

31293-1

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Case Nos. 07-03121 through
	)	07-03123 and 07-03125
MILLCREEK BROADCASTING, L.L.C., )		
<i>et al.</i> , <sup>1</sup>	)	Chapter 11
	)	
Debtors.	)	Hon. Jacqueline P. Cox
	)	

**ORDER APPROVING THE ASSIGNMENT AND AMENDMENT  
OF THE ASSET PURCHASE AGREEMENT FOR THE SALE OF  
SUBSTANTIALLY ALL ASSETS OF THE DEBTORS**

This matter having come before the Court on the Debtors' Motion for Order Approving the Assignment and Amendment of the Asset Purchase Agreement for the Sale of Substantially All Assets of the Debtors (the "Motion"), pursuant to which the Debtors sought, *inter alia*, an order authorizing the amendment and assignment to Simmons Media Group, LLC, a Delaware limited liability company ("SMG"), and the Divestiture Trust (as defined below), of certain rights of SLC Radio, LLC, a Delaware limited liability company ("SLC Radio"), as Buyer under that certain Asset Purchase Agreement (as amended, the "Asset Purchase Agreement")<sup>2</sup> for the sale of substantially all of the assets (the "Sale") of the Debtors to SLC Radio, free and clear of all Encumbrances pursuant to Sections 105, 363, 365 and 1146(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (the assets to be sold being more fully described in the Asset Purchase Agreement, and hereinafter referred to as the "Purchased Assets"); and all interested parties having been heard, or having had the opportunity

<sup>1</sup> The Debtors consist of: Millcreek Broadcasting, L.L.C. (EIN: 36-4265091); 3 Point Media - Delta, L.L.C. (EIN: 61-1421503); 3 Point Media - Franklin, L.L.C. (EIN: 36-4499087) and 3 Point Media - Utah, L.L.C. (EIN: 36-4470799).

<sup>2</sup> Except as otherwise noted in this Order, capitalized terms that are used but not defined in this Order have the meanings ascribed to such terms in the Asset Purchase Agreement.

to be heard, regarding approval of the Motion and the transactions sought to be approved thereby (collectively, the "Transactions"); and the Court having reviewed and considered the Motion and any objections thereto, and the arguments of counsel made, and the evidence adduced, at the hearing to approve the Motion (the "Hearing"); and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and upon the record of the Hearing and these chapter 11 cases, and after due deliberation thereon, and good cause appearing therefore;

**THE COURT HEREBY FINDS, DETERMINES AND CONCLUDES**

**THAT:**

- A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law. To the extent any of the following findings of fact constitute conclusions of law, they are adopted, and shall be construed and deemed, conclusions of law. To the extent any of the following conclusions of law constitute findings of fact, they are adopted, and shall be construed and deemed, as findings of facts.
- B. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
- C. The statutory predicates for the relief sought in the Motion are Sections 105, 363, 365 and 1146(a) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014.
- D. Notice of the Hearing was transmitted to: (a) all parties in interest in connection with the Sale and all contract parties, in accordance with Bankruptcy Rule 2002(a)(2); (b) Schulte

Roth & Zabel LLP, attorneys for the Prepetition Senior Lenders, 919 Third Avenue, New York, New York 10022, Attn: David M. Hillman, Esq. and James T. Bentley, Esq.; (c) Jenner & Block LLP, 353 N. Clark Street, Chicago, Illinois 60654, Attn: Catherine L. Steege, Esq.; (d) all entities known to assert a lien, claim, interest or encumbrance in the Debtors' assets; (e) the United States Attorney's Office; (f) the Internal Revenue Service; (g) all state and local taxing authorities in which the Debtors operate business; (h) all parties having filed a notice of appearance in these cases; (i) the Office of the United States Trustee; and (j) the Debtors' list of twenty (20) largest unsecured creditors.

- E. Notice of the Motion and the Hearing was proper, timely, adequate and sufficient under the circumstances of these Bankruptcy Cases and complied with the various applicable requirements of the Bankruptcy Code and Bankruptcy Rules, and a reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein was afforded to all interested parties.
- F. The Court approved of the Sale contemplated by the Asset Purchase Agreement by an Order entered October 19, 2007 (Docket #226) (the "Sale Order").
- G. SLC Radio was to be the sole Buyer under the Asset Purchase Agreement as of the entry of the Sale Order. SLC Radio, however, has been unable to close on the acquisition of the Purchased Assets, in part, due to its inability to secure FCC approval of the purchase. The Debtors, SLC Radio and SMG believe that SMG will be in a position to obtain FCC approval and close on the acquisition of the Purchased Assets (as defined in the Asset Purchase Agreement) if it becomes the Buyer pursuant to the terms of that certain Assignment, Assumption and Amendment of Asset Purchase Agreement substantially in

the form attached hereto as Exhibit A (the "Assignment and Amendment"), which terms include formation of one or more divestiture trusts to divest certain Purchased Assets that would otherwise be attributable to the Buyer (collectively, the "Divestiture Trust") and retention by SLC Radio of certain rights and obligations under the Asset Purchase Agreement. Therefore, approval of the Motion to authorize the assignment of certain of SLC Radio's rights under the Asset Purchase Agreement (including without limitation a portion of the Credit Bid) to SMG and the Divestiture Trust pursuant to the Assignment and Amendment is necessary and appropriate to provide the Debtors with the opportunity to maximize the value of their estates through the Sale of the Purchased Assets to SMG, the Divestiture Trust and SLC Radio (collectively, the "New Buyers").

- H. The Official Committee for Unsecured Creditors (the "Committee") in these Chapter 11 Cases provided the Debtors with an informal objection to the Motion, and specifically, to Section 2.6 of the Assignment and Amendment and the deletion of Schedule 5.1.2 to the Asset Purchase Agreement, before the objection deadline to the Motion. The Debtors, the Committee, SLC Radio and SMG (the "Parties") have resolved the Committee's informal objection as described herein.
- I. On July 7, 2010, Salt Lake County filed with the Court a limited objection to the Motion asserting that it should be paid for certain post-petition administrative or secured property tax claims (the "Salt Lake County Taxes"). The Debtors have paid the Salt Lake County Taxes and Salt Lake County's objection is hereby withdrawn.
- J. For the reasons and based upon the findings and conclusions set forth in the Sale Order, all of which are incorporated herein by reference, the Sale of the Purchased Assets to the

New Buyers is in the best interests of the Debtors, their estates, and all parties in interest. Upon entry of this Order, all references to the "Buyer" in the Sale Order shall be deemed to refer to one or more of the New Buyers (as set forth in the Assignment and Amendment), and all findings of fact and conclusions of law in the Sale Order shall be effective as to each applicable New Buyer as if such New Buyer were the "Buyer" referred to in the Sale Order as of the date it was entered.

- K. Neither SMG nor any Divestiture Trust is an "affiliate" of or otherwise related to SLC Radio.
- L. SLC Radio currently is providing certain radio programming and other services to the Debtors pursuant to a Local Marketing Agreement, effective as of August 7, 2008.
- M. Each Debtor has (i) full power and authority to execute all documents contemplated by the Asset Purchase Agreement, and (ii) the necessary power and authority to consummate the Sale. No consents or approvals, other than those expressly provided for in the Asset Purchase Agreement or in the Disclosure Schedules thereto, are required for the Debtors to close the Sale.

Based upon all of the foregoing, and after due deliberation, **THE COURT ORDERS, ADJUDGES, AND DECLARES THAT:**

**I. ASSIGNMENT OF THE ASSET PURCHASE AGREEMENT AND CREDIT BID RIGHTS AND RESOLUTION OF OBJECTION**

- 1. The relief requested in the Motion is granted in the manner and to the extent provided herein.

2. All objections and responses concerning the Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Hearing and to the extent any such objection or response was not otherwise withdrawn, waived, or settled, it is overruled and denied (including all reservations of rights or relief requested therein).

3. The form of notice of the Motion and the Hearing is approved.

4. Except as otherwise provided herein, the assignment to SMG and the Divestiture Trust of substantially all rights of SLC Radio under the Asset Purchase Agreement (including without limitation a portion of the Credit Bid) pursuant to the terms of the Assignment and Amendment and the Sale of the Purchased Assets to the New Buyers are hereby approved and authorized in all respects. Those rights of SLC Radio under the Asset Purchase Agreement not otherwise assigned to SMG and the Divestiture Trust (including any portion of the Credit not otherwise assigned) shall be retained by SLC Radio.

5. By agreement of the Parties, the following sections of the Assignment and Amendment attached hereto as Exhibit A, shall be amended and read as follows:

(a) Wind-Down Budget. The Parties have agreed to eliminate the Wind-Down Budget from the Asset Purchase Agreement. As a result, section 2.2 of the Assignment and Amendment is amended to delete the defined term "Wind-Down Period." Section 1.105 of the Asset Purchase Agreement is amended to delete the defined term "Wind-Down Budget Amount." Section 3.1(c) of the Asset Purchase Agreement is amended to delete reference to the Wind-Down Budget as an element of the Purchase Price.

(b) Financing of Liabilities. Section 2.9 of the Assignment and Amendment is amended as follows:

(a) Financing of Liabilities. Section 10.4.5 of the APA is hereby deleted in its entirety and replaced with the following:

The Sellers shall be entitled to draw under the Revolving Loan Promissory Note to provide for payment in full in cash of (a) all Liabilities (other than Assumed Liabilities) that are or become allowed administrative expense claims of the Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code as of the Closing Date, and (b) all Liabilities of the Sellers with respect to (i) Trustee Fees and (ii) Professional Fees incurred or accrued prior to the entry of the Order Approving the Assignment and Amendment of the Asset Purchase Agreement for the Sale of Substantially All Assets of the Debtors (the "APA Amendment Order") and approved by the Bankruptcy Court (subject to a cap of, for each thirty (30) day period commencing May 16, 2007 (or ratable per diem for any lesser period), (A) \$300,000 in the aggregate for Sellers' professionals that are required to file fee applications with the Bankruptcy Court, and (B) \$100,000 in the aggregate for professionals retained by any official committees appointed in Sellers' chapter 11 cases), but only to the extent that such Liabilities are or become allowed administrative expense claims pursuant to Section 503(b) of the Bankruptcy Code, and (iii) Professional Fees incurred or accrued after the entry of the APA Amendment Order and approved by the Bankruptcy Court in an amount not to exceed, (A) \$125,00 in the aggregate for Sellers' professionals (the "Budgeted Amount"); provided, that, if the Closing Date has not occurred and the Sellers' professionals have incurred fees, costs and expenses approaching or equal to the Budgeted Amount, such Budgeted Amount may be increased with the consent of the DIP Lenders, such consent not to be unreasonably withheld, and (B) \$10,000 in the aggregate for professionals retained by any official committees appointed in Sellers' chapter 11 cases, but only to the extent that such Liabilities are or become allowed administrative expense claims pursuant to Section 503(b) of the Bankruptcy Code; provided, that, the Committee's \$10,000 cap shall not apply to fees incurred as a result of the actions taken to enforce paragraph 6 of the APA Amendment Order.

6. The Parties agree that the creditors listed on Schedule 1 to this Order shall be paid the amounts set forth on such Schedule in full and final satisfaction of any and all of their claims, with such payments to be made to such creditors by the Debtors, which amounts shall be funded from a draw under the Revolving Loan Promissory Note within five (5) business days of this Order becoming final and non-appealable. The Parties agree that any payments received prior to entry of this Order by the creditors listed on Schedule 5.1.2 to the Asset Purchase Agreement filed as an exhibit to the Sale Order entered on October 17, 2007 [D.E. 226-3], shall be retained by those creditors and any liability arising against those creditors on account of payments under, including but not limited to, sections 549 and 550 of the Bankruptcy Code, are hereby released, waived, disclaimed and discharged.

7. Upon payment to the creditors of the amounts set forth on Schedule 1 the Committee shall automatically be disbanded; provided, however, that the Committee shall remain in effect for the purpose of preparing, filing, and prosecuting to final order its final fee application.

8. The Debtors agree to move seeking dismissal of these Chapter 11 Cases on or before the Closing Date. The Committee shall have no objection to any disposition of these Chapter 11 Cases that is acceptable to the Debtors, the US Trustee and the DIP Lender. The Debtors agree not to consent to the dismissal of these cases prior to the Closing Date.

## **II. AUTHORIZATION TO CONSUMMATE SALE**

9. The Debtors are authorized and directed to take any and all actions necessary or appropriate to: (a) consummate the Sale (including, without limitation, to convey to the New Buyers any and all of the Purchased Assets intended to be conveyed and to assume and assign

the Executory Contracts to the New Buyers pursuant to the Asset Purchase Agreement) and the Closing of the Transactions in accordance with the Motion, the Asset Purchase Agreement, the Sale Order and this Order; and (b) perform, consummate, implement and close fully the Asset Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement. The parties shall have no obligation to proceed with the Closing of the Asset Purchase Agreement until all conditions precedent to their obligations to do so as set forth in the Asset Purchase Agreement have been satisfied or waived.

### III. LIMITATIONS ON LIABILITY

10. Upon the Closing, (a) pursuant to the terms of the Asset Purchase Agreement, the Debtors are hereby authorized to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer and assignment of the Purchased Assets to the New Buyers free and clear of any and all Encumbrances, and (b) except as otherwise expressly provided in the Asset Purchase Agreement, all Encumbrances shall be and hereby are released, terminated and discharged as to the New Buyers of the Purchased Assets.

11. Upon the Closing, and except as otherwise expressly provided in the Asset Purchase Agreement, SMG and the Divestiture Trust, as New Buyers, are not assuming nor shall they or any of their respective affiliates be in any way liable or responsible as a successor or otherwise, for any liabilities, debts or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets, including but not limited to liabilities, debts or obligations relating to or arising from the management of any of the Purchased Assets by SLC Radio or any other entity or person, prior to consummation of the transactions contemplated by the Asset Purchase Agreement, or relating to continuing or other

conditions existing on or prior to the Closing Date, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to successor liability, to the extent allowed under state law, or otherwise, against SMG, the Divestiture Trust or any of their respective affiliates.

#### **IV. USE OF PROCEEDS AND SATISFACTION OF DIP LENDER CLAIMS AND PREPETITION SECURED CLAIMS**

12. Upon the Closing, all claims arising under the Revolving Loan Promissory Note dated June 13, 2007 (as amended, the "Note") (such claims hereinafter referred to as "DIP Lender Claims"), shall be deemed satisfied in an amount equal to any portion of the DIP Lenders' Payoff Amount used as part of Buyer's Credit Bid; provided that any DIP Lender Claims that do not arise until after the Closing shall remain secured by the Liens granted under the Note and the DIP Order (with the same priorities as set forth under the Note and DIP Order), except as to the Purchased Assets. Upon Closing, the Liens on the Purchased Assets granted under the Note and/or the DIP Order to secure the DIP Lender Claims shall be deemed released, and the DIP Lenders and/or Agent (as defined in the Note) shall take all reasonable actions to confirm removal of any such liens. Any portion of the DIP Lender Claims that is not used as part of the Buyer's Credit Bid and any liens on assets (other than the Purchased Assets) granted under the Note and/or DIP Order to secure the DIP Lender Claim shall not be affected by this Order or the Closing.

13. Upon the Closing, all claims arising under the Prepetition Financing Agreement shall be deemed to be satisfied in an amount equal to the Credit Bid. Upon Closing, the Liens on the Purchased Assets granted under the Prepetition Financing Agreement to secure the Prepetition Obligations shall be deemed released, and the Prepetition Senior Lenders and/or

Prepetition Agent shall take all reasonable actions to confirm removal of any such liens. Any portion of the Prepetition Obligations that is not used as part of the Buyer's Credit Bid and any liens on assets (other than the Purchased Assets) granted under the Prepetition Financing Agreement and related security agreements to secure the Prepetition Obligations shall not be affected by this Order or the closing.

#### V. ADDITIONAL PROVISIONS

14. This Order and the Asset Purchase Agreement shall be binding in all respects upon all creditors and interestholders of any of the Debtors, all non-Debtor parties to the Executory Contracts, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Debtors' bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Asset Purchase Agreement or the Ancillary Documents shall not be subject to rejection or avoidance under any circumstances.

15. The Asset Purchase Agreement may be modified, amended or supplemented by the parties thereto, in a writing signed by the parties, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

16. Nothing contained in any order entered in these bankruptcy cases of the Debtors subsequent to entry of this Order, nor in any chapter 11 plan confirmed in these chapter 11 cases, shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order.

17. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h), 6006(d) and any other provision of the Bankruptcy Code or Bankruptcy Rules shall not apply, is expressly lifted and this Order is immediately effective and enforceable.

18. The provisions of this Order are nonseverable and mutually dependent.

19. The failure specifically to include or make reference to any particular provisions of the Asset Purchase Agreement or the Sale order in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement is authorized and approved in its entirety and that the Sale Order remains effective and in full force except as expressly set forth otherwise in this Order.

20. To the extent applicable, the automatic stay pursuant to Section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court (a) to allow the Buyer to give the Debtors any notice provided for in the Asset Purchase Agreement, and (b) to allow the Buyer to take any and all actions permitted by the Asset Purchase Agreement.

21. The Court retains jurisdiction, even after the closing of these chapter 11 cases, to: (a) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Asset Purchase Agreement, all amendments thereto and any waivers and consents thereunder; (b) protect Buyer, or any of the Purchased Assets, from and against any of the Encumbrances; (c) compel delivery of all Purchased Assets to Buyer; and (d) resolve any disputes arising under or related to the Asset

Purchase Agreement, the Sale or the Transactions, or Buyer's peaceful use and enjoyment of the Purchased Assets.

Dated: July 16, 2010  
Chicago, Illinois

*Jacqueline P. Cox*

*J. Cox*

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**THE HONORABLE JACQUELINE P. COX,  
UNITED STATES BANKRUPTCY JUDGE**