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IN THE FIFTH DISTRICT COURT, WASHINGTON COUNTY

STATE OF UTAH

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US CAPITAL INCORPORATED, a  
Colorado corporation

Plaintiff,

vs.

LEGACY MEDIA CORPORATION, a  
Nevada corporation, et al.,

Defendants.

**THIRD REPORT OF RECEIVER,  
R. WAYNE KLEIN (FOR PERIOD  
FEBRUARY 1, 2010 TO MAY 31, 2010)**

**REPORT ON BID RESULTS**

**MOTION TO APPROVE ASSET SALE  
AND MEMORANDUM IN SUPPORT**

Case No. 090500982

Judge: Eric A. Ludlow

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R. Wayne Klein, the Court-Appointed Substitute Receiver (the "Receiver") of Legacy Media Corporation ("Legacy Media"), Tri-State Media Corporation ("Tri-State Media"), AM Radio 1400, Inc. ("Radio 1400"), AM Radio 1440, Inc. ("Radio 1440"), AM Radio 1470, Inc. ("Radio 1470"), and AM Radio 1490, Inc. ("Radio 1490") (collectively the "Receivership Entities") hereby submits this Third Report for the period February 1, 2010 through May 31, 2010 (the "Reporting Period"), including a Report on Bids for Assets.

## **PROCEDURAL HISTORY**

The Initial Receiver in this case was appointed on May 29, 2009 through The Order Appointing Receiver (the “Receivership Order”). Wayne Klein was appointed as substitute Receiver on September 25, 2009. The Initial Report of the Receiver covered the period from his appointment on September 25 through October 31, 2009. The Second Report covered the period from November 1, 2009 to January 31, 2010. The Receiver’s Motion for Approval of Procedures for the Sale of Assets was filed on March 22, 2010 and the Court signed the Order Approving Procedures for the Sale of Assets on April 6, 2010.

Since submission of the Second Report, the Receiver has accomplished the following:

### **ASSUMED OWNERSHIP OF RADIO STATION KOBY**

1. Through regulatory counsel in Washington, D.C., the Receiver filed applications with the Federal Communications Commission (“FCC”) to have ownership of the license for radio station KOBY transferred to him.
2. On March 22, 2010, the FCC issued an order transferring the license for KOBY to the Receiver.

### **ASSURED REGULATORY COMPLIANCE BY RADIO STATIONS**

3. Five of the six radio stations are currently broadcasting. The Receiver filed an application with the FCC to permit the sixth, station KOGN, to remain silent while the Receiver seeks to sell the stations. The FCC granted the Receiver’s application on March 11, 2010.
4. Station KITT is currently operating under special temporary authority to broadcast from

Soda Springs, Idaho, while awaiting a move to Wilson, Wyoming. That move is conditioned on the move of several other radio stations in Idaho and Wyoming. Because those conditions have not yet been satisfied, the FCC granted temporary authority to continue broadcasting from Soda Springs. That temporary authority expires in September, 2010.

5. Station KNFL had been in the process of correcting the coordinates for its broadcasting, reflecting more precise data. The FCC accepted filings of augmentation data by the Receiver, bringing this station into compliance with these FCC requirements.
6. When one station's emergency alert system was not operating properly, the Receiver worked with the engineer to arrange a transfer of equipment from another station to enable the first station to come into compliance with emergency alert regulations.

#### NEGOTIATED ADDITIONAL PROPERTY LEASES

7. New leases have been negotiated with the owners of land from which several stations broadcast:
  - a. A new lease was finalized and signed with the landowners of the property on which the KENT tower is located. The new lease grants the Receiver and his engineers access to the property and will enable the Receiver to assign the lease to the buyers of the radio station.
  - b. The Receiver signed a new lease with the owners of property from which KNFL broadcasts. The terms of the agreement allow the lease to be transferred to the buyer of the radio station.

- c. KOGN is broadcast from a property that is owned by the Plaintiff, not the Receiver. The Receiver has negotiated and signed a lease with the Plaintiff, granting the Receiver access to the property and permitting assignment of the lease to a buyer of the station.
- d. The Receiver has had negotiations with the owners of the property from which KOBV broadcasts. There has been agreement in principal on the primary terms of the lease. The Receiver believes a lease can be finalized.

#### DEFENDING ASSETS AGAINST CREDITOR CLAIMS

8. The Receiver has had communications with two law firms seeking payment for legal services provided to Legacy Media before the appointment of the Receiver. The Receiver has explained why Receivership assets will not be used to pay their outstanding invoices.
9. Demands have been made on the Receiver by music licensing groups seeking payment for unpaid licensing fees and payment of an assessment for ongoing licensing. The Receiver has explained why the Receivership is not responsible for those pre-receivership obligations.
10. The Receiver has continued to receive bills from creditors and collection agencies, although at a diminishing rate. Upon receipt of these notices, the Receiver sends a letter to the creditors notifying them of the appointment of a receiver and explaining that there are no Receivership assets available to pay their bills.

## OPERATION OF THE RADIO STATIONS, PROTECTING ASSETS

11. Since acquiring ownership of station KOBY, the Receiver has investigated the assets owned by the station and the extent of its rights to use buildings and towers currently used in its broadcasting. The Receiver obtained copies of all the purchase documents and license agreements from a prior owner of the station and used those to determine the extent of assets and rights within the control of the Receiver. As a result, the Receiver has identified operational and equipment changes that will be required by a buyer of this station to separate shared facilities.
12. On a monthly basis, the Receiver makes lease payments to the owners of property used by stations KENT, KNFL, and KPTO. The Receiver also makes monthly interest payments on the promissory note owed to PRC St. George-I, LLC, the company that sold KOBY to Legacy Media. Between December 2009 and February 2010, the Receiver also made principal payments to PRC St. George-I, as called for by the promissory note.
13. Operational expenses of several of the radio stations are being paid on an ongoing basis, using funds provided by US Capital. These expenses include payment of electricity bills, bills for remote cellular communication devices, license fees, and engineering fees.
14. The Receiver has received a property tax notice from one of the counties seeking imposition of personal property taxes for equipment used at the station. The Receiver has requested that the county exempt the Receiver from the obligation to pay these taxes until the station is sold.
15. A music licensing agreement was signed with BMI for station KITT, allowing KITT to

continue broadcasting copyrighted music. The Receiver is paying the monthly fee for this license.

16. Working with the engineers, the Receiver has addressed multifarious operational problems such as overheating at one of the transmitter buildings, replacement of electrical meters, power outages, and interruption of remote cellular services.

#### COMMUNICATIONS WITH THE PLAINTIFF, OTHERS

17. The Receiver has been in regular communication with the plaintiff and plaintiff's counsel in this matter. He has consulted with them on all significant decisions and actions taken.
18. The Receiver has posted on the Receivership website significant information regarding the Receivership operation, including copies of court orders, the Initial and Second Reports to the Court, information for creditors, and information about the sale of assets.

#### **SALE OF RECEIVERSHIP ASSETS**

#### APPROVAL OF ASSET SALE PROCEDURES

19. By motion filed March 22, 2010, the Receiver requested Court approval of procedures for the sale of Receivership Assets. Copies of the motion were mailed to all parties. No objections or other comments were filed with the Court. On April 6, 2010, the Court granted the Receiver's motion and approved the proposed bid procedures.

#### ADVERTISING AVAILABILITY OF THE STATIONS

20. Concurrently with the filing of the motion, the Receiver began soliciting bids for the radio stations. These efforts included:
- a. Researching the identity and contact information for potential bidders, consisting

of persons who had expressed an interest in the radio stations, former owners of the stations, radio station brokers, and creditors.

- b. Mailing the Notice of Bid to 59 potential bidders identified by the Receiver and the Plaintiff.
- c. Posting a copy of the Notice of Bid on the Receiver's website ([www.kleinutah.com](http://www.kleinutah.com)).
- d. Purchasing an advertisement in the magazine *Inside Radio*, where the advertisement ran twice in a two-week period (March 22 and March 31). In addition, *Inside Radio* posted notice of the availability of the stations on its website. The Receiver was able to identify some visitors to his website as being linked from *InsideRadio.com*.
- e. One of the radio station brokers agreed to send notice of the station availability to 5,000 of her clients.

21. During the bid period, the Receiver provided information to potential bidders about the stations by:

- a. Preparing a summary of information about each of the stations and posting this information on the Receiver's website. This included information about leases, lists of equipment at each station, and a brief history of each station. Copies of the summary were mailed separately to certain prospective bidders upon request.
- b. When the Receiver obtained additional information about one of the stations, a bid supplement sheet was mailed to all prospective bidders and posted on the

Receiver's website. The supplemental bid information also informed bidders that the Receiver would consider payment terms that varied from the procedures described in the Notice of Bid.

- c. Responding to phone and e-mail inquiries from potential bidders about the bid.
- d. Taking a prospective bidder on a tour of one of the broadcast locations.

## BIDS RECEIVED

22. By the April 30 bid deadline, only three bids were submitted. There were no bids for all the stations. One bidder submitted bids for two stations and a second bidder submitted a bid for one station.
23. In accordance with the bid procedures approved by the Court, the Receiver determined that a higher price would be obtained by selling the stations individually than as a group. The Receiver requested that Plaintiff allocate its credit bid among the individual stations for which bids were submitted. Plaintiff, US Capital, communicated to the Receiver the amount of US Capital's credit bid for each of those stations.
24. The Receiver sent a letter to each bidder, informing the bidder of the amount of the credit bid that had been allocated to that station. The bidder was told that if it amended its bid to exceed the credit bid amount, the station would be sold to the bidder. If the bidder was unwilling to raise its bid, the station would be transferred to the Plaintiff based on its credit bid. Bidders were given a week to respond.
25. At the conclusion of the week, the bidder who had bid for two stations informed the Receiver that it was not going to amend its bid. The second bidder never responded.



26. Due to the disappointing number of bidders and the failure of any bidders to bid amounts higher than Plaintiff's credit bid, the successful bidder for this bid process – and all Receivership Assets – is the Plaintiff.

### **MOTION**

The Receiver hereby moves the Court to approve the sale of the assets of the Receivership to Plaintiff for \$1,200,000, the amount of Plaintiff's credit bid.<sup>1</sup>

### **MEMORANDUM IN SUPPORT**

As noted in the memorandum in support of the Motion for Approval of Procedures for the Sale of Receivership Assets, this Court has “the power to determine all questions concerning ownership and disposition of the [receivership] property.” *Interlake Co. v. Von Hake*, 697 P.2d 238 (Utah 1985). Rule 66, of the Utah Rules of Civil Procedure affirms that, under the direction of the court, a receiver may make transfers of property.

The sale of assets as set forth in this report and motion is consistent with the Court's May 29, 2009 order creating the receivership and empowering the Receiver to sell assets of the Receivership Estate. *Id.* at ¶4(h)(vii).

### **CONCLUSION**

The Receiver respectfully submits this Third Report for the period from February 1, 2010 through May 31, 2010, Report on Bid Procedures, and Motion to Approve Asset Sale. Attached are Proposed Findings of Fact, Proposed Conclusions of Law, and a Proposed Order.

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<sup>1</sup> In the event that Plaintiff identifies to the Receiver others to whom Plaintiff intends to sell the stations, the Receiver will transfer the stations directly to the buyer, instead of Plaintiff.

The Receiver verifies under penalty of perjury that the foregoing is true and correct.

DATED this 2<sup>nd</sup> day of June, 2010.

  
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WAYNE KLEIN, Receiver

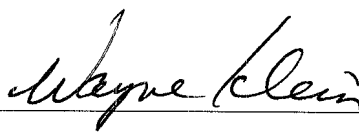
**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of June, 2010, a true copy of the foregoing Third

Report of Receiver, Report on Bid Procedures, and Motion to Approve Asset Sale was mailed to:

Bruce C. Jenkins  
Jenkins Jensen & Bayles  
1240 East 100 South, Suite 9  
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*Counsel for Morgan Skinner*

Peggy Hunt  
Benjamin J. Kotter  
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136 South Main Street, Suite 1400  
Salt Lake City, UT 84101  
*Counsel for US Capital*

  
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*Order Prepared by:*

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IN THE FIFTH DISTRICT COURT, WASHINGTON COUNTY

STATE OF UTAH

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US CAPITAL INCORPORATED, a  
Colorado corporation

Plaintiff,

vs.

LEGACY MEDIA CORPORATION, a  
Nevada corporation, et al.

Defendants.

[PROPOSED]

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER APPROVING  
THE SALE OF RECEIVERSHIP  
ASSETS**

Case No. 090500982

Judge: Eric A. Ludlow

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This matter is before the Court on the Receiver's Motion to Approve Asset Sale and Memorandum in Support. The Motion accompanied his Third Report and Report on Bid Results ("Reports"). The Court has reviewed the Motion, the Reports, and the file and based thereon, and, for good cause shown, enters the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. This Court has jurisdiction over the Motion, the parties, and the property under Utah Code Ann. §78B-3-205 and 304. Venue is proper in the Fifth Judicial District Court

under Utah Code Ann. §78B-3-307.

2. The Receiver's Third Report, Report on Bid Results, and Motion, including the proposed Findings of Fact and Conclusion of Law, and a Proposed Order were served on the parties in interest.
3. The radio stations KOBY, KENT, KOGN, KFNL, KPTO, and KITT (including the assets of Legacy Media Corporation, Tri-State Media Corporation, AM Radio 1400, Inc., AM Radio 1440, Inc., AM Radio 1470, Inc., and AM Radio 1490, Inc.) (collectively, "Receivership Assets") are properly under the control and ownership of the Receiver.
4. No objections were filed with the Court regarding the Receiver's Motion for Approval of Procedures for the Sale of Receivership Assets.
5. A reasonable opportunity to object and be heard on this Motion has been given to all parties in interest known to the Receiver.
6. The Receiver's Notice of Bid contained sufficient information to inform bidders of the availability of the Receivership Assets and information about the Receivership Assets.
7. The procedures proposed and utilized by the Receiver to solicit bids and conduct the sale of Receivership Assets were fair and impartial.
8. The Receiver has marketed the Receivership Assets sufficiently to maximize their value, and the credit bid made by Plaintiff is the highest and best price available for the Receivership Assets.
9. Plaintiff's credit bid of \$1,200,000.00 is reasonably equivalent value for the Receivership Assets to be transferred to Plaintiff, in light of the bids actually received, the conditions

of the radio stations and the current economic climate.

10. Because the credit bid of \$1,200,000.00 is less than the amount owed to Plaintiff, there will be no funds or assets available to pay unsecured creditors of the Receivership Entities.
11. The transfer of Receivership Assets to Plaintiff is in the best interests of the Receivership Estate. The transfer proposed by the Receiver is a sound exercise of the Receiver's business judgment.
12. The Receiver has authority to transfer the Receivership Assets to Plaintiff, and to execute all documents required to consummate the transaction, under the terms of the Order Appointing Receiver, entered on May 28, 2009, the Order Appointing Substitute Receiver, entered September 25, 2009, Utah Rule of Civil Procedure 66, and applicable law.

#### CONCLUSIONS OF LAW

13. Under Rule 66 of the Utah Rules of Civil Procedure and the holding of *Interlake Co. v. Von Hake*, 697 P.2d 238 (Utah 1985), this Court has the power to determine all questions regarding ownership and disposition of the Receivership Assets.
14. The Notice of Bid used by Receiver was fair, impartial, and adequately described the assets to be sold and the procedures governing the bid.
15. The bid procedures utilized satisfy due process requirements.
16. Receiver has authority to transfer the Receivership Assets to Plaintiff.
17. There are no other secured creditors that have demonstrated a valid claim on the

ORDER

18. The Receiver is authorized, without any further order from this Court, to transfer the Receivership Assets<sup>1</sup> to Plaintiff or Plaintiff's designee.
19. The transfer of all Receivership Assets to Plaintiff is approved as being fair, reasonable, and adequate, and any additional notice as may otherwise be required by the Utah Rules of Civil Procedure or applicable law is hereby deemed satisfied.
20. The consideration paid by Plaintiff constitutes reasonably equivalent value and fair consideration under Utah law for the assets to be transferred to it (or its designee).
21. All parties or creditors holding or asserting liens against the Receivership Assets transferred to Plaintiff pursuant to this Order are ordered to release such liens upon receiving a request by Plaintiff or the Receiver and receipt of a copy of this Order.
22. The Receiver's sale of the Receivership Assets to Plaintiff: a) shall be free and clear of any interests in such Receivership Assets and/or claims against such Receivership Assets, and b) shall be "as is, where is," and without warranty of any kind, including warranty of

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<sup>1</sup> This includes any and all assets of the Receivership Estate, including, but not limited to all of the Receivership Estate's right, title, and interest in the following assets owned, possessed, leased, licensed, or controlled by the Receiver: inventory, insurance policies and insurance proceeds, furniture, computers, computer equipment, software, office equipment, equipment, fixtures, accounts, chattel paper, deposit accounts, investment accounts, securities accounts, letters of credit rights, proceeds, documents, goods, instruments and general intangibles, all FCC licenses and/or permits and any and all rights associated with or related to such licenses and permits, contracts, contract rights, leases, lease rights, all claims and causes of action that have been asserted by the Plaintiff and/or which may be asserted by Plaintiff, all stock of the Receivership Entities, any and all interests and rights that the Receivership Entities hold in any entity (and specifically, without limitation, any interest of the Receivership Entities in Radio 940, LLC, AM Radio 1400, Inc., AM Radio 1440 Inc., AM Radio 1470 Inc., AM Radio 1490 Inc., Legacy Media Corporation and Tri-State Media Corporation), all books and records, and all intangible rights and assets of the Receivership Entities.

title. This Order shall be the Court's determination that, with respect to the Receivership Assets transferred to Plaintiff (or Plaintiff's designee), all liens, interests, and encumbrances in such assets have been unconditionally released, discharged, and terminated.

23. Plaintiff shall have no liability or responsibility for any liability or obligation of the Receivership Entities relating to the Receivership Assets transferred to it, other than as expressly set forth in this Order, and in no event shall Plaintiff have any liability or responsibility for any unrecorded liabilities of the Receivership Entities.
24. The terms and conditions of this Order shall be binding in all respects, and shall inure to the benefit of the Receiver, Plaintiff, the Receivership Estate, and their successors and assigns.
25. Because the amount of debt owed to Plaintiff and the costs of administration of the Receivership Estate exceed the value of the Receivership Assets, all claims against the Receivership Estate, except the claims of Plaintiff and the Receiver, are hereby denied. There shall be no distribution to any claimants other than Plaintiff and for the costs of administration of the Receivership Estate.
26. Plaintiff is to pay the reasonable and necessary operating expenses of the Receivership Estate, including the Receiver's expenses and fees through the date of the closing of the Receivership Estate.
27. When the transfer of Receivership Assets to Plaintiff is completed and the expenses of the Receivership have been paid, the Receiver and Plaintiff may move this Court to enter

an order terminating the Receivership Estate and discharging the Receiver.

DATED this \_\_\_\_ day of June, 2010.

BY THE COURT

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HONORABLE ERIC A. LUDLOW  
District Court

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_ day of June, 2010 I mailed the foregoing Order

Approving Procedures for the Sale of Receivership Assets by United States Mail, postage prepaid, to the following:

Annette W. Jarvis  
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