
4 or withdraw the sanctions motion. Additionally,  
5 exhibit and witness lists were filed less than a week  
6 before the evidentiary hearing; however, due to  
7 debtor's second change of counsel, the Court will  
8 excuse the parties' noncompliance with the Court's  
9 order at docket 128.

10 The factual background leading up to the  
11 claim is not simple. The debtor is in the business  
12 of owning and developing construction permits --  
13 sometimes I refer to those as "CPs" or "CP" -- for  
14 translator stations granted by the Federal  
15 Communications Commission or FCC. According to the  
16 debtor's various disclosure statements filed with the  
17 Court, the debtor is owned by Community Education  
18 Foundation, Inc., a nonprofit organization, as the  
19 sole member.

20 The debtor states that the trustees of  
21 Community Education Foundation are Lavon Randall,  
22 Lorna A. Skinner, John Christian Barlow, or "Barlow"  
23 as I refer to him, Ryan M. Skinner, and Jeffrey B.  
24 Bate. Barlow is largely controlled -- in the control  
25 of the debtor.

1 In 2003, PMCC applied to the FCC for, among  
2 other things, eight FM radio translators, these  
3 referred to as "the radio properties." That's at  
4 docket 94, and in the Exhibit A, the declaration of  
5 Amy Meredith at paragraph 4. The FCC did not take  
6 any action on the radio properties until 2013.  
7 That's in Meredith's declaration at paragraph 5.

8 In 2009, while the applications were  
9 pending, Scott Powell and Ms. Meredith divorced.  
10 Through the divorce decree, Ms. Meredith was awarded  
11 100 percent of PMCC. That's in Meredith's  
12 declaration and also in her undisputed testimony.

13 Ms. Meredith filed paperwork with the FCC  
14 in 2011 to demonstrate that she was the sole owner of  
15 PMCC. That's her declaration at paragraph 7.

16 Sometime in mid July to August of 2013,  
17 Powell contacted Ms. Meredith and inquired whether  
18 PMCC was interested in working with him to develop  
19 and then sell the radio properties. That's in her  
20 declaration at paragraph 10.

21 MR. RIFE: Your Honor, was -- you said  
22 "Powell."

23 THE COURT: Sir, I'm reading the ruling.  
24 If you want to dispute it and you want to appeal it,  
25 you may do so. Don't interrupt the Court while I'm



1 making a ruling. Thank you.

2 MR. RIFE: All right.

3 THE COURT: Meredith -- and I may be -- I  
4 may be wrong, but I'll correct it, and I'll take that  
5 into consideration, but --

6 MR. RIFE: Sorry.

7 THE COURT: -- please don't interrupt.

8 Meredith refused to sell the radio  
9 stations, and Powell stated that he was approached by  
10 the debtor and was advised that he could act on  
11 behalf of PMCC because their divorce decree was  
12 invalid. That's, again, in her declaration at  
13 paragraph 12.

14 Thereafter, about July 2013, Powell and the  
15 debtor entered into an agreement concerning the radio  
16 properties. That's -- I refer to as "the July  
17 agreement." The July agreement is Creditor's Exhibit  
18 2. Ms. Meredith testified that her signature on the  
19 July agreement was forged and she never saw or signed  
20 it.

21 Then in August and November of 2013,  
22 Ms. Meredith decided to work with the debtor to  
23 develop the radio properties based on promises of a  
24 down payment and on promises of a favorable 60-40  
25 division of proceeds once the radio properties were

1 sold.

2 On November 21, 2013, Ms. Meredith signed a  
3 document dated October 22 titled -- entitled  
4 "Assignment Agreement." I refer to that as "the  
5 October assignment agreement." That is Creditor's  
6 Exhibit 3.

7 As stated on Creditor's Exhibit 3, the  
8 October assignment agreement is between  
9 Powell-Meredith Communications Company, a Texas  
10 company in good standing, and Scott Powell and  
11 Ms. Meredith, collectively referred to as "PMCC," and  
12 Community Translator Network, LLC, a subsidiary Of  
13 Rockwell Education Foundation, Inc.

14 Hereinafter, when I use the phrase or the  
15 letters "PMCC," I am including Meredith and Scott  
16 Powell, because that's the way the documents and the  
17 evidence has come through.

18 The October assignment agreement entitled  
19 PMC- -- entitled PMCC to receive a deposit of \$20,000  
20 for the radio properties. That was calculated at  
21 \$2,500 times eight CPs. PMC was thereafter entitled  
22 to a 60-40 share of the proceeds realized by the  
23 debtor after the debtor developed the radio  
24 properties.

25 Ms. Meredith's assertion of the 60-40

1 division of proceeds is supported by Creditor's  
2 Exhibit 15, which is a declaration signed and  
3 submitted to the FCC by Morgan Skinner, manager of  
4 Rockwell, on July 7, 2014.

5 The declaration acknowledged the agreement  
6 of the parties was -- of the parties was to have  
7 Rockwell perform technical, legal, and pay the FCC  
8 processing fees required for the prosecution of the  
9 construction permit applications, and the  
10 construction permits were to be transferred to the  
11 debtor, a company which Attorney John Christian  
12 Barlow was the sole manager or trustee and held in  
13 trust, and when the net proceeds would be divided  
14 thereafter on a 60-40 basis, PMCC would receive 60  
15 percent and Rockwell 40 percent, with Rockwell's  
16 expenses capped at 2,500 per translator. That's in  
17 Exhibit 15.

18 The aforementioned agreement was never  
19 consummated. Additionally, neither PMCC nor Meredith  
20 received a deposit of \$20,000 for the radio  
21 properties.

22 In January of 2014, Ms. Meredith discovered  
23 that PMCC's FCC access codes were changed and the  
24 debtor had submitted to the FCC access to PMCC's  
25 account, one, the necessary reports qualifying five

1 of the radio properties to be transferred to the  
2 debtor, and two, a document dated November 10, 2013,  
3 which I refer to as "the November assignment  
4 agreement," which transferred five of the radio  
5 properties to the debtor. That's Creditor's Exhibit  
6 4.

7 Ms. Meredith testified that her signature  
8 on the November assignment agreement was forged and  
9 she never saw or signed the agreement until searching  
10 the FCC filings. The debtor and PMCC discussed  
11 settlement after this issued, but the same was never  
12 consummated.

13 The debtor continued to pursue a permit  
14 through the FCC on the five radio properties listed  
15 in the November settlement agreement, however.  
16 Ms. Meredith filed an objection with the FCC, but on  
17 January 8th, 2014, the FCC granted the permits of the  
18 debtor on the five radio properties that were listed  
19 in the November assignment agreement. The five radio  
20 properties are Cheyenne, Logan, Needles, Roseburg,  
21 and Ruidoso.

22 The remaining three properties, which are  
23 Gulf Port, Mississippi; South Padre Island, Texas;  
24 and Wickenburg, Arizona were also transferred from  
25 PMCC to the debtor. However, PMCC filed an objection

1 with the FCC, and the debtor was not immediately  
2 granted the permits. The debtor relies on the  
3 October assignment agreement and believes that, at  
4 most, it owes PMCC \$20,000, which constitutes the  
5 deposit amount of the eight radio properties. The  
6 properties -- the parties dispute the validity and  
7 the mechanism of all transfers of the radio  
8 properties.

9 Well, as a starting point, Bankruptcy Rule  
10 9006(b)(1) provides that the Court may, in its  
11 discretion, allow untimely acts if the failure to act  
12 was done -- was due to excusable neglect and allows  
13 the Court to do that after the time has expired.  
14 That was an argument made by PMCT -- PMC -- or,  
15 excuse me, the debtor today, and the rule clearly  
16 allows the motion to be made at any time after the  
17 time has expired, but it must be -- there must be  
18 cause for cause shown.

19 Here the motion to extend was made shortly  
20 before the hearing.

21 The Supreme Court stated that, if  
22 appropriate, courts should accept late filings caused  
23 by inadvertence, mistake, or carelessness, as well as  
24 by intervening circumstances beyond the parties'  
25 control. That's in the Pioneer case, which the

1 parties are well aware of.

2 The determination of what is excusable is  
3 at (inaudible) an equitable one taken into account of  
4 all relevant circumstances surrounding the party's  
5 omission, including the danger of prejudice to the  
6 debtor, the length of the delay, and its potential  
7 impact on judicial proceedings, the reason for the  
8 delay, including whether it was within the reasonable  
9 control of the movant, and whether the movant acted  
10 in good faith. That's a quote from that case and  
11 which our circuit has adopted also in the Lang case  
12 from 2004.

13 At the evidentiary hearing, Ms. Meredith  
14 made an oral motion to extend the time to file a  
15 proof of claim. She also filed the motion to extend  
16 several days before in docket 168.

17 Ms. Meredith filed claim number 8 two days  
18 late and blames the delay on the debtor's failure to  
19 list her as a creditor. PMCC received notice of the  
20 proof of claim deadline at the same address where  
21 Ms. Meredith was listed for notice. Although Ms.  
22 Meredith's reason for the delay is not persuasive in  
23 its entirety, the Court is inclined to grant an  
24 extension to file claim number 8, as it would not  
25 prejudice the debtor, because the debtor has already

1 included PMC in its proposed plan and list of 20  
2 largest creditors, unsecured creditors.

3 The delay of two or three days in filing  
4 claim 8 has not significantly impacted the  
5 proceedings, and no plan has been confirmed.  
6 Ms. Meredith acted in good faith in filing the claim,  
7 and the Court finds cause for granting the extension.

8 A more difficult issue arises as to  
9 Ms. Meredith's standing. There is no question she  
10 filed the claim in her own -- in her own name. She  
11 testified, without objection, that she was either the  
12 sole owner of PMCC and/or the sole recipient of the  
13 assets of PMCC through a divorce decree and, indeed,  
14 as the Court recognized a few minutes ago, that the  
15 documents refer to her, collectively with Mr. Powell  
16 and PMCC, as "PMCC."

17 With such evidence, the Court determines  
18 that Ms. Meredith's claim on her own behalf is  
19 sufficient. Had the debtor presented evidence that  
20 the claim was still with PMC and had never been  
21 transferred in any way to Ms. Meredith or  
22 contradicted the clear language on the assignment  
23 agreements referred to, Exhibits 2 and 3, the Court's  
24 ruling may have been different; however, no objection  
25 was made to Ms. Meredith's testimony, nor was there

1 any other evidence presented by the debtor, only  
2 argument that was made by the debtor. I am not  
3 considering the argument made by counsel for  
4 Ms. Meredith today in this determination.

5 Accordingly, the motion to extend to file  
6 the proof of claim number 8 should be granted.

7 And the next question is the validity of  
8 the claim itself. A properly filed proof of claim  
9 (inaudible) its prima facie evidence of the validity  
10 and amount of the claim under Rule 3001(f). Such a  
11 claim is deemed allowed unless a party in interest  
12 objects. That's found at Code Section 502, and a  
13 case from our circuit in the Broadband Wireless case,  
14 which my former colleague, Judge Glen Clark, authored  
15 in 2003 from the BAP.

16 The objecting party has the burden of going  
17 forward with evidence supporting the objection. Such  
18 evidence must be of a probative force equal to that  
19 of the allegations contained in the proof of claim;  
20 however, an objection raising only legal issues is  
21 sufficient.

22 Once the objecting party has reached the  
23 threshold, the creditor has the ultimate burden of  
24 persuasion as to the validity of the amount of the  
25 claim, and that's taken from the Geneva Steel case



1 from our BAP in 2001, and another case I like from  
2 our Circuit Court of Appeals. That's the Harrison  
3 case from 1993.

4 Here Ms. Meredith has the burden of  
5 persuasion as to the validity and amount of the  
6 claim, as it does not enjoy the evidentiary  
7 presumption of prima facie validity. At the very  
8 least, the October assignment agreement entitles PMCC  
9 a deposit claim of \$20,000 for the eight radio  
10 properties. That's Exhibit 3. However, Ms. Meredith  
11 bases her proof of claim on five radio stations.  
12 That's also at proof of claim number 8.

13 Nevertheless, the debtor does not dispute  
14 that it owed PMCC at least the \$20,000 for the  
15 deposit on the eight radio stations. The testimony  
16 of Amy Meredith and creditors, Exhibit 5 -- that is  
17 the declaration of Morgan Skinner regarding the 60-40  
18 split of the proceeds -- is persuasive, but not  
19 completely.

20 Also, the debtor stated that the agreement  
21 between the parties was 20,000 down and then an  
22 assumption of the prior July contract, which has the  
23 60-40. That's found in the testimony from last week.

24 The debtor went on to say that the  
25 agreement in assuming that July contract by taking

1 the assignment 60-40 net, not 60-40 gross, splitting  
2 future actual return off the sales price. That's  
3 found on -- in the transcript also.

4 The debtor failed to persuade the Court  
5 that the parties did not agree on a 60-40 share of  
6 proceeds realized by the debtor after the debtor  
7 developed the radio properties.

8 Accordingly, the Court is going to make a  
9 two-part ruling here. First of all, I'm going to  
10 allow the claim for at least \$20,000, but due to the  
11 Court's reversal of this ruling as to allowing  
12 evidence as to the amount of the claim, I am going to  
13 allow further evidence to be presented at a  
14 subsequent hearing. I think that's only fair. I  
15 pulled the plug on Mr. Chesnut's cross-examination --  
16 or his direct examination because of the objection  
17 raised, and I reverse that today, and so I want to  
18 hear additional evidence.

19 I have some real serious questions as to  
20 the damages over and above the 20,000. It is so  
21 speculative, in the Court's opinion. But,  
22 nevertheless, I'm going to give the debtor a chance  
23 to show what those damages are, and they need to be  
24 more than just a guess, and so I'll require further  
25 evidence on that matter.

1           Accordingly, Ms. Meredith's motion to  
2     extend the time for filing of proof of claim number 8  
3     should be granted. Proof of claim number 8 should be  
4     allowed for Ms. Meredith. Further evidence and  
5     testimony will be required as to the net proceeds  
6     received from the eight radio properties to determine  
7     the 60-40 split.

8           The debtor's request for fines and  
9     sanctions against Ms. Meredith in the amount of  
10    \$500,000 and five years in prison I'm going to find  
11    was orally withdrawn back in August. Further, if not  
12    withdrawn, the Court concludes it doesn't have  
13    jurisdiction to imprison someone, nor does it have  
14    jurisdiction to impose a criminal penalty, and so,  
15    for those two reasons, I'm not going to address the  
16    request for the monetary fine and the prison term.

17           This ruling constitutes the Court's  
18    findings of fact and conclusions of law pursuant to  
19    Rule 90-14 and 70-52. The Court reserves the right  
20    to issue a written opinion memorializing this,  
21    however, but I'll -- I'll prepare a separate order  
22    which refers to the findings made on the record and  
23    issue that to the parties.

24           And I'm going to allow, like I said,  
25    another hearing on the amount of damages or the

1 amount of claim, as the case may be, and I'll allow  
2 the parties -- I want you to talk and come -- come up  
3 with a date that is mutually agreeable.

4 So, Mr. Chesnut, it's your burden to set  
5 that hearing date, but I want you to talk with  
6 Mr. Rife, find a date that's convenient for both of  
7 you, and I'll take that then.

8 And do you anticipate at that time,  
9 Mr. Chesnut, you're going to use a witness?

10 MR. CHESNUT: I think it would depend upon  
11 the conversation with Mr. Rife. I think that it's  
12 fairly straightforward, given, I think, that there  
13 have been sales that we -- that information on those  
14 closing documents might be able to -- I'd like to  
15 just confer with him, but if -- otherwise I would  
16 present a witness, your Honor.

17 THE COURT: Well, what I'm -- what I'm  
18 getting at is if I come down to St. George, do I let  
19 you argue that and present evidence by way -- other  
20 argument or the like? And so I'll leave that to your  
21 discussions between the two of you, and if we have --  
22 if we have live evidence with a witness, the Court  
23 has to be at the same place the witness is. I don't  
24 take oral testimony over the airwaves for a couple of  
25 reasons. One, it's hard to perceive the witness's

1 demeanor to make an opinion as to credibility, and  
2 then, two -- our equipment is pretty good, but it's a  
3 little more problematic to swing it around and view a  
4 witness on the stand, so I've made it a habit and a  
5 practice not to allow oral testimony over the  
6 airwaves.

7 Now, I want to go back and see where I  
8 screwed up, Mr. Rife. You made a --

9 MR. RIFE: I -- I was mishearing, I think.  
10 It was just -- I wanted to make sure that I heard you  
11 correctly.

12 THE COURT: If I said "Powell," does it --  
13 did it really matter? Okay.

14 MR. RIFE: No, no, no. It just --

15 THE COURT: Let's see.

16 MR. RIFE: My ears have been --

17 THE COURT: Are we okay?

18 MR. RIFE: My -- quite frankly, your Honor,  
19 my ears have been ringing all day, so...

20 THE COURT: Okay. In talking with my alter  
21 ego here, my clerk, and referencing, the Court stands  
22 by what it said.

23 MR. RIFE: That -- that's fine. I would  
24 ask one -- one bit of direction, and this has --  
25 right now we're preparing an amended plan --

1 THE COURT: Yeah.

2 MR. RIFE: -- pursuant to the Court's  
3 order. Do I basically equate Ms. Meredith and PMCC  
4 for purposes --

5 THE COURT: That's -- that's my conclusion  
6 from the evidence that I have. Those Exhibits 2 and  
7 3, I think, just to cement that down.

8 MR. RIFE: That was what I was getting from  
9 what you were ruling there. We've basically combined  
10 the individual and the corporate form, and so I  
11 should combine them in the plan the same way?

12 THE COURT: That's -- that's the Court's  
13 opinion of what the evidence convinces it to be.

14 All right. Well, then, we'll prepare a  
15 little order on this, kick it out to you.

16 Now, on another matter, Mr. Rife, there was  
17 a hearing before Judge Anderson here a while ago, and  
18 there was an extension of something. Does -- does my  
19 ruling in kicking this out a little bit more impact  
20 any deadlines that were set there?

21 MR. RIFE: Potentially. Let me just say  
22 potentially, because we'll -- we'll need to have -- I  
23 mean -- we'll, of course, still have a dispute over  
24 that class consisting of PMCC for -- no matter how I  
25 characterize it in the disclosure statement and plan.

1 THE COURT: Let me see if I can't find that  
2 order. (Inaudible), where is that order?

3 UNIDENTIFIED SPEAKER: On 60?

4 THE COURT: Ah. It says, paragraph 2,  
5 "Debtor must file an amended plan that complies with  
6 (inaudible) applications by January 2." That's what  
7 I was being concerned about. But I don't think  
8 having a hearing down the road on the proof of claim  
9 amount will impact you on that.

10 You can file it and just say, "Hey, the  
11 Court made this determination," but you need to  
12 disclose that or put that in there somewhere, but  
13 it's not going to foul you up, I don't think. Okay?

14 MR. RIFE: I'll probably refer to the  
15 ultimate order in the --

16 THE COURT: I answered my own question.  
17 Okay. Are there -- are there other matters?  
18 Mr. Chesnut? Questions?

19 MR. CHESNUT: No, your Honor. Thank you.

20 THE COURT: Okay. Well, thank you for your  
21 time and putting up with the Court today, and the  
22 court now is in recess.

23 THE CLERK: All arise.

24 (Record closed at 3:35 p.m.)

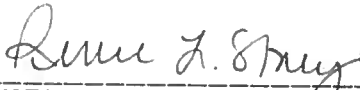
25 \* \* \* \*

1 STATE OF UTAH )  
2 COUNTY OF SALT LAKE ) ss.

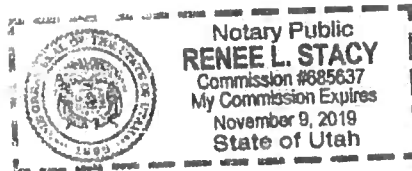
3  
4 I, RENEE L. STACY, Registered Professional  
5 Reporter and Certified Realtime Reporter for the  
6 State of Utah, do hereby certify that the foregoing  
7 transcript was written stenographically by me from an  
8 electronic recording and thereafter transcribed;

9 That the foregoing pages contain a true and  
10 accurate transcription of the electronically recorded  
11 proceedings and was transcribed by me to the best of  
12 my ability.

13 IN WITNESS WHEREOF, I have subscribed my  
14 name and affixed my seal on this 28th day of July,  
15 2017.

16  
17   
18 RENEE L. STACY, RPR, CRR  
19 Notary Public in and for the  
20 County of Salt Lake, State of Utah

21 My Commission Expires:  
22 November 9, 2019





## 11 U.S. Code § 362. Automatic stay

<u>U.S. Code</u>	<u>Notes</u>
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(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

**(8)** the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

**(b)** The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

**(1)** under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

**(2)** under subsection (a)—

**(A)** of the commencement or continuation of a civil action or proceeding—

**(i)** for the establishment of paternity;

**(ii)** for the establishment or modification of an order for domestic support obligations;

**(iii)** concerning child custody or visitation;

**(iv)** for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

**(v)** regarding domestic violence;

**(B)** of the collection of a domestic support obligation from property that is not property of the estate;

**(C)** with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

**(D)** of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

**(E)** of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

**(F)** of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

**(G)** of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

**(3)** under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

**(4)** under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

**[(5) Repealed. Pub. L. 105-277, div. I, title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-866;]**

**(6)** under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

**(7)** under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other

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Attorney for Plaintiff/Debtor

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION	
COMMUNITY TRANSLATOR NETWORK, LLC, Plaintiff, Debtor v.  POWELL MEREDITH COMMUNICATIONS COMPANY Defendant	COMPLAINT  Bankruptcy No. 15-31245. Chapter 11  Adversarial Case No:  Chief Judge WILLIAM T. THURMAN

Debtor in Possession, Community Translator Network LLC, files this Adversary Complaint to obtain control and possession of property of the estate.

On October 22, 2013, an Assignment Agreement was entered into between Community Translator Network LLC and Powell Meredith Communications Company (the “CTN-PMCC Assignment Agreement”), wherein Community Translator Network LLC (“Plaintiff/Debtor” or “CTN”) would acquire from Powell Meredith Communications Company (“Defendant” or “PMCC”) eight (8) FM Translator Construction Permits (“CPs”).

After significant funds and resources were invested for development of the FM Translator CP’s to be granted CP status and assigned to CTN by the FCC, PMCC’s motives to defraud CTN were revealed. Upon the transfer of five (5) of the eight (8) CP’s to CTN, PMCC determined that they would do whatever they could to overturn the FCC grant to CTN, and retain the CP’s, sell them, and keep all of the proceeds for itself. CTN has accumulated debt and expended funds for the legal and engineering development costs for the CP’s making them worth considerably more now than they were worth previously.

Case No:  
CTN v. PMCC  
COMPLAINT

PMCC is defrauding CTN by refusing to honor the CTN-PMCC Assignment Agreement. PMCC and Meredith refuse to transfer the remaining three CP's to CTN and have attempted to regain ownership of the transferred CP's.

CTN filed a petition for bankruptcy due to the debt it has accumulated based upon the CTN-PMCC Assignment Agreement. CTN avails itself to the Bankruptcy Court and requests a judgment against PMCC for specific performance on the CTN-PMCC Assignment Agreement and monetary damages.

Under Section 542(a) PMCC is obligated to relinquish control of the three CP's to CTN since all eight of the CP's are property of the estate and of value to the estate.

### PARTIES

1. Community Translator Network, LLC, is a Utah company in good standing. CTN is in a bankruptcy, case no 15-31245, and is the Debtor in Possession.
2. Powell Meredith Communications Company ("Defendant" or "PMCC") is a Texas company with forfeited existence.

### JURISDICTION

3. This is a Core Proceeding under 28 U.S.C. Section 157(a)(2)(A), (E), (O). <sup>1</sup>

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<sup>1</sup> Courts of "Equity" have authority to decide contractual disputes and public interest decisions are left to the determination of the Commission. See In re: Applications of Arecibo Radio Corp., 101 F.C.C.2d 545, at 548 (1985), holding "The Commission's attempts to reach a fair accommodation between its exclusive authority over licensing matters and the authority of state and local courts have resulted in procedures which acknowledge that breach of contract questions are matters for the courts to decide under state and local law. Because the Commission does not possess the resources, expertise, or jurisdiction to adjudicate such questions fully, we normally defer to judicial determinations regarding the interpretation and enforcement of contracts for the sale of broadcast stations. By this approach we have preserved the Commission's exclusive authority to make public interest determinations on licensing matters while recognizing the role of state and local courts in adjudicating private contractual matters."

The "public interest" with which the Commission is charged is that involved in granting licenses. Safeguarding of that interest can hardly imply that the interest of States in enforcing their [contract] laws have been nullified[.] See Radio Station WOW, Inc. v. Johnson, 326 US 120, 13, Supreme Court 1945.

"Civil Court can require litigants to submit settlement agreement to Commission." See In re: Applications of Arecibo Radio Corp., 101 F.C.C.2d 549 (1985), quoting Ninety Two Point Seven Broadcasting Inc., 55 RR 2nd, 607, 610-11, 1984.

4. 11 U.S.C. Section 542 “[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

FACTS

5. CTN is a company that buys, upgrades, and sells certain Federal Communications Commission broadcast licenses and permits.
6. On October 22, 2013, a valid contract was entered into between CTN, PMCC / Meredith. See Exhibit I, the CTN-PMCC Assignment Agreement.
7. The CTN-PMCC Assignment Agreement required PMCC to transfer eight FM Translator Construction Permits to CTN for a total price of Twenty Thousand Dollars \$20,000.00 payable upon grant of CP status by the FCC and completion of all eight of the transfers to CTN.
8. The value of the FM Translators Construction Permit applications prior to the CTN-PMCC Assignment Agreement was approximately \$500.00 each.
9. Prior to the FCC granting an Assignment Application for the transfer of the eight FM Translator Construction Permits, the eight FM Translators needed to be granted Construction Permit status.
10. The eight FM Translator CP's are:
  1. Cheyenne, WY - Channel 224 (92.7MHz), Facility No. 143430.
  2. Gulfport, MS - Channel 268 (101.5MHz), Facility No. 142760.
  3. Logan, UT - Channel 229 (93.7MHz), Facility No. 143532.
  4. Needles, CA - Channel 262 (100.3MHz), Facility No. 142491.
  5. Roseburg, OR - Channel 292 (106.3MHz), Facility No. 142743.
  6. Ruidoso, NM - Channel 285 (104.9MHz), Facility No. 142745.

7. South Padre Island, TX - Channel 288 (105.5MHz), Facility No. 142717.
8. Wickenburg, AZ - Channel 224 (92.7MHz), Facility No. 143311.
11. On March 21, 2014, the FCC consented to the Assignment Application of five (5) of the eight (8) CP's granted CP status to be transferred to CTN.
12. The five CP's that were transferred to CTN are:
  - Cheyenne, WY - Channel 224 (92.7MHz), Facility No. 143430.
  - Logan, UT - Channel 229 (93.7MHz), Facility No. 143532.
  - Needles, CA - Channel 262 (100.3MHz), Facility No. 142491.
  - Roseburg, OR - Channel 292 (106.3MHz), Facility No. 142743.
  - Ruidoso, NM - Channel 285 (104.9MHz), Facility No. 142745.
13. Three CP's granted CP status by the FCC that PMCC now refuses to transfer to CTN are:
  - Gulfport, MS - Channel 268 (101.5MHz), Facility No. 142760.
  - South Padre Island, TX - Channel 288 (105.5MHz), Facility No. 142717.
  - Wickenburg, AZ - Channel 224 (92.7MHz), Facility No. 143311.
14. CTN has an assignment agreement with an interested party for the purchase and assignment of Needles CA for the price of \$15,575.00.
15. CTN has an assignment agreement with an interest party for the purchase and assignment of Ruidoso NM for the price of 21,500.00.
16. PMCC have filed multiple Petitions at the FCC attempting to unwind the transfers of the CP's to CTN and is now attempting to block transfers from CTN to third-party purchasers of the Construction Permits.
17. If PMCC is successful in breaching the CTN-PMCC Assignment Agreement, PMCC stands to benefit greatly as a result of the funds invested and work performed by CTN in the development of the CP's.
18. PMCC has refused to honor the CTN-PMCC Assignment Agreement.

19. PMCC's refusal to honor the CTN-PMCC Assignment Agreement has cost CTN at least \$500,000.00.
20. PMCC has already started to construct and operate one of the CP's that they refuse to transfer to CTN.
21. The construction and operation of the CP has harmed CTN.
22. Under Section 542(a) PMCC is required to relinquish control of the three CP's to CTN since they are property of the estate and of value to the estate.

### CAUSES OF ACTION

#### I. FRAUD

23. All preceding paragraphs are incorporated herein.
24. PMCC entered into a valid contract, with CTN for the purchase and transfer of certain FM Translator CP's, the CTN-PMCC Assignment Agreement.
25. PMCC intended that CTN would rely on the contract that required PMCC to transfer the FM Translator CP's to CTN.
26. PMCC intended to breach the contract and benefit from the breach.
27. CTN was unaware that PMCC intended to breach the contract and defraud CTN.
28. CTN had a right to rely on the CTN-PMCC Assignment Agreement.
29. CTN relied on the CTN-PMCC Assignment Agreement and improved value of the FM Translator CP's so that they could be transferred to CTN.
30. PMCC did breach the CTN-PMCC Assignment Agreement and did benefit from their breach.
31. CTN is harmed by the actions of PMCC.

#### II. BREACH



32. All preceding paragraphs are incorporated herein.
33. The CTN-PMCC Assignment Agreement Dated October 22, 2013 is a valid contract.
34. PMCC breached the CTN-PMCC Assignment Agreement when PMCC refused to transfer all eight FM Translator CP's.
35. CTN does not have possession, control, and ownership of all of the eight FM Translator CP's.
36. CTN is harmed as a result of PMCC's actions.

### III. CONTRACTUAL INTERFERENCE

37. All preceding paragraphs are incorporated herein.
38. The CTN-PMCC Assignment Agreement is a valid contract.
39. PMCC interfered with the contract between CTN and the buyers of Ruidoso NM and Needles CA when PMCC filed with the FCC a Petition to Deny the transfer of Needles CA and Ruidoso NM.
40. PMCC is not authorized to file a Petition to Deny the transfer of Needles CA and Ruidoso NM with the FCC.
41. CTN is damaged because the FCC has delayed the transfer of Needles CA and Ruidoso NM.

### PRAYER FOR RELIEF

Community Translator Network LLC prays this Court for an Order:

- (a) for specific Performance on the CTN-PMCC Assignment Agreement wherein PMCC is required to facilitate the transfer of the three remaining FM Translator Construction Permits to Community Translator Network LLC or that the Clerk of the Court is authorized to facilitate the transfer of the FM Translator Construction Permits with the FCC;
- (b) An award of damages for breach of contract in the amount not less than \$500,000.00;

- (c) An award for contractual interference in the amount of not less than \$21,500.00;
- (d) An award for attorney fees and costs in an amount to be specified by affidavit;
- (e) punitive damages in amount determined by the Court;
- (f) an order enjoining PMCC from interfering in CTN's business;
- (g) all other remedies this Court deems appropriate.

RESPECTFULLY SUBMITTED this Thursday, April 28, 2016.

/s/ John Christian Barlow

John Christian Barlow, Attorney for Plaintiff/Debtor

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*Attorneys for Michael F. Thomson, Chapter 7 Trustee*

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

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In re:  
  
COMMUNITY TRANSLATOR NETWORK LLC,  
  
Debtor.

Bankr. Case No. 15-31245  
  
Chapter 7  
  
The Honorable William T. Thurman

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**NOTICE OF ABANDONMENT PURSUANT TO LOCAL RULE 6007-1**

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*The Notice of Proposed Abandonment Pursuant to Bankruptcy Rule 6007 and Bankruptcy Local Rule 6007-1 [Dkt. 388], having been served on all parties in interest, and no objection having been timely filed, the Trustee hereby abandons the following-described property of the estate:*

Any rights and interests of the Debtor in and to the causes of action set forth in the Adversary Proceeding currently pending in the United States Bankruptcy Court for the District of Utah styled as *Community Translator Network LLC v. Powell Meredith Communications Company*, Case No. 16-02073.

Dated this 7th day of July 2019.

/s/ John J. Wiest  
Michael F. Thomson  
Peggy Hunt  
John J. Wiest  
DORSEY & WHITNEY LLP  
*Attorneys for Chapter 7 Trustee*

**CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)**

I hereby certify that on the 7th day of July 2019, I electronically filed the **NOTICE OF ABANDONMENT PURSUANT TO LOCAL RULE 6007-1** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF uses and were served through the CM/ECF system.

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*Attorneys for Michael F. Thomson, Chapter 7 Trustee*

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

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In re:

COMMUNITY TRANSLATOR NETWORK LLC,  
  
Debtor.

Bankr. Case No. 15-31245

Chapter 7

The Honorable William T. Thurman

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**APPLICATION FOR ORDER TO SHOW CAUSE**

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Pursuant to 11 U.S.C. §§ 105 and Fed. R. Bankr. P. 9014 and 9020, Michael F. Thomson, the duly appointed Chapter 7 Trustee (the “Trustee”) of the bankruptcy estate of Community Translator Network LLC (the “Debtor”), by and through counsel, moves the Court for entry of an order directing E Morgan Skinner, Jr. (“Skinner”) and John Christian Barlow (“Barlow”) (together, the “Parties”) to appear and show cause why they should not be held in contempt for violating the automatic stay.

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The basis for the relief sought in the Motion are 11 U.S.C. §§ 105, 362, and 542, and Fed. R. Bankr. P. 9014 and 9020.

### **BACKGROUND**

5. On December 1, 2015, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
6. Skinner and Barlow were sent a copy of the Notice of Chapter 11 Bankruptcy Case on or about December 17, 2015, and have actual knowledge of this bankruptcy case.
7. On June 23, 2017, the order converting this case to a case under Chapter 7 of the Bankruptcy Code was entered on the Court's docket.
8. On June 20, 2017, the Trustee was appointed the interim Chapter 7 trustee for the Debtor's bankruptcy estate, and he now serves as the permanent trustee.
9. Skinner and Barlow were sent a copy of the Notice of Chapter 7 Bankruptcy Case on or about June 28, 2017.
10. The automatic stay has not been terminated or modified in the Case.
11. The automatic stay remains in effect as to the Debtor and its property.

### **FACTS RELEVANT TO THE MOTION**

#### ***The Skinner Lawsuit***

12. On or about December 12, 2017, Skinner initiated the case styled as *Skinner v. Powell Meredith Communications Company*, case number 1:17-cv-00187-C, pending in the U.S. District Court for the Northern District of Texas (Abilene) (the "Skinner Lawsuit") by filing a

*Complaint and Request for Injunction* (the “Skinner Complaint”) against Powell Meredith Communications Company (“Powell”). A true and correct copy of the Skinner Complaint is attached hereto as **Exhibit A**.

13. The Skinner Complaint relates to certain FM Translators Construction Permits (the “Permits”) which are the subject of a contract between the Debtor and Powell (the “Contract”) and seeks to exercise control over the Permits and to transfer the Permits to Skinner. See *id.*, ¶ 46, and at p. 9.

14. On or about January 18, 2018, the Trustee sent correspondence to Skinner notifying Skinner that (1) filing of the Skinner Lawsuit is a violation of the automatic stay and (2) the Contract and the Permits are property of the Debtor’s bankruptcy estate. The Trustee requested and demanded that Skinner withdraw the Skinner Complaint immediately and notified Skinner that his failure to withdraw the Skinner Complaint would lead to the Trustee pursuing Skinner’s actions as willful violations of the automatic stay and seeking all available remedies including sanctions and recovery of all costs and attorneys’ fees incurred as a result of the automatic stay violations, pursuant to Section 105(a) of the Bankruptcy Code. A copy of this correspondence is attached hereto as **Exhibit B**.

15. As of today’s date, Skinner has not withdrawn the Skinner Complaint. In fact, as evidenced by the case docket attached hereto as **Exhibit C**, Skinner continues to prosecute the Skinner Lawsuit in violation of the automatic stay.

*The Barlow Lawsuit*

16. On or about December 12, 2017, Barlow initiated the case styled as *Barlow v. Powell Meredith Communications Company*, case number 1:17-cv-00188-C, pending in the U.S. District Court for the Northern District of Texas (Abilene) (the “Barlow Lawsuit”) by filing a *Complaint and Request for Injunction* (the “Barlow Complaint”) against Powell. A true and correct copy of the Barlow Complaint is attached hereto as **Exhibit D**.

17. Barlow filed the Barlow Complaint as an alleged “third party beneficiary of any contract entered into” by the Debtor. See id. at 1 & 3, and ¶¶ 5, 24.

18. The Barlow Complaint relates to the Contract and seeks to exercise control over the Permits and to transfer the Permits to Barlow. See id., ¶ 43, and at 8.

19. On or about January 18, 2018, the Trustee sent correspondence to Barlow notifying Barlow that (1) filing of the Barlow Lawsuit is a violation of the automatic stay and (2) the Contract and the Permits are property of the Debtor’s bankruptcy estate. The Trustee requested and demanded that Barlow withdraw the Barlow Complaint immediately and notified Barlow that his failure to withdraw the Barlow Complaint would lead to the Trustee pursuing Barlow’s actions as willful violations of the automatic stay and seeking all available remedies including sanctions and recovery of all costs and attorneys’ fees incurred as a result of the automatic stay violations, pursuant to Section 105(a) of the Bankruptcy Code. A copy of this correspondence is attached hereto as **Exhibit E**.

20. As of today’s date, Barlow has not withdrawn the Barlow Complaint. In fact, as evidenced by the case docket attached hereto as **Exhibit F**, Barlow continues to prosecute the Barlow Lawsuit in violation of the automatic stay.

#### **BASIS FOR RELIEF REQUESTED**

21. The automatic stay statutorily enjoins, among other things, “any act to obtain possession of property of the [bankruptcy] estate . . . or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). It is proper for this Court to award sanctions where a party violates the automatic stay. See 11 U.S.C. § 105(a); Rafter Seven Ranches L.P. v WNL Invs., L.L.C. (In re Rafter Seven Ranches L.P.), 414 B.R. 722, 733 (B.A.P. 10<sup>th</sup> Cir. 2009); Std. Indus. V. Aquila Inc. (In re C.W. mining Co.), 625 F.3d 1240, 1246 (10<sup>th</sup> Cir. 2010) (awarding sanctions for violation of the automatic stay, including voiding all actions taken in violation thereof); In re Skinner, 917 F.2d 444, 450 (10<sup>th</sup> Cir. 1990) (upholding award of civil contempt



where party had notice of the automatic stay and failed to restore status quo after it learned its actions were in violation of the automatic stay).

22. Skinner violated the automatic stay by filing the Skinner Lawsuit, and continues to violate the automatic stay by seeking affirmative relief in the Skinner Lawsuit.

23. Barlow violated the automatic stay by filing the Barlow Lawsuit, and continues to violate the automatic stay by seeking affirmative relief in the Barlow Lawsuit.

### **CONCLUSION**

WHEREFORE, the Trustee respectfully prays that the Court will enter an order:

- (a) Directing the Parties to appear and show cause why they should not be held in contempt for violating the automatic stay;
- (b) Prohibiting the Parties from taking further actions to violate the automatic stay, including exercising control over property of the Debtor;
- (c) Awarding appropriate sanctions, including the fees and costs of the Trustee and his counsel; and
- (d) Granting such other and further relief as is just and equitable.

DATED this 8th day of March, 2018.

/s/ Michael F. Thomson

Michael F. Thomson

Peggy Hunt

Nathan S. Seim

John J. Wiest

DORSEY & WHITNEY LLP

Attorneys for Chapter 7 Trustee



# Thomson v. Rockwell Media Services, LLC et al

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**Adversary Proceeding**  
**Lead BK case is: 2:15-bk-31245**

## Utah Bankruptcy Court

### Chapter 7

**Judge:** William T Thurman  
**Case #:** 2:18-ap-02041  
**Nature of Suit** 14 Bankruptcy - Recovery of money/property - other  
**Case Filed:** Apr 03, 2018

[Docket](#)[Parties \(3\)](#)[News](#)

Last checked: **never**

[Update Parties ↻](#)

#### Defendant

Rockwell Media Services, LLC, a Utah limited liability company  
158 West 1600 South, Suite 200 PO Box 1194  
St. George, UT 84771

#### Represented By

Rockwell Media Services, LLC

#### Defendant

John Christian Barlow, an individual  
520 N Main Street C318  
Heber City, UT 84032

#### Represented By

John Christian Barlow

#### Plaintiff

Michael F. Thomson, Chapter 7 Trustee  
111 South Main Street 21st Floor  
Salt Lake City, UT 84111

#### Represented By

John J. Wiest  
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801-933-4047  
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## Thomson v. Skinner, Jr. et al

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### Adversary Proceeding Lead BK case is: 2:15-bk-31245

#### Utah Bankruptcy Court

#### Chapter 7

Judge:

William T Thurman

Case #:

2:18-ap-02042

Nature of Suit

14 Bankruptcy - Recovery of money/property - other

Case Filed:

Apr 03, 2018

[Docket](#)[Parties \(3\)](#)[News](#)

Last checked: never

[Update Parties ↻](#)

#### Defendant

E. Morgan Skinner, Jr., an individual  
PO Box 1194  
St. George, UT 84771

#### Represented By

E. Morgan Skinner, Jr.

#### Defendant

John Christian Barlow, an individual  
520 N Main Street C318  
Heber City, UT 84032

#### Represented By

John Christian Barlow

#### Plaintiff

Michael F. Thomson, Chapter 7 Trustee  
111 South Main Street 21st Floor  
Salt Lake City, UT 84111

#### Represented By

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## Thomson v. Barlow

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### Adversary Proceeding Lead BK case is: 2:18-bk-25142

#### Utah Bankruptcy Court

#### Chapter 7

Judge:

R Kimball Mosier

Case #:

2:18-ap-02139

#### Nature of Suit

67 Bankruptcy - Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

68 Bankruptcy - Dischargeability - §523(a)(6), willful and malicious injury

Case Filed:

Oct 15, 2018

[Docket](#)[Parties \(2\)](#)[News](#)

Last checked: never

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#### Defendant

John Christian Barlow, Debtor  
520 N Main Street C318  
Heber City, UT 84032

#### Represented By

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# Thomson v. Hoffman Schutz Media Capital, Inc.

[Dashboard](#)

## Adversary Proceeding Lead BK case is: 2:15-bk-31245

### Utah Bankruptcy Court

#### Chapter 7

Judge:	William T Thurman
Case #:	2:18-ap-02043
Nature of Suit	14 Bankruptcy - Recovery of money/property - other
Case Filed:	Apr 03, 2018
Terminated:	Jul 02, 2019

[Docket](#)[Parties \(2\)](#)[News](#)

Last checked: never

[Update Parties](#)

#### Defendant

Hoffman Schutz Media Capital, Inc., a New Jersey corporation  
10424 NE Sunrise Bluff Lane  
Bainbridge Island, WA 98110

#### Represented By

Hoffman Schutz Media Capital, Inc.

#### Plaintiff

Michael F. Thomson, Chapter 7 Trustee  
111 South Main Street 21st Floor  
Salt Lake City, UT 84111

#### Represented By

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Tuesday, July 02, 2019



## Thomson v. Barlow

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**Adversary Proceeding**  
**Lead BK case is: 2:18-bk-25142**

**Utah Bankruptcy Court**  
**Chapter 7**

**Judge:**

**Case #:**

**Nature of Suit**

**Case Filed:**

R Kimball Mosier

2:18-ap-02139

67 Bankruptcy - Dischargeability - §523(a)(4), fraud as  
fiduciary, embezzlement, larceny

68 Bankruptcy - Dischargeability - §523(a)(6), willful  
and malicious injury

Oct 15, 2018

Docket

Parties (2)

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Last checked: never

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### Defendant

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