UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
Urban Communicators PCS Limited Partnership, *et al.*,	)	Case No. 98-B-47996 (REG)
Debtors.	)	Jointly Administered

DECISION AND ORDER ON IMPLEMENTATION OF PRIOR DECISION

In this contested matter in the jointly administered chapter 11 cases of Urban Communicators PCS Limited Partnership, *et al.*, the Debtors and Gabriel Capital ("Gabriel") dispute the application of portions of this Court's December 11, 2007 decision (the "Decision")[1]—specifically those pertaining to the calculation of the amount of post-petition interest owed to Gabriel. Pursuant to the Decision,[2] familiarity with which is presumed, the parties submitted briefs outlining their respective interpretative theories. For the reasons set forth below, the Court finds that Gabriel's calculation accurately applies the letter and spirit of the Decision, with the exception that prior payments made to Gabriel from license sale proceeds are—in accordance with the parties' original loan documents—to be applied first to unpaid accrued interest, second to the loan principal, and last to all other obligations, including legal fees and expenses.

The parties disagree principally on three issues. The first is the amount of Gabriel's prepetition claim. The parties' contentious history notwithstanding, the Court is astonished that

1 *See In re Urban Communicators PCS Ltd. P'Ship*, 379 B.R. 232 (Bankr. S.D.N.Y. 2007).

2 *Id.* at 256-57 ("If there is disagreement as to the exact amount due by reason of this ruling (after giving due account to previous payments to Gabriel on account of its secured claim, and without prejudice to parties' rights to appeal this ruling), the parties are to confer, and if possible agree, on a mechanism and schedule for the submission of evidence and briefs on the open issues. But the time to appeal this determination will run from the date of entry of this Decision and Order.").

this issue could still be in question. The parties stipulated on at least two occasions[3] that the amount of Gabriel's prepetition claim is $11,134,451.33. This is surely not the procedural mechanism—if one actually exists—for the Debtors to relitigate that issue. The amount of *post-petition* interest (the only type of interest the Court considered in the Decision) owed to Gabriel must be calculated based upon Gabriel's prepetition allowed claim of $11,134,451.33.

The second interpretative issue in dispute involves the application of the equitable cap the Court imposed on Gabriel's entitlement to post-petition interest. The Debtors argue that post-petition interest should accrue at 19%, compounded quarterly—as is provided for in the underlying loan agreements—until, by reason of the effect of the quarterly compounding, the simple annual interest rate equivalent reaches 25%, at which point the interest rate would be capped. Following this formula, Gabriel would actually accrue interest at an effective blended simple annual interest rate of somewhere between 19% and 25%.

This is neither what the Decision requires nor—to the extent one finds ambiguity on this point—what the Court intended. Rather, as Gabriel notes, the Decision provides that Gabriel should accrue interest on its prepetition claim at a rate of 25% per annum from the petition date.[4] The 38% effective simple annual interest rate that the Court declined to award Gabriel was calculated by averaging Gabriel's accrued contractual interest entitlement over the pendency of the bankruptcy case.[5] The 25% rate that the Court instead chose to adopt should similarly be

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[3] *See, e.g.*, Stip. and Order Authorizing Use of Collateral and Providing Adequate Protection (the "2005 Cash Collateral Order") (ECF # 360) at p. 6; Second Stip. and Order Authorizing Use of Collateral and Providing Adequate Protection (the "2006 Cash Collateral Order") (ECF # 434) at p. 6.

[4] *Id.* at 256 ("For the foregoing reasons, the Court grants Gabriel's motion for pendency interest, allowing pendency interest to the extent its simple interest equivalent rate would not exceed 25% per annum.[] The Court rejects the Debtors' contentions that Gabriel is entitled to less (and, of course, the Debtors' contention that Gabriel is entitled to nothing), and rejects Gabriel's contentions that it is entitled to more.").

[5] This effective annual simple interest rate is the single rate of simple non-compounded interest that would need to be applied to Gabriel's prepetition claim, running from the petition date to the date of calculation,

applied as a single effective annual interest rate over the entire pendency of the case. It would be analytically incongruous to do otherwise.

Lastly, the parties dispute the order in which Gabriel must apply payments made by the Debtors from license sales to its total indebtedness. Gabriel argues that the 2005 Cash Collateral Order requires that all payments be applied first to Gabriel's legal fees and expenses, next to interest, and last to principal. The Court disagrees. Gabriel relies on a portion of the 2005 Cash Collateral Order that, by its clear terms, only governs the application of proceeds from the release of the Verizon Escrow Funds.[6] The 2005 Cash Collateral Order does not speak more broadly to application of all other payments on account of the loan. For this, the Court looks to the underlying loan documents.

The Amendatory Agreement provides in paragraph 6 that Section 2.02(A)(b) of the Note Purchase Agreement is modified to read, "All Net Asset Sales shall be applied as provided in Section 2.02(B)." "Net Asset Sales Proceeds"[7] is defined in the Note Purchase Agreement as "the aggregate cash payments received by the Company pursuant to any Asset Sale…." The license sales relevant here—and proceeds therefrom that went to Gabriel—clearly fall within this definition. Section 2.02(B) of the Note Purchase Agreement provides that each Mandatory

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to yield the ultimate balance due to Gabriel, taking into account the Debtors' interim payments. *See* ECF # 493.

[6] *See* 2005 Cash Collateral Order at p. 12 ("Upon the release of the Verizon Escrow Funds, the Debtors shall pay the Verizon Escrow Funds to Gabriel. The Verizon Escrow Funds shall be applied to Gabriel's claims against the Debtors in the following order: (1) the fees, charges and expenses incurred by Gabriel in connection with these Chapter 11 cases, including, without limitation, the reasonable fees, charges and expenses of Kasowitz, Benson, Torres & Friedman LLP, (2) allowed accrued interest, (3) principal."). The Verizon Escrow Funds consisted of $1.37 million of the cash proceeds from the July 13, 2005 license sale to Verizon Wireless.

[7] The Amendatory Agreement modifies section 2.02(A)(b) to include the defined term "Net Asset Sales." However, "Net Asset Sales" is defined in neither the Amendatory Agreement nor the Note Purchase Agreement. Rather, "Net Asset Sales Proceeds," the term originally used in the section 2.02(A)(b) of the Note Purchase Agreement, is defined. As neither party has proffered an explanation for why the parties would introduce a new, undefined term that so closely resembles the previously utilized defined term, the Court believes that the exclusion of "Proceeds" in the Amendatory Agreement was merely a scrivener's error.

Prepayment—or as is the case here, proceeds from Net Asset Sales—"shall be applied first, to the payment of accrued but unpaid interest on the Notes, on a pro rata basis, second, to principal on the Notes, on a pro rata basis and third, to any other Obligations."[8]

If the same license sales took place before bankruptcy they would have been Mandatory Prepayment events. Though the Court presumably would have had the power to defer mandatory prepayments after the bankruptcy filing, it would be inconsistent with the spirit, if not also the letter, of the Note Purchase Agreement to apply the proceeds of prepayments actually made in any manner other than in accordance with the parties' previous agreement on this exact point.

Conclusion

For the reasons set forth above, the Court adopts the calculation provided by Gabriel, with the sole exception that license sale proceeds other than those that constituted the Verizon Escrow Funds must be applied in accordance with the provisions of the Note Purchase Agreement and Amendatory Agreement, as outlined above. To the extent the parties still cannot agree on how to implement this ruling, they are to confer and schedule a conference call with the Court.

SO ORDERED.

Dated: New York, New York
July ***31***, 2008

s/ Robert E. Gerber
United States Bankruptcy Judge

[8] Emphasis in original.