

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CUMULUS MEDIA HOLDINGS INC. and)
CUMULUS MEDIA INC.,)
))
Plaintiffs,)
))
v.)
))
JPMORGAN CHASE BANK, N.A., as)
Administrative Agent under the Amended and)
Restated Credit Agreement among Cumulus)
Media Inc., Cumulus Media Holdings Inc., as)
Borrower, Certain Lenders, Royal Bank of)
Canada, and Macquarie Capital (USA) Inc., as)
Co-Syndication Agents, and Credit Suisse AG,)
Cayman Islands Branch, Fifth Third Bank,)
Goldman Sachs Bank USA and ING Capital)
LLC, as Co-Documentation Agents dated as of)
December 23, 2013,)
))
Defendant.)
))

Case No. 16-cv-9591

COMPLAINT

Plaintiffs Cumulus Media Inc. and Cumulus Media Holdings Inc. (collectively, “Cumulus” or “the Company”) for their complaint against JPMorgan Chase Bank, N.A. (“Defendant”), as Administrative Agent under the Amended and Restated Credit Agreement among Cumulus Media Inc., Cumulus Media Holdings Inc., as Borrower, Certain Lenders, Royal Bank of Canada, and Macquarie Capital (USA) Inc., as Co-Syndication Agents, and Credit Suisse AG, Cayman Islands Branch, Fifth Third Bank, Goldman Sachs Bank USA and ING Capital LLC, as Co-Documentation Agents dated as of December 23, 2013 (the “Credit Agreement,” attached hereto as Exhibit A), allege as follows:

NATURE OF THE ACTION

1. This is a declaratory judgment and breach of contract action. Cumulus seeks a declaration that it is authorized under the Credit Agreement to proceed with a refinancing that will deleverage the Company by up to \$305 million. Cumulus also seeks a declaration that, in breach of the Credit Agreement, Defendant JPMorgan Chase Bank, N.A. has unreasonably withheld consent to certain components of Cumulus's refinancing. To remedy this breach of the Credit Agreement, Cumulus seeks an order of specific performance requiring Defendant to comply with its contractual obligation to consent to Cumulus's refinancing and (1) to sign agreements pursuant to the Credit Agreement that assign the Credit Agreement's revolving loan commitments to new revolving lenders; (2) to sign an amendment to increase the aggregate principal amount of revolving credit available under the Credit Agreement; and (3) to sign an amendment to modify the leverage ratio covenant relating to the Credit Agreement's revolving credit facility. All of these actions are authorized under the Credit Agreement.

2. Cumulus is the nation's second largest radio network, with 447 owned-and-operated radio stations, more than 8,200 broadcast radio stations affiliated with its Westwood One network, and roughly 6,000 employees. Like most terrestrial radio station companies, Cumulus has experienced a recent decline in its business. In response, Cumulus has implemented a series of initiatives designed to improve ratings and revenues, and early indicators suggest that these initiatives are working.

3. Cumulus's ability to fully capitalize on these initiatives, however, is hindered by its heavy debt load. Cumulus's capital structure presently includes approximately \$2.4 billion in debt consisting of: (1) approximately \$1.8 billion outstanding in first lien term loans (the "Term Loan") under the Credit Agreement; and (2) approximately \$610 million of 7.75% senior notes due 2019 (the "Senior Notes," and holders thereof the "Senior Noteholders") and issued pursuant

to an Indenture. Additionally, the Credit Agreement provides for a \$200 million revolving line of credit (the “Revolving Credit Facility”), which may be increased in size with “incremental” facilities. No borrowings are outstanding under the Revolving Credit Facility at this time.

4. To deleverage its balance sheet and improve its maturity profile, Cumulus has agreed to undertake a refinancing transaction with certain Senior Noteholders holding approximately 55 percent of Cumulus’s Senior Notes. Those agreements are memorialized in a Refinancing Support Agreement dated as of December 6, 2016 (the “RSA”). In addition to the Senior Noteholders who are parties to the RSA, Cumulus expects other Senior Noteholders to join the transaction.

5. As provided by the RSA, Cumulus will, pursuant to a public tender process, refinance its outstanding Senior Notes using proceeds from the Revolving Credit Facility. Participating Senior Noteholders will refinance their Senior Notes with borrowings under the Revolving Credit Facility, through which Cumulus will retire the Senior Notes at a discount of up to 50 cents on the dollar.¹ This refinancing benefits Cumulus by significantly reducing its overall leverage. The refinancing will also eliminate a “springing maturity” of the Term Loan under the Credit Agreement that occurs if more than \$200 million of Senior Notes are outstanding in January 2019.

6. To accomplish this refinancing, Cumulus needs to take four steps pursuant to the Credit Agreement. *First*, existing lenders of the Revolving Credit Facility must assign their revolving loan commitments—their obligations to make loans to Cumulus—to new lenders that will hold the commitments in connection with the refinancing (the “New Revolving Lenders”).

¹ Senior Noteholders that tender after an “Early Tender Date” of December 23, 2016, but prior to a deadline of January 10, 2017 will be eligible to refinance their Senior Notes for consideration with a face value equal to 45% (rather than 50%) of the face value of the Senior Notes tendered.

Second, Cumulus must access the \$200 million from the Revolving Credit Facility, which will provide Cumulus with the cash necessary to refinance the Senior Notes. Because a leverage covenant in the Credit Agreement currently prevents Cumulus from accessing its revolving line of credit, Cumulus reached an agreement with the New Revolving Lenders to amend that leverage ratio and permit access to the Revolving Credit Facility. *Third*, Cumulus must access up to an additional \$105 million from the incremental borrowing capacity provided for in the Credit Agreement (the “Incremental Revolving Facility”) so that it has enough cash to complete the refinancing. *Fourth*, and finally, Cumulus must refinance the Senior Notes.

7. The proposed refinancing does not breach the Credit Agreement or create a Default or Event of Default under the Credit Agreement. Indeed, each step of the planned refinancing is specifically authorized by Cumulus’s Credit Agreement.

8. As to the first step, the Credit Agreement allows a lender to assign its loan obligations to another entity—here, the New Revolving Lenders—and prohibits the Administrative Agent from “unreasonably withh[olding] or delay[ing]” its consent to such a transfer. Although Cumulus asked Defendant to confirm that it would consent to the transfer, Defendant has thus far refused to do so.

9. As to the second step, the Credit Agreement specifically permits Cumulus, without Defendant’s consent, to amend the Credit Agreement’s leverage ratio covenants to allow Cumulus to access the Revolving Credit Facility.² Although Cumulus asked Defendant to confirm that it would execute the amendment upon the consummation of the refinancing

² The leverage ratio amendment also amends the terms of the Revolving Credit Facility to extend the maturity date and increase the pricing and fees associated therewith. Pursuant to Section 4.24 of the Credit Agreement, such amendments solely require the consent of the lenders agreeing to extend their revolving loan commitments, which are the New Revolving Lenders.

transaction, Defendant indicated that it would not do so. As of this filing, Defendant has refused to provide assurance that it will execute the amendment.

10. As to the third step, Cumulus must access funds in the Incremental Revolving Facility, which, in combination with funds from the Revolving Credit Facility, will provide enough cash to refinance the Senior Notes. Under the Credit Agreement, new lenders may provide additional credit through the Incremental Revolving Facility by entering into an “Incremental Facility Amendment” with Cumulus. Although Defendant must undertake the ministerial task of executing this amendment, Defendant’s consent to the amendment is expressly not required. Although Cumulus asked Defendant to confirm that it would execute the amendment upon the consummation of the refinancing transaction, Defendant has refused to provide such confirmation. As of this filing, Defendant has refused to provide assurance that it will execute the amendment.

11. As to the fourth step, Cumulus must complete the refinancing transaction, which, again, is authorized by the Credit Agreement. On this point, the Agreement could not be clearer—it allows Cumulus to make payments on account of the Senior Notes “in connection with any refinancing of the Senior Notes.” Cumulus does not need the consent of Defendant or Cumulus’s senior secured lenders. Although Cumulus provided Defendant with the necessary documents to execute the refinancing transaction and asked Defendant to confirm that it would execute the documents upon the consummation of the transaction, Defendant refused to provide such confirmation. As of this filing, Defendant has refused to provide assurance that it will execute the amendment.

12. On December 9, 2016, Defendant sent Cumulus a letter informing Cumulus that Defendant would not provide assurance that it would execute the assignments, amendments, and other documentation pertaining to the refinancing when the transaction was consummated, as

Cumulus had requested. The letter asserted that Defendant had the right not to act until after further conferring with the Term Lenders and indicated that Defendant would delay execution pending further consultation with the Term Lenders.

13. Although Section 10.4 of the Credit Agreement provides, in part, that Defendant “shall be fully justified in failing or refusing to take any action . . . unless it shall first receive such advice or concurrence of the Required Lenders . . . as it deems appropriate,” Defendant has had ample opportunity to receive such advice from the Term Lenders.

14. In addition, although Section 10.4 may exculpate Defendant from certain liabilities for acting or refusing to act in certain instances, Section 10.4 does not permit Defendant to thwart Cumulus’s exercise of its contractual rights by abdicating Defendant’s own duties under the Credit Agreement or by subjecting Cumulus’s contractual rights to approval of the Term Lenders. That is particularly true where the Credit Agreement expressly provides Cumulus with the right to access incremental lending, to effectuate amendments, and to refinance debts *without* approval of the Term Lenders.

15. Cumulus needs to proceed with its proposed refinancing, and it needs to do so quickly. Through its proposed transaction, Cumulus has agreed with Senior Noteholders to refinance the Senior Notes at a substantial discount to par. But this agreement is not open-ended. Rather, the Senior Noteholders’ commitments to refinance at this significant discount is contingent upon, among other things, the refinancing being completed by a January 27, 2017 “Outside Date.” Although that Outside Date can be extended in limited circumstances, Cumulus will lose a significant opportunity if Defendant thwarts Cumulus’s ability to exercise its contractual rights in a timely fashion.

16. Accordingly, Cumulus seeks a declaratory judgment that the Credit Agreement permits it to: (1) use funds from the Revolving Credit Facility and the Incremental Revolving

Facility in combination with other steps to refinance the Senior Notes; (2) amend the leverage ratio restriction, thereby enabling Cumulus to access the Revolving Credit Facility, subject only to the agreement of the lenders under its Revolving Credit Facility; and (3) enter into an Incremental Facility Amendment to access the Incremental Revolving Facility.

17. Cumulus also seeks an order of specific performance of the Credit Agreement, compelling Defendant to (1) comply with its contractual obligation to consent to the assignment of revolving loan commitments to the New Revolving Lenders; (2) execute the amendment to the leverage ratio covenants in Section 8.1; (3) execute the Incremental Facility Amendment; and (4) undertake any other action necessary to effectuate the refinancing.

THE PARTIES

18. Plaintiff Cumulus Media Holdings Inc. is a Delaware corporation with its principal place of business in Atlanta, Georgia. Cumulus Media Holdings Inc. is the Borrower under the Credit Agreement.

19. Plaintiff Cumulus Media Inc. is a Delaware corporation with its principal place of business in Atlanta, Georgia. Cumulus Media Inc. is the parent of Cumulus Media Holdings Inc. and is a party to the Credit Agreement.

20. Defendant JPMorgan Chase Bank, N.A., doing business as Chase Bank, is a national banking association that is chartered by the Office of the Comptroller of the Currency, a bureau of the United States Department of the Treasury. JPMorgan Chase Bank, N.A.'s main office is located in Columbus, Ohio. JPMorgan Chase Bank, N.A. is a wholly-owned subsidiary of JPMorgan Chase & Co., which is a leading global financial services firm and one of the largest banking institutions in the United States.

JURISDICTION AND VENUE

21. The Court has personal jurisdiction over Defendant, who consented to the jurisdiction of this Court pursuant to Section 11.11 of the Credit Agreement.

22. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1). There is complete diversity because Plaintiffs are citizens of Delaware and Georgia, and Defendant is a citizen of Ohio. The proposed refinancing involves hundreds of millions of dollars and, if executed, would prevent a springing maturity on a \$1.839 billion loan, among other benefits. Accordingly, the amount in controversy exceeds the sum or value of \$75,000, excluding interest and costs.

23. Venue is proper in this district pursuant to Section 11.11 of the Credit Agreement. Venue is also proper pursuant to 28 U.S.C. § 1391(a) and (b) because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, and because Defendants are subject to personal jurisdiction in this District.

CUMULUS'S HISTORY

24. A leader in the radio broadcasting industry, Cumulus (NASDAQ:CMLS) combines high-quality local programming with iconic, nationally syndicated media, sports and entertainment brands to deliver premium content choices to the 245 million people reached each week through its 447 owned-and-operated stations broadcasting in 90 U.S. media markets (including eight of the top 10), more than 8,200 broadcast radio stations affiliated with its Westwood One network, and numerous digital channels.

25. Together, the Cumulus/Westwood One platforms make Cumulus one of the few media companies that can provide advertisers with national reach and local impact. Cumulus/Westwood One is the exclusive radio broadcast partner to some of the largest brands in sports, entertainment, news, and talk, including the NFL, the NCAA, the Masters, the Olympics,

the GRAMMYs, the Academy of Country Music Awards, the American Music Awards, the Billboard Music Awards, Westwood One News, and more. Additionally, it is the nation's leading provider of country music and lifestyle content through its NASH brand, which serves country fans nationwide through radio programming, exclusive digital content, and live events.

26. Cumulus employs roughly 6,000 men and women located throughout the country.

27. Over the past several years, Cumulus, like many terrestrial radio operators, has experienced declines in audiences, as a result of new audio competitors including satellite radio and online or streaming music applications, and in advertising dollars, due to both audience declines and substantial competition from digital advertising vehicles. But recently, Cumulus has implemented a series of initiatives to drive ratings and reverse the Company's fortunes. For example, Cumulus has begun shifting operational control to local markets to better tailor programming choices to local preferences, thereby driving increased ratings and revenues. Cumulus believes these initiatives are already starting to take effect.

28. Cumulus's turnaround, however, continues to be hindered by its debt obligations. Cumulus's existing debt burden both constrains its operational performance and limits the runway available for Cumulus to complete its ongoing operational initiatives.

THE CREDIT AGREEMENT

29. On December 23, 2013, Cumulus entered into the Credit Agreement, which covers two kinds of loans: (1) a \$2.025 billion Term Loan maturing in December 2020; and (2) a \$200 million Revolving Credit Facility maturing in December 2018.

30. As of September 30, 2016, Cumulus had \$1.839 billion outstanding under the Term Loan.

31. At present, Cumulus is unable to access the \$200 million Revolving Credit Facility because of financial covenants contained in the Credit Agreement. Section 8.1 of the

Credit Agreement provides that the Company's consolidated first lien net indebtedness (*i.e.*, its first priority secured indebtedness) must be less than specified multiples of the Company's Earnings Before Income, Taxes, Depreciation, and Amortization ("EBITDA") in order for Cumulus to borrow under the Revolving Credit Facility. If Cumulus's consolidated first lien net indebtedness exceeds those specified thresholds, Cumulus cannot borrow under the Revolving Credit Facility. The required ratio for the periods ending September 30, 2016 and December 31, 2016, is 5.0 to 1.0, meaning that the Company's consolidated first lien net indebtedness cannot exceed roughly \$950 million (based on Consolidated EBITDA as of September 30, 2016) in order for Cumulus to borrow under the Revolving Credit Facility.³ As of September 30, 2016, the Company's actual leverage ratio was in excess of the first lien net leverage ratio covenant, thereby preventing the Company from accessing the Revolving Credit Facility.

32. As discussed more fully below, Section 11.1 of the Credit Agreement specifically provides that this leverage covenant may be amended with consent from the holders of a majority of the lending commitments under the Revolving Credit Facility.

THE SENIOR NOTES

33. Cumulus also has \$610 million outstanding in 7.75% Senior Notes, which were issued on May 13, 2011 and mature on May 1, 2019.

34. Interest on the 7.75% Senior Notes is payable on May 1 and November 1 of each year.

35. The Senior Notes and the Term Loan are inextricably linked, because the Credit Agreement provides for a "springing maturity" on the Term Loan if a certain amount of Senior Notes remain outstanding at a certain time. Specifically, under the Credit Agreement, the Term

³ As currently provided, the first lien net leverage ratio covenant periodically decreases until it reaches 4.0 to 1.0 on March 31, 2018.

Loan is scheduled to mature on December 23, 2020 (*see* Credit Agreement p. 38 (defining “Term Loan Maturity Date”)); however, that maturity is automatically advanced to 91 days prior to the Senior Notes’ May 1, 2019 maturity (*i.e.*, January 30, 2019) if more than \$200 million of Senior Notes is outstanding on January 30, 2019.

THE PROPOSED REFINANCING TRANSACTION

36. On December 6, 2016, Cumulus agreed with certain Senior Noteholders to a refinancing transaction that will allow Cumulus to significantly reduce its debt load and improve its maturity profile. The proposed refinancing will allow Cumulus to refinance up to \$610 million of the Senior Notes with approximately \$305 million in secured debt borrowed under the Revolving Credit Facility.

37. This transaction will be effectuated in several steps. *First*, existing lenders under the (currently undrawn) Revolving Credit Facility will assign their loan commitments—*i.e.*, their obligations to make loans on demand from Cumulus—to the New Revolving Lenders.

38. *Second*, the New Revolving Lenders and Cumulus will amend the Credit Agreement’s existing leverage ratios, thereby permitting Cumulus to borrow \$200 million under the Revolving Credit Facility.

39. *Third*, to obtain the remaining \$105 million that may be required to complete the refinancing, Cumulus will access the Incremental Revolving Facility. To do so, Cumulus will enter into an Incremental Facility Amendment permitting new lenders to provide this additional credit. This will allow Cumulus to borrow a total of up to \$305 million—50% of the face value of the Senior Notes.

40. *Fourth*, Cumulus will refinance the Senior Notes by offering the Senior Noteholders the opportunity to obtain participations in the revolver, either directly or via a pass-through trust (the “Trust”).

41. The refinancing transaction will reduce Cumulus's total leverage by up to \$305 million. At present, with the Senior Notes outstanding, the Company's leverage level (net of cash) is approximately 10.8 times the Company's EBITDA (based on \$212 million of Last Twelve Months' EBITDA as of September 30, 2016). If all of the Senior Noteholders participate in the refinancing transaction, the Company's leverage level (net of cash) would be reduced to approximately 9.4 times EBITDA.

42. The refinancing transaction will also materially enhance Cumulus's ability to implement its turnaround initiatives. If Cumulus cannot refinance the Senior Notes, Cumulus faces a January 2019 springing maturity on its \$1.839 billion Term Loan.

43. By avoiding this springing maturity, Cumulus gains more time to improve its operational performance and benefit from its business initiatives that are already underway. With this additional time, Cumulus will gain the ability to use its ongoing positive free cash flow to reduce the amount outstanding under its Term Loan.

THE CREDIT AGREEMENT AUTHORIZES THE PROPOSED TRANSACTION

44. Each and every aspect of the proposed refinancing is specifically authorized by the Credit Agreement.

TRANSFER OF REVOLVING LOAN COMMITMENTS

45. The assignments of the revolving loan commitments to the New Revolving Lenders are authorized by Section 11.6(c) of the Credit Agreement, which allows a lender to "sell to any Eligible Assignee . . . all or any part of its rights and obligations under this Agreement" with Defendant's written consent. Defendant promised that it would "***not . . . unreasonably with[o]ld or delay[]***" its consent in this regard.

46. Despite making this promise, Defendant has withheld its consent to the transfer of loan obligations to the New Revolving Lenders.

THE AMENDMENTS TO THE LEVERAGE RATIO COVENANTS

47. Cumulus will implement an amendment to the leverage ratio imposed by Section 8.1 of the Credit Agreement to permit borrowing under the Revolving Credit Facility.

48. Section 11.1 of the Credit Agreement permits Cumulus and the New Revolving Lenders to amend the leverage ratios in Section 8.1 without the consent of other parties.

49. Section 11.1 generally prohibits modification of the Credit Agreement unless agreed to by the Required Lenders—defined as Lenders holding a majority (by value) of the outstanding Term Loans and revolving commitments under the Credit Agreement. But Section 11.1 also contains an exception that allows amendments of Section 8.1 without the consent of the Required Lenders: “Notwithstanding anything to the contrary contained herein, any amendment, modification or waiver of any provision of subsection 8.1 . . . ***shall require the written consent of the Majority Revolving Lenders (and only the Majority Revolving Lenders) and each Loan Party party hereto.*** For the avoidance of doubt, ***it is understood and agreed that the Required Lenders may not, and nor shall the consent of the Required Lenders be needed to, amend, modify or waive any provision of subsection 8.1 . . .***” (emphases added).

50. The Credit Agreement defines the Majority Revolving Lenders as a majority (by value) of those lenders obligated to make Revolving Credit Loans. (*See* Credit Agreement p. 25 (defining “Majority Revolving Lenders”). Under Cumulus’s proposed refinancing, the Majority Revolving Lenders will be the New Revolving Lenders, collectively, because such entities will hold in excess of 50.0% of all such lending commitments under the Revolving Credit Facility. The Loan Party, in turn, refers to Cumulus Media Inc. and its subsidiary, Cumulus Media Holdings Inc. (*See id.* (defining “Loan Party”).).

51. Thus, amending the leverage ratios in Section 8.1 requires written consent from only two parties: the Majority Revolving Lenders (*i.e.*, the New Revolving Lenders)⁴ and the Loan Party (*i.e.*, Cumulus). The consent of Defendant (or any other lender, for that matter) is expressly not required.

52. The New Revolving Lenders and Cumulus have both agreed to consent to the amendment of Section 8.1.

53. Although Cumulus has asked Defendant to confirm that it would execute the amendment, Defendant refused to provide such confirmation.

AMENDMENTS TO ACCESS THE INCREMENTAL REVOLVING FACILITY

54. The proposed refinancing will allow Cumulus to retire \$610 million in Senior Notes at a discount of up to 50 cents on the dollar. At full participation, the Senior Notes will be exchanged for up to \$305 million in secured debt, \$200 million of which will come from the Revolving Credit Facility. The remaining up to \$105 million will come from the Incremental Revolving Facility.

55. Cumulus does not need Defendant's consent to access the Incremental Revolving Facility. Section 4.25(a) of the Credit Agreement provides: "The Borrower may from time to time amend this [Credit Agreement] in order to provide to the Borrower increased revolving commitments" This amendment is called the "Incremental Facility Amendment."

56. Section 4.25(b) allows new Additional Lenders to enter into an Incremental Facility Amendment with the Borrower. Section 4.25(b) defines "Additional Lender" as a lender

⁴ Upon taking assignment of the revolving loan commitments as provided herein, the New Revolving Lenders will hold in excess of 50% of all commitments under the Revolving Credit Facility and, therefore, will constitute the Majority Revolving Lenders under the Credit Agreement.

“that elects to extend loans or commitments under an Incremental Facility,” provided that such lender is reasonably acceptable to Cumulus.

57. Under Section 4.25(b), the Incremental Facility Amendment must be “executed by the Borrower, such Additional Lender and the Administrative Agent.”

58. “Execut[ion],” however, does not require consent. Section 4.25(b) expressly states that “*[n]o Incremental Facility Amendment shall require the consent of any Lenders other than the Additional Lenders with respect to such Incremental Facility Amendment.*”

59. The New Revolving Lenders and those Senior Noteholders that have, to date, elected to directly hold revolving commitments have agreed to be Additional Lenders, and those parties are reasonably acceptable to Cumulus in accordance with Section 4.25(b).

60. Although Cumulus has asked Defendant to confirm that it would execute the Incremental Amendment, Defendant refused to provide such confirmation.

THE REFINANCING

61. After the commitments with respect to the Revolving Credit Facility have been assigned to the New Revolving Lenders and after the Credit Agreement has been amended as set forth herein, Cumulus may proceed with its proposed refinancing. This refinancing is expressly authorized by at least two provisions of the Credit Agreement: Section 8.8, which allows payments in connection with refinancing Senior Notes, and Section 1, which defines “Permitted Refinancing.”

62. Section 8.8 of the Credit Agreement allows Cumulus to make early payments on debts in order to refinance the Senior Notes. That Section generally prohibits Cumulus from “mak[ing] any optional payment or prepayment on the principal of the Senior Notes or any Permitted Refinancing of the Senior Notes” In other words, Cumulus generally may not make optional payments or prepayments on the principal of the Senior Notes, nor may Cumulus

make optional payments or prepayments on the principal of any Senior Notes refinanced with the proceeds of a “Permitted Refinancing.”

63. But Section 8.8 contains exceptions to this general rule. In particular, Section 8.8(j) provides that “the Borrower and its Restricted Subsidiaries may make payments in respect of the Senior Notes and any Permitted Refinancing thereof (i) in connection with *any refinancing* of the Senior Notes or any Permitted Refinancing thereof permitted *pursuant to the terms hereof*” (emphases added).

64. Accordingly, Section 8.8(j) permits Cumulus to make early payments on Senior Notes (or previously refinanced Senior Notes), provided that those payments are made in connection with a refinancing “permitted pursuant to the terms hereof” (that is, the terms of the Credit Agreement). Here, the Credit Agreement specifically permits Cumulus to incur revolving loans, and thus incurring the revolving loans to refinance the Senior Notes does not require Defendant’s consent.

65. Accordingly, Cumulus’s early payment of the Senior Notes is permitted by Section 8.8(j).

66. In addition, the proposed refinancing, once effected, will not constitute a Default or Event of Default under the Credit Agreement. Section 9 of the Credit Agreement lists Events of Default; none is triggered by the proposed refinancing.

67. Although Cumulus has asked Defendant to confirm that it would execute the necessary documents to execute the refinancing transaction, Defendant refused to provide such confirmation. Defendant instead, on December 9, 2016, stated that it would further confer with the Term Lenders.

COUNT I – DECLARATORY JUDGMENT AS TO THE PROPOSED REFINANCING

68. Plaintiffs re-allege the allegations set forth in paragraphs 1-67 above as if fully set forth herein.

69. Cumulus and Defendant are parties to the Credit Agreement, the terms of which are set forth in the Agreement.

70. Cumulus has complied with its contractual obligations under the Credit Agreement.

71. A justiciable controversy presently exists between Cumulus and Defendant, acting on behalf of the Term Loan Lenders, concerning the proposed refinancing of the Senior Notes. Although Cumulus has asked Defendant to confirm that it would execute the documents necessary for the refinancing, Defendant has not done so.

72. Resolution of this controversy is necessary to define Cumulus's current rights and obligations under the terms of the Credit Agreement.

73. Thus, Cumulus respectfully requests a declaration that the Company's proposed refinancing of the Senior Notes does not constitute a breach, Default, or Event of Default under the Credit Agreement.

COUNT II – DECLARATORY JUDGMENT AS TO THE AMENDMENTS TO THE LEVERAGE RATIO COVENANT

74. Plaintiffs re-allege the allegations set forth in paragraphs 1-73 above as if fully set forth herein.

75. Cumulus and Defendant are parties to the Credit Agreement, the terms of which are set forth in the Agreement.

76. Cumulus has complied with its contractual obligations under the Credit Agreement.

77. A justiciable controversy presently exists between Cumulus and Defendant, acting on behalf of the Term Loan Lenders, concerning the amendments to Section 8.1 of the Credit Agreement. Cumulus maintains that only the consent of the Majority Revolving Lenders is necessary. Although Cumulus has asked Defendant to confirm that it would execute the amendment, Defendant has not done so.

78. Thus, Cumulus respectfully requests a declaration that any amendments to Section 8.1 of the Credit Agreement in conjunction with the proposed refinancing require only the consent of the Majority Revolving Lenders and not the Term Loan Lenders or Defendant, and that Defendant must execute Cumulus's proposed amendments.

COUNT III – DECLARATORY JUDGMENT AS TO THE AMENDMENTS TO ACCESS THE INCREMENTAL REVOLVING FACILITY

79. Plaintiffs re-allege the allegations set forth in paragraphs 1-78 above as if fully set forth herein.

80. Cumulus and Defendant are parties to the Credit Agreement, the terms of which are set forth in the Agreement.

81. Cumulus has complied with its contractual obligations under the Credit Agreement.

82. A justiciable controversy presently exists between Cumulus and Defendant, acting on behalf of the Term Loan Lenders, concerning entering into an Incremental Facility Amendment to access additional credit under the Incremental Revolving Facility. This is governed by Section 4.25 of the Credit Agreement.

83. Cumulus maintains that entering into an Incremental Facility Amendment does not require the consent of Defendant and the Term Loan Lenders, but only the consent of the Additional Lenders providing credit under the Incremental Revolving Facility. Although

Cumulus has asked Defendant to confirm that it would execute the Incremental Amendment, Defendant has not done so.

84. Thus, Cumulus respectfully requests a declaration that any amendment implementing an Incremental Revolving Facility requires only consent from the applicable Additional Lenders.

COUNT IV – BREACH OF CONTRACT AND SPECIFIC PERFORMANCE

85. Plaintiffs re-allege the allegations set forth in paragraphs 1-84 above as if fully set forth herein.

86. Cumulus and Defendant are parties to the Credit Agreement, the terms of which are set forth in the Agreement.

87. Cumulus has complied with its contractual obligations under the Credit Agreement.

88. Cumulus sought Defendant's consent to the transfer of revolving loan obligations and further asked Defendant to confirm that it would execute amendments to the leverage covenant and Incremental Facility Amendment. Defendant has not done so.

89. Section 11.6(c) of the Credit Agreement allows lenders to transfer their loan obligations to another lender when the Administrative Agent has given written consent, which is "not to be unreasonably withheld or delayed."

90. Defendant has unreasonably withheld its consent to the transfer of loan obligations to the New Revolving Lenders. Defendant has thus breached the Credit Agreement.

91. Cumulus therefore seeks an order of specific performance of the Credit Agreement, compelling Defendant to comply with its contractual obligation to consent to the assignment of revolving loan commitments to the New Revolving Lenders.

92. Defendant has also breached the Credit Agreement by not executing the amendments to the leverage covenant and Incremental Facility Amendment. Accordingly, Cumulus also seeks an order compelling Defendant to execute these amendments.

93. Finally, because the proposed refinancing is plainly authorized by the Credit Agreement, Cumulus seeks an order compelling Defendant to undertake any other actions necessary to effectuate the proposed refinancing.

PRAYER FOR RELIEF

WHEREFORE, judgment should be entered in favor of Plaintiffs and against Defendant as follows:

- a. Judgment declaring that Cumulus's proposed refinancing of the Senior Notes does not constitute a breach, Default, or Event of Default of the Credit Agreement;
- b. Judgment declaring that any amendment to Section 8.1 of the Credit Agreement in conjunction with the proposed refinancing requires only consent from the Majority Revolving Lenders, and not the Term Loan Lenders or Defendant;
- c. Judgment declaring that any amendment implementing an Incremental Revolving Facility requires only consent from the applicable Additional Lenders, and not the Term Loan Lenders or Defendant;
- d. Judgment that Defendant breached the Credit Agreement by not consenting to the assignment of the revolving loan commitments to the New Revolving Lenders and an order of specific performance compelling Defendant to provide its written consent;
- e. Judgment that Defendant breached the Credit Agreement by not executing the amendment to Section 8.1 and an order of specific performance compelling Defendant to execute the amendments to Section 8.1 of the Credit Agreement;
- f. Judgment that Defendant breached the Credit Agreement by not executing the Incremental Facility Amendment and an order of specific performance compelling Defendant to execute the Incremental Facility Amendment;
- g. An order of specific performance compelling Defendant to undertake all other actions necessary to effectuate the proposed refinancing;

- h. For reasonable attorneys' fees and costs of suit herein; and
- i. For such other and further relief as the Court may deem just and proper.

Dated: December 12, 2016
New York, New York

Respectfully submitted,

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