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FIFTH DISTRICT COURT
2012 APR 16 PM 1:36
WASHINGTON COUNTY

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BY _____

IN THE FIFTH DISTRICT COURT, WASHINGTON COUNTY

STATE OF UTAH

US CAPITAL INCORPORATED, a
Colorado corporation

Plaintiff,

vs.

LEGACY MEDIA CORPORATION, a
Nevada corporation, et al.

Defendants.

**MOTION FOR
APPROVAL TO SELL
RECEIVERSHIP ASSETS**

Case No. 090500982

Judge: Eric A. Ludlow

Wayne Klein, Receiver ("Receiver") of Defendants Legacy Media Corporation (which includes Radio 940, LLC), Tri-State Media Corporation (which includes KITT FM), AM Radio 1400, Inc., AM Radio 1440, Inc., AM Radio 1470 Inc., and AM Radio 1490, Inc. ("Receivership Entities"), submits his Motion ("Motion") for Approval to Sell Receivership Assets ("Assets").

By this Motion, the Receiver seeks Court approval of a plan by which the Assets will be offered and sold through a no-reserve auction process. Under this plan, a radio station broker ("Auction Broker") will be engaged to solicit bids from prospective buyers, other radio station

brokers, landowner/lessors and other interested persons. The Auction Broker will determine the rules for the auction, solicit bids, disseminate information about the Assets, and advise the Receiver regarding the bids that are received. The Receiver will analyze the bids gathered by the Auction Broker to determine which bids will maximize the net revenue to be received by the Receivership Estate.

The Receiver will file a report with the Court summarizing the results of the auction and seek approval for the sale. Net proceeds from the sale will be applied first to pay the expenses of the business broker, second to pay outstanding administrative expenses of the Receivership Estate, and third to pay all remaining amounts to the Chapter 11 bankruptcy trustee ("Trustee") for the secured creditor, US Capital, Inc. The Trustee supports this Motion.

Upon consummation of the sale of the Assets and distribution of the net proceeds, the Receiver will ask the Court to terminate the Receivership.

This Motion is supported by the attached memorandum in support.

CONCLUSION

The Receiver respectfully asks the Court to approve the Motion and the proposed method of conducting the sale of assets as being in the best interests of the Receivership Estate. A proposed order is attached.

DATED this 16th day of April, 2012.



WAYNE KLEIN, Receiver

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STATE OF UTAH

US CAPITAL INCORPORATED, a
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Plaintiff,

vs.

LEGACY MEDIA CORPORATION, a
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Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION FOR APPROVAL TO
SELL RECEIVERSHIP ASSETS**

Case No. 090500982

Judge: Eric A. Ludlow

Wayne Klein, Receiver ("Receiver") submits this memorandum in support of his Motion for Approval to Sell Receivership Assets ("Assets").

MEMORANDUM IN SUPPORT

BACKGROUND

1. On May 29, 2009, the Court signed an order placing the corporate defendant entities in receivership and appointing Derk G. Rasmussen as the initial receiver for the Receivership Entities. By order dated September 25, 2009, Wayne Klein was appointed as the

substitute receiver (collectively, the two orders are referred to herein as "Receivership Order").¹

2. Pursuant to the Receivership Order, the Receiver is authorized to take any and all actions necessary for the operation of the Receivership Entities and the "Receivership Estate," as that term is defined in the Receivership Order, including selling tangible and intangible Assets of the Receivership Estate ("Assets").

3. The Receiver has assumed control of the Assets and has been managing them. These actions are described in the Initial Report of Receiver (October 31, 2009), the Second Report of Receiver (January 31, 2010), and the Third Report to the Court (June 2, 2010) and are reflected in the Court's order dated January 7, 2010 expanding the scope of the Receivership to include Radio 940, LLC.

4. The transfer of the radio station licenses to the Receiver was consummated when the Federal Communications Commission formally approved the transfer of five of the radio station licenses on November 18, 2009 and the sixth on March 3, 2010.

5. The Receivership Entities and others owed a debt to Plaintiff US Capital, Inc. ("US Capital") as reflected by the loan agreements ("Loan Agreements") attached to US Capital's Complaint that has been filed in this action. As of February 15, 2010, US Capital was owed \$1,532,324.00 by the Receivership Entities and others.² According to the Loan Agreements, the debt ("Debt") to US Capital is secured by a lien on all Assets of the

¹ At the time of the initial order appointing a receiver, Radio 940, LLC was not specifically identified as being in the Receivership Estate. Radio 940 was added to the Receivership Estate by order of this court dated January 7, 2010.

² This excludes attorneys fees and costs which US Capital asserts also may be recovered under the loan agreements.

Receivership Estate.³

6. On March 22, 2010, the Receiver filed a motion for approval of procedures for the sale of Assets. This motion was approved by the Court on April 6, 2010. The Receiver marketed the Assets for sale and received several bids for the assets of three of the radio stations and a credit bid from US Capital, Inc. for all of the Assets. The bid that yielded the highest value for the Assets was the credit bid of US Capital, Inc.

7. On July 8, 2010, the Court issued an order approving the sale of the Assets to US Capital, Inc. However, US Capital, Inc. requested that the Receiver not transfer the Assets to it until US Capital Inc. could remarket the Assets to other buyers. This was to facilitate the subsequent transfer of radio station licenses to subsequent buyers and also utilize the Receiver's knowledge in maintaining the Assets while awaiting instructions from US Capital on retransfers.

8. Since that time—and before the Assets could be resold by US Capital—US Capital was placed in bankruptcy:

a. On November 28, 2011, creditors filed an involuntary petition to place US Capital in Chapter 11 bankruptcy;

b. On December 20, 2012, the United States Bankruptcy Court for the District of Colorado entered an order for relief and establishing procedures for the bankruptcy (Case No. 11-37582 ABC);

³ This includes, but not limited to, all inventory, insurance contracts, furniture, computers, computer equipment, equipment, software, office equipment, fixtures, accounts, chattel paper, deposit accounts, investment accounts, securities accounts, investment property, letter of credit rights, documents, goods, instruments, general intangibles, FCC licenses and/or permits and associated rights, contracts and contract rights, claims and causes of action, books and records, and proceeds.

c. On January 13, 2012, John C. Smiley was appointed as Chapter 11 Trustee (“Trustee”);

d. On March 23, 2012, the Trustee filed a motion to convert the Chapter 11 bankruptcy to a Chapter 7 proceeding.

9. The Trustee has informed the Receiver that the Trustee supports the plan being proposed by this Motion.

10. As a consequence of the bankruptcy of US Capital, Inc. and the financial troubles leading to the bankruptcy petition filed against it, the Receiver has halted all actions relating to operation of the Assets. Lease payments to landlords have ceased as well as payments on a promissory note relating to the purchase of KOBV. Electrical power has been shut off to three of the properties,⁴ resulting in the shut-down of all equipment at those sites.⁵

11. The Receiver and Trustee have jointly determined that the best course to follow is to sell the Assets through a no-reserve bid process so:

- a. The Assets can be turned to cash,
- b. The expenses of sale can be paid,
- c. The administrative expenses of the Receivership can be paid,
- d. The funds remaining in the Receivership Estate can be delivered to the

Trustee, and

⁴ The three are KPTO, KNFL, and KENT. KITT, KOGN, and KOBV are still operating as a result of individual circumstances.

⁵ These shut-downs cause the stations to be in violation of FCC regulations, including the requirement that notices be filed with the FCC relating to cessations of broadcasting. The Receiver has not filed, and does not intend to file, notices with the FCC regarding the shut-downs. After consultation with the Trustee, the Receiver has restored electrical power to the KPTO site to keep the tower warning lights operating.

- e. The Receivership can be terminated.

PROPOSED BID PROCEDURES

12. The Receiver proposes the following bid procedures:

a. Selection of Auction Broker. Upon approval of this Motion, the Receiver and the Trustee will select a radio station broker ("Auction Broker") to conduct the auction of the Assets.⁶ The Auction Broker's role will be to:

- i. Determine the rules applicable to the conduct of the auction,⁷
- ii. Set deadlines for the submission of bids,
- iii. Advertise the availability of the Assets and solicit bids for the Assets,
- iv. Disseminate information about the Assets and respond to questions by potential bidders,
- v. Provide information about the bids received to the Trustee and the Receiver, and
- vi. Make recommendations to the Trustee and Receiver on the viability of the bids and bidders and what bids should be accepted.

b. Terms of Sale. The Auction Broker will establish rules of the auction including:

- i. The Assets will be offered with no minimum bid required and no

⁶ The Trustee will consult with the Receiver in selecting an Auction Broker and in the terms of the contract used to employ the Auction Broker.

⁷ The auction rules are expected to determine the conditions under which the lender to KOBV can submit a credit bid.

reserve, and

ii. The Assets will be sold without warranty by the Receiver as to the condition of the Assets or the status of the FCC license. Winning bidders will be solely responsible for taking steps to accomplish the transfer of the FCC licenses and negotiating with property owners where Assets are located. The Receiver will provide assistance, but without guarantee of any particular performance result or agreements with property owners.

c. Analysis and Report by Receiver. Upon conclusion of the bid process, the Receiver, in consultation with the Trustee, will analyze the bids and select the winning bids.

d. Deposits Required. The winning bidders will be notified of their winning bids and required to provide a deposit with the Receiver. The amount and terms of the deposit will be determined by the Auction Broker in consultation with the Receiver and Trustee.

REPORT TO THE COURT ON BID RESULTS

13. When the bid evaluation process is completed, the Receiver will report promptly to the Court on the results of the bid process and his recommendation to the Court. The report to the Court on the bid process will include:

- a. The identity of the Auction Broker and reasons for its selection,
- b. The rules established for the conduct of the auction,
- c. Efforts undertaken by the Auction Broker to advertise the availability of

the Assets and to solicit bids,

d. The number, nature, and range of bids that were received (without identifying non-winning bidders),⁸

e. The Receiver's determination whether the value of the stations would be maximized by selling the stations individually or as a group, including an explanation of his basis for that determination,

f. An explanation of how the Receiver determined which bid would yield the highest value,

g. The recommendations of the Receiver as to who should be awarded which Assets, and

h. A summary of the Deposits paid to the Receiver by the winning bidders.

14. The Receiver will submit a recommendation to the Court on the final disposition of the Assets, including:

a. Identification of the winning bidder(s);

b. Description of the winning bid(s); and

c. Whether any conditions affect the bid being recommended for acceptance and how those conditions should be treated.

15. The Receiver will provide to the Court a proposed order approving the sale of Assets, along with proposed findings of fact and conclusions of law.

ARGUMENT

⁸ This information, however, will be shared on a confidential basis with the Court if the Court requests.

In *Interlake Co. v. Von Hake*, 697 P.2d 238 (Utah 1985), the Utah Supreme Court instructed that receivership courts have authority to approve the process to be used by the receiver for the sale of assets of the Receivership Estate. “The possession by the court of the res in a receivership proceeding gives the court the power to determine all questions concerning ownership and disposition of the property.” Rule 66 of the Utah Rules of Civil Procedure provides that a receiver, subject to the direction of the Court, may seize property, collect, pay and compromise debts, and make transfers of property.

This Court’s Order Appointing Receiver (May 29, 2009) has already empowered the Receiver to transfer, dispose of, or sell “any tangible and intangible assets of the [Receivership Entities]” after “consult[ing] with US Capital as to the procedures that the Receiver intends to employ in marketing the property and conducting the disposition of the property.” *Id.* at ¶4(h)(vii).

Together, the case law, Rule 66, and this Court’s Order Appointing a Receiver provide authority for the Court to approve this Motion and the bid procedures proposed by the Receiver. So long as the Court believes that the procedures proposed by the Receiver are reasonably designed to maximize the value of the Receivership Estate, the Court may approve the method proposed by the Receiver for the sale of Assets.

CONCLUSION

The Receiver respectfully submits that the Court should approve the Motion and the accelerated bid procedures described in this Memorandum as being in the best interests of the Receivership Estate. Attached to this Motion is a proposed order approving the bid procedures

described in this Motion and Memorandum.

A recommended order approving the sale of Assets, along with proposed findings of fact and conclusions of law, will be submitted at the conclusion of the bid process.

DATED this 16th day of April, 2012.



WAYNE KLEIN, Receiver

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of April 2012 I will serve the foregoing Motion for Approval to Sell Receivership Assets, Memorandum in Support, and Proposed Order by United States Mail, postage prepaid, on the following parties:

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