IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re **AFFILIATED MEDIA, INC.,**[1] **Debtor.**	**Chapter 11** **Case No. 10-10202 (KJC)**

DEBTOR'S MOTION PURSUANT TO SECTIONS 105(a), 363(b) AND 365 OF THE BANKRUPTCY CODE FOR AUTHORITY TO (I) ESTABLISH THE FCC TRUST AND (II) SUBJECT TO FCC APPROVAL, ASSUME AND ASSIGN FCC BROADCAST LICENSES

The debtor-in-possession in the above-captioned chapter 11 case (the "Debtor" or "AMI"), hereby moves (the "Motion"), pursuant to sections 105(a), 363(b), and 365 of title 11 of the United States Code (the "Bankruptcy Code"), for an order substantially in the form annexed hereto as **Exhibit "A"** (the "Order") for authority to (i) establish the FCC Trust (as defined below), and (ii) subject to Federal Communications Commission ("FCC") approval, assume the FCC Broadcast Licenses (as defined below) and assign them to the FCC Trust. In support of the Motion, the Debtor submits the *Declaration of Ronald A. Mayo, Vice President and Chief Financial Officer of Affiliated Media, Inc., in Support of First Day Relief* (the "Mayo Declaration") filed contemporaneously herewith, and respectfully submits as follows:

Background

1. On January 22, 2010 (the "Petition Date"), the Debtor commenced its bankruptcy case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. No trustee, examiner or creditors' committee has been appointed in this case. The Debtor

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1. The last four digits of the Debtor's federal tax identification number are 5553. The Debtor's mailing address and corporate headquarters is 101 W. Colfax Avenue, Suite 1100, Denver, CO 80202.

is operating its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, beginning on December 18, 2009, the Debtor solicited votes on the Prepackaged Plan of Reorganization of Affiliated Media, Inc., dated December 18, 2009 (the "Prepackaged Plan"), through a Disclosure Statement dated December 18, 2009 (the "Disclosure Statement") distributed in accordance with sections 1125 and 1126(b) of the Bankruptcy Code, both filed contemporaneously herewith. Terms used but not otherwise defined herein have the meanings assigned to such terms in the Prepackaged Plan and the Disclosure Statement. The Prepackaged Plan has been accepted by all classes entitled to vote in excess of the statutory thresholds specified in section 1126(c) of the Bankruptcy Code.

The Debtor's Business

3. The Debtor, together with its Subsidiaries, is the second largest newspaper publisher in the United States in terms of paid daily circulation under management. Only the Debtor has commenced a bankruptcy case; none of its Subsidiaries has filed a petition for relief as of the Petition Date. Through its Subsidiaries, the Debtor publishes fifty-four (54) daily and more than 100 non-daily newspapers in eleven (11) states (and owns and operates Internet websites related thereto), including suburban markets in close proximity to the San Francisco Bay Area, Los Angeles, Baltimore, Boston and El Paso. The Debtor's Subsidiaries also own or operate several metropolitan daily newspapers including *The Denver Post*, *San Jose Mercury News*, *St. Paul Pioneer Press*, *Contra Costa Times*, *Los Angeles Daily News*, *The Salt Lake Tribune*, *The Detroit News*, and *Oakland Tribune*. The daily newspapers that the Debtor and its Subsidiaries control have a combined daily and Sunday paid circulation of approximately 2.3 million and 2.4 million, respectively, as of September 30, 2009. The Debtor, through its Subsidiaries, also operates a television station in Alaska and four radio stations in Texas. As of

the Petition Date, the Debtor had approximately 100 employees. The Debtor and its Subsidiaries together employ approximately 8,700 people.

4. The Debtor is the ultimate parent of twenty-nine (29) wholly-owned Subsidiaries and owns 95% of the outstanding equity interests of Alaska Broadcasting Company, Inc. ("Alaska Broadcasting"). Attached to the Mayo Declaration as **Exhibit "A"** is a summary organizational chart of the Debtor and certain of its Subsidiaries.

5. The Debtor operates its business through its Subsidiaries. To ensure the efficient operation of the Debtor's Subsidiaries, the Debtor provides numerous management and operational services for a fee based on contractual obligations and on an allocation of cost basis where no contractual obligation exists. These services are in the nature of operating, administrative, accounting, electronic media and other support services, newsprint purchase services, financial reporting services, human resource services, risk management services, payroll services, tax reporting services, tax return preparation services and cash management.

6. The Debtor's main source of cash flow is distributions and dividends from its Subsidiaries as well as management fees and reimbursements from payments made on behalf of the Subsidiaries. Advertising is the largest component of the Subsidiaries' revenues, followed by circulation revenue. In addition to selling advertising in their core newspaper products, the Debtor's Subsidiaries also generate revenue through (i) advertising in niche publications, such as those related to home improvement, health and fitness, and weddings, and (ii) Internet advertising. The Debtor's Subsidiaries also generate revenue through commercial printing for third parties and distribution of third-party publications.

7. The Debtor's consolidated total revenues have fallen from $1.330 billion for the fiscal year ended June 30, 2007 to $1.060 billion for the fiscal year ended June 30, 2009

due to declining advertising and circulation revenues that are occurring throughout the newspaper industry. As of December 15, 2009, the Debtor estimates the fair market value of its total enterprise to be between $190 million and $230 million and its total debt to be approximately $930 million. The Debtor's estimated cash on hand as of the Petition Date is approximately $40 million.

The Debtor's Capital Structure

8. As of the Petition Date, the Debtor's capital structure includes:

(i) senior secured indebtedness in the outstanding principal amount of $590 million (which amount includes $6.375 million of contingent reimbursement claims on letters of credit), owed to a syndicate of lenders (collectively, the "Senior Lenders") under a credit agreement dated December 30, 2003 (as amended, supplemented, and/or otherwise modified from time to time, the "Senior Credit Agreement") among the Debtor, Bank of America, N.A. as administrative agent (the "Administrative Agent"), the Senior Lenders and certain of the Debtor's Subsidiaries as guarantors (the "Guaranteeing Subsidiaries").[2] The Senior Lenders' claims are guaranteed by the Guaranteeing Subsidiaries and secured by first-priority liens and security interests in (a) the Debtor's interest and each Guaranteeing Subsidiary's interest in the capital stock (or other ownership interests) of the Guaranteeing Subsidiaries, and (b) substantially all of the assets of Alaska Broadcasting;

(ii) other claims in an aggregate principal amount of $15.1 million most of which is secured (the "Other Indebtedness"); and

(iii) unsecured subordinated notes in an aggregate principal amount outstanding of approximately $326 million (the "Subordinated Notes") issued under two

2. A true and accurate list of Guaranteeing Subsidiaries is attached to the Mayo Declaration as **Exhibit "B"**.

Indentures between AMI (known at that time as MediaNews Group, Inc.) and the Indenture Trustee, as more fully described in the Disclosure Statement and the Mayo Declaration.

9. The Debtor's founders (including the Debtor's chief executive officer) and certain family trusts hold the majority of the Debtor's pre-petition voting shares of stock. There is no established public trading market for the Debtor's capital stock.

Events Leading Up To The Filing of The Prepackaged Plan

10. As described in more detail in the Mayo Declaration, prior to the Petition Date, the Debtor entered into discussions with certain Senior Lenders and the Administrative Agent regarding a restructuring to reduce the Debtor's debt load and ensure that it could maintain competitive operations. The parties entered into a forbearance agreement dated as of April 30, 2009 and supplemented as of September 30, 2009 and November 30, 2009 (as so supplemented, the "Forbearance Agreement"), pursuant to which the Senior Lenders agreed to forbear from exercising certain remedies available to them as a result of certain of the Debtor's defaults so as to permit the Debtor to negotiate a comprehensive restructuring plan. The initial term of the forbearance period expired on September 30, 2009, and was extended to November 30, 2009 and then to March 31, 2010, subject to the other terms and conditions of the Forbearance Agreement.

11. In November 2009, the Debtor reached agreement with certain Senior Lenders and the Administrative Agent on the terms of a comprehensive restructuring of the Debtor's senior secured debt involving the issuance of new senior secured debt, the execution of new secured guaranties and a debt-for-equity swap, and the Debtor agreed to seek approval of that restructuring through the Prepackaged Plan. Certain Senior Lenders and the Administrative Agent indicated their support for the Prepackaged Plan by executing the Second Supplement to Forbearance Agreement and Restructuring Support Agreement dated November 30, 2009 (the

"Restructuring Support Agreement"). In addition, the holder of approximately 51% of the outstanding principal amount of the Subordinated Notes also advised AMI that it supported the Prepackaged Plan in principle, and later voted to accept the Prepackaged Plan.

12. In accordance with the terms of the Restructuring Support Agreement, on December 18, 2009, the Debtor commenced a solicitation of votes from all classes entitled to vote under the Bankruptcy Code by mailing the Disclosure Statement, the Prepackaged Plan, ballots and related solicitation materials to the creditors in the classes entitled to vote on the Prepackaged Plan.

13. On January 6, 2010, the Debtor mailed the First Supplement to the Disclosure Statement and Prepackaged Plan. On January 9, 2010, the Debtor mailed the Second Supplement to the Disclosure Statement and Prepackaged Plan. The Prepackaged Plan has been accepted, within the meaning of section 1126(c) of the Bankruptcy Code, by all of the impaired classes of claims entitled to vote on the Prepackaged Plan.

The Prepackaged Plan

14. Under the terms of the Prepackaged Plan, each Senior Lender will receive its Pro Rata share of (i) $150 million of New Senior Secured Term Notes, guaranteed by all of AMI's wholly-owned Subsidiaries and secured by first-priority liens on substantially all of the assets of Reorganized AMI and its wholly-owned Subsidiaries; (ii) with respect to those Senior Lenders holding revolving loans and commitments under the existing facility, a $6.375 million letter of credit facility, resulting from an automatic rollover of the Debtor's existing letters of credit outstanding as of the Effective Date (the "Tranche A Facility"); and (iii) 88.0% of the equity of Reorganized AMI. In addition, a $7.5 million letter of credit facility (the "Tranche B Facility") will be provided as a separate new extension of credit by certain of the Senior Lenders. Collectively, the Tranche A Facility and the Tranche B Facility make up the $13.875 million

letter of credit facility (the "LOC Facility"). The remaining 12% of the equity of Reorganized AMI is reserved for issuance to its management. Dean Singleton, the Chairman and Chief Executive Officer of the Debtor, is receiving warrants to purchase up to 8% of the equity of Reorganized AMI.

15. Because the holders of the Subordinated Note Claims voted to accept the Prepackaged Plan, each holder will receive its Pro Rata share of the Subordinated Note Warrants offered to them under the Prepackaged Plan. The Subordinated Note Warrants provide the Subordinated Note holders the right to purchase, in aggregate, up to 8.25% of the Class B New Common Stock of Reorganized AMI in certain circumstances.

16. In addition, the Prepackaged Plan provides for the payment in full of (i) allowed administrative expense claims; (ii) federal, state, and local tax claims; and (iii) certain other priority non-tax claims. Holders of Other Indebtedness will either have their claims paid in full or have their claims reinstated upon confirmation of the Prepackaged Plan. Trade creditors and certain other holders of general unsecured claims against AMI are unimpaired under the Prepackaged Plan and will receive payment of their claims in the ordinary course as those claims become due and payable. Holders of existing equity interests in AMI will not receive a distribution on account of such interests.

17. The Prepackaged Plan contemplates a comprehensive financial restructuring of the Debtor's existing capital structure that will allow the Debtor to delever its balance sheet by reducing its approximately $930 million total debt to approximately $179 million (composed of the New Senior Secured Term Notes in the amount of $150 million, the LOC Facility in the amount of $13.875 million and the Other Indebtedness in the amount of

$15.1 million), through a short and consensual chapter 11 case, and emerge from chapter 11 poised for future growth and stability.

18. Additional information and more detail regarding the Debtor's business, the Debtor's capital structure, the events leading up to the Petition Date, and the Prepackaged Plan can be found in the Mayo Declaration.

Jurisdiction and Venue

19. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

20. Two of the Debtor's Subsidiaries between them own four radio broadcast stations and a television broadcast station, and operate those stations pursuant to licenses from the FCC. The FCC regulates both ownership and operation of television and radio stations. Accordingly, any licensee of a broadcast station must obtain the FCC's consent to effectuate any change or transfer of control of any FCC broadcast station license.

21. As a result of the confirmation of the Prepackaged Plan, the Senior Lenders will own substantially all of the equity of the Reorganized Debtor. For the Reorganized Debtor to emerge from bankruptcy with control of FCC broadcast licenses, the prior consent of the FCC is required under procedures for statutory public notice and the filing of petitions – which could require many months and delay the emergence of the Reorganized Debtor from bankruptcy. In addition, the Reorganized Debtor would need to be organized to ensure that it would be qualified as an entity eligible to hold FCC broadcast licenses, even though the Debtor's television station and radio stations constitute only about one percent (1%) of the Debtor's business value.

22. To avoid possible delays associated with obtaining the FCC's consent to a transfer of control of the broadcast licenses to Reorganized AMI, the Prepackaged Plan contemplates that in an integrated transaction approved by this Court, the FCC licenses will be assigned to the Debtor, the Debtor will, pursuant to the Prepackaged Plan and this Motion, establish a liquidating trust (the "FCC Trust"), and the Debtor will, pursuant to the Prepackaged Plan and subject to FCC approval, assign the broadcast licenses and certain related assets to the FCC Trust, free and clear of all liens. Thus, by this Motion, the Debtor requests entry of an order pursuant to sections 105(a), 363(b) and 365 of the Bankruptcy Code authorizing the Debtor to (i) establish the FCC Trust, and (ii) assume the broadcast licenses and assign them to the FCC Trust.

Facts Related to this Motion

23. Alaska Broadcasting owns a CBS-affiliated television broadcast station licensed to serve Anchorage, Alaska. Another Subsidiary of the Debtor, Graham Newspapers, Inc. ("Graham Newspapers"), owns four radio broadcast stations licensed to serve communities in Texas.

24. The Debtor's television and radio operations (the "Broadcast Operations") are regulated by the FCC under chapter 5 of title 47 of the United States Code, 47 U.S.C. § 151 et seq., (as amended, the "Communications Act"). A television or radio station may not operate in the United States without the FCC's authorization. Alaska Broadcasting and Graham Newspapers hold licenses issued by the FCC for the operation of their television station and

radio stations, respectively, which licenses generally have a term of eight years (collectively, the "FCC Broadcast Licenses").[3]

25. A fundamental aspect of the Prepackaged Plan is the Senior Lenders' agreement to exchange a portion of their debt for equity in Reorganized AMI and exchange the remainder of their debt for new senior secured debt, the execution of new secured guaranties and a stronger collateral package of assets owned by AMI and AMI's Subsidiaries. Without that additional collateral, AMI would not have received the Senior Lenders' support for the Prepackaged Plan.

26. Following confirmation of the Prepackaged Plan, the Senior Lenders will own 88% of the equity of Reorganized AMI. Some of the Senior Lenders are banks, which, if subject to FCC filing requirements under FCC long form application procedures, could have extensive reporting obligations,[4] and may have ownership or media interests that would be inconsistent with the holding of a reportable interest in the television and radio stations owned by the Debtor's Subsidiaries. The ownership restrictions in the Communications Act and FCC regulations can cause difficulty in restructuring the debt of a distressed media outlet. Mike Spector and Sarah McBride, *Media Rules Complicate Restructurings*, Wall St. J., Sept. 18, 2009, at C1, *available at* http://online.wsj.com/article/SB125322915767921233.html.

27. The Prepackaged Plan provides that "[o]n or after the Petition Date, the Debtor, to comply with the rules and policies of the FCC, promptly shall file or cause to be filed

3. Subsidiaries of the Debtor also hold a limited number of FCC private radio and other non-broadcast licenses that are used in connection with aspects of its operations other than television and radio broadcasting (the "FCC Non-Broadcast Licenses"). The FCC Non-Broadcast Licenses would not be assigned to the FCC Trust. To the extent that the Debtor's Subsidiaries elect to retain these FCC Non-Broadcast Licenses, FCC consent to the transfer of those licenses to the control of Reorganized AMI would need to be obtained.

4. Substantial information on ownership, media interests, and other factors must be provided to the FCC for evaluation in connection with an assignment of license or transfer of control where there is a substantial change in ownership or control.

applications with the FCC for consent to the transfer of control of the FCC Broadcast Licenses and FCC Non-Broadcast Licenses held by members of the AMI Group from control by AMI to control by AMI as debtor-in-possession." (Prepackaged Plan § 6.16.)

28. The Prepackaged Plan further provides:

> Pursuant to a separate order of the Bankruptcy Court, the Debtor shall establish the FCC Trust. Upon receipt of necessary approvals from the FCC, the FCC Broadcast Licenses and FCC Broadcast License Related Assets as specified by the FCC Trust Agreement that are held by certain members of the AMI Group shall be assigned to AMI and then immediately to the FCC Trust, in each instance, free and clear of all Liens (and for the benefit of AMI and Reorganized AMI; provided that the Liens of the Senior Lenders in certain of the FCC Broadcast License Related Assets shall attach to the beneficiary's interest in the proceeds of the FCC Trust). Concurrent with the assignment of the FCC Broadcast Licenses and FCC Broadcast License Related Assets, certain members of AMI Group and the FCC Trust shall enter into the Time Brokerage Agreements. Pursuant to this Prepackaged Plan, the Bankruptcy Court shall retain jurisdiction over the FCC Trust after the Effective Date.

(Prepackaged Plan § 6.17.)

29. The FCC's approval is required for the issuance, renewal, transfer, assignment or modification of station operating licenses. *See* 47 C.F.R. § 73.3540.[5] The FCC takes the position that if a licensee, or the entity that controls it, files for chapter 11 protection, it must obtain FCC approval for the transfer of its FCC licenses to the debtor-in-possession (even though it is the same entity as the pre-chapter 11 licensee).[6] The Debtor plans shortly after the Petition Date to file the necessary applications with the FCC to permit the transfer of the FCC Broadcast Licenses from AMI to AMI as debtor-in-possession. The FCC allows the use of an

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5. While the transfer contemplated herein is a voluntary transfer, it is worth noting that the FCC has routinely approved involuntary assignments of licenses in cases where licensees have filed for bankruptcy protection. *In re Parsons*, 10 F.C.C.R. 2718, 2721 ¶ 17 (1995).

6. The FCC classifies a licensee's change to status as a debtor-in-possession under chapter 11 of the Bankruptcy Code as an "involuntary" assignment, even though the chapter 11 filing is within the control of the licensee or its parent corporation. The FCC's rules permit a debtor to seek FCC approval of the "involuntary" assignment after the filing of a bankruptcy case.

abbreviated process to obtain approval of certain transfers. The abbreviated process, called a "Short Form Application," does not require a public comment period and usually takes approximately thirty (30) days. The licensee-to-debtor-in-possession transfer process is permitted under the Short Form Application. *See* 47 C.F.R. § 73.3541. When there is a "substantial" change in control, however, the FCC requires that its consent be obtained through use of a "Long Form Application." The Long Form Application includes a public comment period and the entire approval process can take up to six months or more. The process for obtaining FCC consent to the assignment of the FCC Broadcast Licenses from the Debtor to any third party would also require a Long Form Application. *See* 47 C.F.R. § 73.3540.

30. To expedite the Debtor's emergence from chapter 11, the Prepackaged Plan provides for the establishment of the FCC Trust to hold the FCC Broadcast Licenses and certain assets necessary to render broadcast service, such as transmission and antennae equipment and rights to use transmission sites (the "FCC Broadcast License Related Assets") while the Debtor disposes of its Broadcast Operations. The Prepackaged Plan provides for the assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets from Alaska Broadcasting and Graham Newspapers to the FCC Trust subject to the continuing jurisdiction and oversight of the Bankruptcy Court, (*see* Prepackaged Plan § 11.1(l)), while the disposition of the television and radio stations is determined and Long Form Applications are filed with the FCC to approve the assignment of the FCC Broadcast Licenses by the FCC Trust to one or more third parties. To do this, the Debtor requests that the Court establish the FCC Trust and permit the assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets to the FCC Trust. It is expected that the assignment of the FCC Broadcast Licenses to the FCC Trust can be processed by the FCC pursuant to its abbreviated Short Form

Application procedures used with respect to bankruptcy proceedings. *See* 47 C.F.R. §§ 73.3540(f) and 73.3541.

31. Establishment of the FCC Trust and the transfer and assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets are also conditions precedent to the effectiveness of the Prepackaged Plan. (Prepackaged Plan § 9.1(d).)

32. Should the Court grant the relief sought in this Motion, the FCC Trust would be governed by the terms of the Affiliated Media, Inc. FCC Trust Agreement (the "FCC Trust Agreement"). A draft of the FCC Trust Agreement is attached hereto as **Exhibit "B"**. Pending ultimate disposition of the assets relating to the Broadcast Operations, certain of the economic benefits and burdens of the Broadcast Operations will remain with the Debtor through Alaska Broadcasting and Graham Newspapers (and following its emergence from bankruptcy, with Reorganized AMI), but control of the Broadcast Operations will be vested solely in the FCC Trust.

33. Concurrent with the assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets, Alaska Broadcasting and Graham Newspapers, on the one hand, and the FCC Trust, on the other, shall enter into "Time Brokerage Agreements"[7] that will permit AMI, through its Subsidiaries, to provide certain programming and related services for the Broadcast Operations, subject to the oversight and ultimate control of the Trustees of the FCC Trust pending final disposition of the FCC Broadcast Licenses and the FCC Broadcast

7. A Time Brokerage Agreement is an arrangement pursuant to which the right to program a discrete block of time on a station is transferred by a licensee to a third party, subject to continuing oversight and control by the licensee. The third party also sells the commercial spot announcements within the programming time.

License Related Assets, thereby avoiding disruption of service to the public and preserving the value of these assets as part of an ongoing business. (Disclosure Statement Article V.L.)

Basis for Relief

34. Preserving the value of the Debtor's business is critical to the success of the Prepackaged Plan. To that end, maintaining the value of the Debtor's Broadcast Operations is an important element of the Prepackaged Plan and will protect the jobs of the employees of the broadcast stations.

35. Additionally, the assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets to the FCC Trust will expedite the Debtor's emergence from chapter 11. If approved by the Bankruptcy Court and by the FCC, this approach would allow Reorganized AMI to emerge from bankruptcy with the FCC Broadcast Licenses subject to the control of the FCC Trust prior to the date that the FCC grants Long Form Applications for the sale of the radio and television stations to one or more third parties. Because this interim transfer would take place pursuant to an order of the Bankruptcy Court and because the FCC Trust would remain subject to the jurisdiction and oversight of the Bankruptcy Court, the FCC could authorize this interim transfer using the streamlined Short Form Application procedures applicable to *pro forma* ownership changes and "involuntary" transfer and assignment applications in FCC regulations. *See* 47 C.F.R. §§ 73.3540(f) and 73.3541. Absent FCC consent to the assignment of the FCC Broadcast Licenses to the FCC Trust, Reorganized AMI would likely not be able to emerge from bankruptcy until the FCC has approved the Long Form Applications.

36. A short stay in chapter 11 is a key component of the Debtor's business strategy and is the hallmark of the Prepackaged Plan. Prolonging this case could result in the Debtor exhausting its cash and having to seek debtor-in-possession financing. Furthermore, a

lengthy stay in chapter 11 would cause reputational harm to the Debtor and may damage the Debtor's relationships with customers and suppliers. The Debtor cannot afford any potential delay caused by the longer timeline necessary for FCC approval of a Long Form Application. Thus, establishment of the FCC Trust and the assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets to it is critical to the Debtor.

37. Finally, establishment of the FCC Trust and the transfer of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets from the Debtor's Subsidiaries to the Debtor, and the subsequent assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets by the Debtor to the FCC Trust, is a condition precedent to the effectiveness of the Prepackaged Plan, which has already been approved by the required creditors. Failure to meet the conditions set forth in the Prepackaged Plan would delay the Debtor's emergence from chapter 11 and require the negotiation of a new plan of reorganization.

I. The Relief Sought Herein is Appropriate Under Section 363(b) of the Bankruptcy Code

38. Bankruptcy Code section 363(b) permits a debtor to use property of the estate[8] "other than in the ordinary course of business," after notice and a hearing. *See* 11 U.S.C. § 363(b)(1). This Court should approve a debtor's request for relief under Bankruptcy Code section 363 where the debtor demonstrates a sound business justification for seeking such relief. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a § 363(b) application expressly

8. Once the FCC Broadcast Licenses are transferred from Alaska Broadcasting and Graham Newspapers to the Debtor, the FCC Broadcast Licenses are considered estate property. *See In re Atl. Bus. & Cmty. Dev. Corp.*, 994 F.2d 1069, 1075 (3d Cir. 1993) (holding that FCC broadcast licenses and other licenses subject to government regulation are estate property); *Shimer v. Fugazy (In re Fugazy Express, Inc.)*, 124 B.R. 426, 430 (S.D.N.Y. 1991) (same).

find from the evidence presented before him at the hearing a good business reason to grant such an application."); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("[T]he debtor must articulate some business justification, other than mere appeasement of major creditors . . . .").

39. Once a debtor has articulated a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and the honest belief that the action taken was in the best interests of the company.'" *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

40. The business judgment rule has vitality in chapter 11 cases. *See Integrated Res., Inc.*, 147 B.R. at 656; *see also Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

41. As discussed above, it is in the Debtor's business judgment that failure to assign the FCC Broadcast Licenses and the FCC Broadcast License Related Assets to the FCC Trust will have a material adverse impact on its business, on the business of Reorganized AMI and on the Debtor's success in emerging from chapter 11 because it would prolong the Debtor's stay in chapter 11.

II. Establishment of the FCC Trust is Permitted Under Section 1123(a)(5) of the Bankruptcy Code

42. Section 1123(a)(5) states that "[n]otwithstanding any otherwise applicable nonbankruptcy law, a plan *shall* . . . provide adequate means for the plan's implementation." 11

U.S.C. § 1123(a)(5) (emphasis added). Such means may include "transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan." *Id.* § 1123(a)(5)(B).

43. A condition precedent to the effectiveness of the Prepackaged Plan is the establishment of the FCC Trust and the assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets to the FCC Trust. The Prepackaged Plan provides for the formation of the FCC Trust pending Court approval.

44. Other courts in this district have permitted the creation of a liquidation trust in connection with a plan of reorganization. *See, e.g., In re The IT Group, Inc.*, No. 02-10118 (MFW) (Bankr. D. Del. Mar. 29, 2004) (entering order approving settlement agreement providing for establishment of environmental liquidating trust); *In re Orion Ref. Corp.*, No. 03-11483 (CGC) (Bankr. D. Del. July 2, 2004); (confirming plan of reorganization that established liquidation trust); *In re Oakwood Homes Corp.*, No. 02-13396 (PJW) (Bankr. D. Del. Feb. 6, 2004) (same).

45. Other debtors recently have created their own FCC trusts to deal with the difficult issue of complying with FCC regulations in the face of new ownership post plan confirmation. *See, e.g., In re ION Media Networks, Inc.*, No. 09-13125 (Bankr. S.D.N.Y. Dec. 3, 2009) [Docket No. 453] (confirming plan of reorganization that created FCC trust and finding that an FCC trust agreement was an "essential element of the Plan"); *see also* Citadel Broad. Corp., Current Report (Form 8-K), Exhibit 10.1 (Dec. 23, 2009), *available at* http://www.sec.gov/Archives/edgar/data/1174527/000119312509259251/d8k.htm) (plan support agreement filed with the SEC three days after filing of bankruptcy petition in *In re Citadel Broad. Corp.*, No. 09-17442 (Bankr. S.D.N.Y. Dec. 20, 2009)).

III. Subject to FCC Approval, the Debtor May Assume the FCC Broadcast Licenses and Assign Them to the FCC Trust

46. To the extent that the FCC Broadcast Licenses are executory contracts, the Debtor seeks authority to assume and assign them under section 365 of the Bankruptcy Code. Such assumption and assignment is permitted by section 365(f) and is not prohibited by virtue of section 365(c), because the Debtor's request for approval is conditioned upon the receipt of FCC consent.

47. Like the section 363 standard articulated above, the standard for assumption or rejection of contracts is the business judgment rule, and the Debtor has satisfied that rule here for all the reasons set forth in Section I *supra*.

IV. The Court's Equitable Powers Under Section 105(a) of the Bankruptcy Code Support the Establishment the FCC Trust and Authorization of Assignment of the FCC Broadcast Licenses

48. The establishment of the FCC Trust, the assignment of the FCC Broadcast Licenses and the FCC Broadcast License Related Assets from the Debtor's Subsidiaries to the Debtor, and the subsequent assignment of the licenses and the FCC Broadcast License Related Assets by the Debtor to the FCC Trust should be authorized pursuant to section 105 of the Bankruptcy Code pursuant to the Court's equitable powers.

49. Section 105(a) of the Bankruptcy Code provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

The Debtor submits the relief sought herein is necessary to preserve the estate and maintain value for creditors.

50. A bankruptcy court may invoke section 105(a) to preserve a right provided elsewhere in the Bankruptcy Code so long as other, substantive rights of the Bankruptcy Code are not altered. *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 444 (1st Cir. 2000) (recognizing in a case of first impression that section 105(a) "empowers the bankruptcy court to exercise its equitable powers-where necessary or appropriate to facilitate the implementation of other Bankruptcy Code provisions"(quotation omitted)); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176 (stating that "the paramount policy and goal of chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor").

51. The relief sought in this Motion is necessary to comply with the FCC's rules on the ownership in broadcast companies and the assignment or transfer of broadcast licenses. Furthermore, the relief sought herein is necessary for confirmation of the Prepackaged Plan. Accordingly, the Debtor requests that the relief requested herein be granted.

Waiver of Bankruptcy Rule 6004(h)

52. The Debtor further seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above, the failure to expedite the process of obtaining FCC approval for assignment of the FCC Broadcast Licenses could result in a longer than anticipated stay in chapter 11 and could therefore jeopardize the Prepackaged Plan. Accordingly, the Debtor submits that sufficient cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

Debtor's Reservation of Rights

53. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtor, or a waiver of the Debtor's rights to dispute any claim.

Notice

54. No trustee, unsecured creditors' committee or examiner has been appointed in this chapter 11 case. Notice of this Motion shall be provided to (i) the attorneys for the Debtor, Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, NY 10004-1482, Attn.: Kathryn A. Coleman, Esq. and Eric J. Fromme, Esq.; (ii) the co-attorneys for the Debtor, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 18th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn.: Derek C. Abbott, Esq. and Daniel B. Butz, Esq.; (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801-3519; (iv) the attorneys for Bank of America, N.A., administrative agent under the Senior Credit Agreement, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017-3904, Attn.: John Fouhey, Esq. and Damian S. Schaible, Esq.; (v) the co-attorneys for Bank of America, N.A., administrative agent under the Senior Credit Agreement, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801-3361, Attn.: Mark D. Collins, Esq.; (vi) The Bank of New York Mellon Trust Company, N.A., as Indenture Trustee under each of the Indentures, 700 South Flower Street, Suite 500, Los Angeles, CA 90017-4101, Attn.: Raymond Torres; (vii) those parties listed on the list of creditors holding the twenty (20) largest unsecured claims against the Debtor, as identified in its chapter 11 petition; and (viii) any persons who have filed a request for notice in this chapter 11 case pursuant to Bankruptcy Rule 2002 (collectively the "Notice Parties").

No Previous Request

55. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: January 22, 2010
Wilmington, Delaware

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