

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 10-8002

PAETEC COMMUNICATIONS, INC.,

Plaintiff-Petitioner,

v.

COMMPARTNERS, LLC,

Defendant-Respondent.

On Petition for Interlocutory Appeal from the U.S. District Court
for the District of Columbia, Civ. Action No. 1:08-CV-00397 (JR)

**UNOPPOSED JOINT MOTION OF
PAETEC COMMUNICATIONS, INC. AND COMMPARTNERS, LLC
TO RETURN CASE TO THE ACTIVE DOCKET**

Pursuant to this Court's Order of June 24, 2010, Petitioner PAETEC Communications, Inc. ("PAETEC") and Respondent CommPartners, LLC ("CommPartners") jointly file this motion asking the Court to return this case to the active docket.

On May 13, 2010, PAETEC timely filed a petition under 28 U.S.C. § 1292(b) for permission to appeal the February 18, 2010 decision of the district court in this matter. On May 20, 2010, a diverse group of 14 entities in the communications industry sought leave to file a brief as *amici curiae*, in which they urged the Court to grant that petition. CommPartners opposed the petition on May 24, 2010, and PAETEC filed its reply on June 1, 2010.

On June 13, 2010, CommPartners filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada. As a result, this proceeding was automatically stayed pursuant to 11 U.S.C. § 362(a)(1). On June 24, 2010, this Court entered an order holding this case in abeyance, pending the termination or lifting of the automatic stay.

Two days earlier, PAETEC had filed a motion in the bankruptcy court to lift the automatic stay. On July 30, 2010, the court denied that motion without prejudice, as premature.

On March 11, 2011, PAETEC renewed its motion to lift the automatic stay. CommPartners subsequently consented to that motion, pursuant to the terms of a settlement agreement that resolved certain matters between PAETEC and CommPartners, but not the dispute before the district court giving rise to this interlocutory appeal.

On September 6, 2011, the Bankruptcy Court entered the attached order, in which it lifted the automatic stay to permit this Court to act on PAETEC's pending petition and, if granted, to hear the interlocutory appeal. Accordingly, PAETEC requests that the Court return this case to the active docket so that it can act on PAETEC's petition for permission to appeal.

CommPartners joins in that request. CommPartners also withdraws its earlier opposition to PAETEC's petition for permission to appeal and states that it

supports the granting of that petition, although it continues to oppose PAETEC's position on the merits of the interlocutory appeal.

For the foregoing reasons, the Court should return this case to the active docket, and grant PAETEC's petition for permission to appeal.

Respectfully submitted,

/s/ Jeffrey J. Binder

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September 15, 2011

STATEMENT PURSUANT TO D.C. CIRCUIT RULE ECF-3

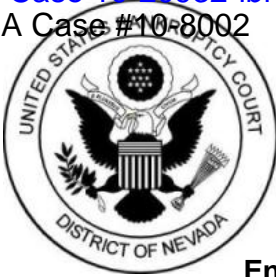
Pursuant to D.C. Circuit Rule ECF-3(B), the undersigned certifies that counsel for parties other than PAETEC consent to the filing of this notice.

/s/ Jeffrey J. Binder
Jeffrey J. Binder

CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of September, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Jeffrey J. Binder
Jeffrey J. Binder



Entered on Docket
September 06, 2011

A handwritten signature in dark ink, appearing to read "Linda B. Riegle".

Hon. Linda B. Riegle
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

COMMPARTNERS HOLDING
CORPORATION, a Nevada corporation, *et al.*

Debtor(s).

BK-S-10-20932-LBR
Chapter 11 Cases

Jointly Administered and
Substantively Consolidated with
BK-S-10-20933 through BK-S-10-20935

Affects:

☐ This debtor
☒ All Debtors
☐ COMMPARTNERS, LLC, 10-20933
☐ COMMPARTNERS CARRIER
SERVICES CORPORATION, 10-20934
☐ COMMPARTNERS NETWORK
SERVICES, LLC, 10-20935

Hearing Date: September 1, 2011
Time: 9:30 a.m.

**CONSENT ORDER ON RENEWED MOTION FOR RELIEF FROM
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) TO ALLOW
MOVANT TO PROCEED WITH AN APPEAL TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND WAIVER OF FOURTEEN-
DAY STAY OF THE ORDER PURSUANT TO FED. R. BANKR. P. 4001(a)(3)**

1 PAETEC Communications, Inc. ("PAETEC") filed its *Renewed Motion for Relief from the*
2 *Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1) to Allow Movant to Proceed with an Appeal to the*
3 *United States Court of Appeals for the District of Columbia* (the "Motion") [ECF No. 531] seeking
4 entry of an order granting relief from the automatic stay in the above-captioned bankruptcy cases (the
5 "Bankruptcy Cases") of CommPartners Holding Corporation, *et al.* (collectively, the "Debtors" and
6 together with PAETEC, the "Parties") to allow PAETEC to continue the interlocutory appeal (the
7 "Appeal") under 28 U.S.C. § 1292 to the United States Court of Appeals for the District of Columbia
8 of the Memorandum Order issued by the United States District Court for the District of Columbia on
9 cross motions for summary judgment in *PAETEC Communications, Inc. v. CommPartners, LLC*,
10 Civil Action No. 1:08-CV-0397 (JR) (D.D.C.). The Debtors consent to the relief requested in the
11 Motion on the terms and subject to the conditions as more specifically set forth in that certain
12 Settlement Agreement of the Parties. Based on the consent of the Parties, and good cause shown, it
13 is hereby:

14 **ORDERED** that the Motion is GRANTED, and PAETEC is granted relief from the
15 automatic stay in the Debtors' Bankruptcy Cases pursuant to 11 U.S.C. § 362(d)(1) to allow the
16 Appeal to proceed in all respects to conclusion in accordance with the Settlement Agreement of the
17 Parties; provided, however, that enforcement of any final decision at the conclusion of the Appeal
18 shall be as set forth in the Settlement Agreement; and

19 **IT IS FURTHER ORDERED** that PAETEC is granted relief from the fourteen (14) day
20 stay of effectiveness of this Order pursuant to Fed. R. Bankr. P. 4001(a)(3), such that this Order is
21 effective immediately upon its entry.

22 **IT IS SO ORDERED.**

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25 ...

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2 AGREED:

3 By: /s/ Matthew C. Zirzow
4 GORDON SILVER
5 GREGORY E. GARMAN, ESQ.
6 MATTHEW C. ZIRZOW, ESQ.
7 3960 Howard Hughes Pkwy., 9th Floor
8 Las Vegas, Nevada 89169

9
10 *[Proposed] Special Counsel for*
11 *Chapter 11 Trustee, Brian D. Shapiro, Esq.*

12 AGREED:

13 By: /s/ Shelley D. Krohn
14 SHELLEY D. KROHN, LTD.
15 SHELLEY D. KROHN, ESQ.
16 228 S. 4th Street, Suite # 300
17 Las Vegas, Nevada 89101

18 *[Proposed] Attorneys for*
19 *Chapter 11 Trustee, Brian D. Shapiro, Esq.*

AGREED:

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