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Entered on Docket
May 05, 2017

Honorable Gary Spraker
United States Bankruptcy Judge



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Matthew L. Johnson (6004)
Russell G. Gubler (10889)
JOHNSON & GUBLER, P.C.
Lakes Business Park
8831 West Sahara Avenue
Las Vegas, Nevada 89117
Phone: (702) 471-0065
Fax: (702) 471-0075
e-mail: mjohnson@mjohnsonlaw.com

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:)	Case No.: BK-S-17-10530-LED
KHWY, INC.,)	Chapter 11
Debtor.)	Hearing Date: April 3, 2017
)	Hearing Time: 1:30 p.m.

ORDER APPROVING SALE FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363(F)

Upon the Motion to Sell Assets Free and Clear of Liens and Encumbrances Pursuant to 11 U.S.C. §363(f) [Doc 15] (the "Sale Motion") and pursuant to the Order Granting Motion to Sell Assets Free and Clear of Liens and Encumbrances Pursuant to 11 U.S.C. §363(f) and Setting Auction [Doc 57] (the "Sale Order"), an auction and sale hearing was held before the Court on Monday, April 3, 2017 at 1:30 p.m. (the "Sale Hearing") for the sale of the Debtor's assets, (the "Property"). As confirmed at the Sale Hearing, the Property consists of all the assets set forth on Exhibit 1 to the Sale Order plus the limited liability company membership interest of Debtor in The Drive LLC, along with the interests, to the extent permitted by law, of

JOHNSON & GUBLER, P.C.
LAKES BUSINESS PARK
8831 WEST SAHARA
LAS VEGAS, NEVADA 89117
(702) 471-0065
(702) 471-0075

1 Debtor and The Drive LLC in the licenses, permits and authorizations issued by the Federal
2 Communications Commission (“FCC”) for operation of the radio stations (and associated
3 auxiliary licenses) licensed to those entities, respectively, specifically, KHWY, Inc. stations
4 KRXV(FM), Yermo, CA, FCC Facility ID 34554, KHYZ(FM), Mountain Pass, CA, FCC
5 Facility ID 34555, KHWY(FM), Essex, CA, FCC Facility ID 34556, KIXF(FM), Baker, CA,
6 Facility ID 68412, and KIXW-FM, Lenwood, CA, Facility ID 68413; and The Drive LLC
7 stations KHDR(FM), Lenwood, CA, FCC Facility ID 89344, and KHRQ(FM), Baker, CA,
8 FCC Facility ID 89128.

9 This Court, having determined that the \$620,000.00 credit bid of Heftel Broadcasting
10 Company, LLC (the “Buyer” or “Successful Bidder”) was the highest and best bid for the
11 Property; having determined that the \$525,000.00 credit bid of Educational Media Foundation
12 (“EMF” or “Backup Bidder”) for purchase of the KHYZ and KRXV radio stations excluding
13 purchase of the balance of the Property was the second highest and second best bid for sale of
14 property of the estate; having entertained arguments of counsel, having reviewed the pleadings
15 and papers on file with the Court, and based upon the findings of fact and conclusions of law
16 placed on the record at the hearing and incorporated herein pursuant to Rule 7052 of the
17 Federal Rules of Bankruptcy Procedure, which is incorporated herein by this reference in
18 accordance with Rule 52 of the Federal Rules of Civil Procedure, made applicable pursuant to
19 Bankruptcy Rule 9014; any objections to the sale having been resolved or overruled; and the
20 Court having determined that the relief granted herein is in the best interests of the Debtor’s
21 estate, their creditors, and other parties-in-interest, and after due deliberation thereon; and good
22 and sufficient cause appearing therefor;

23 IT HEREBY IS FOUND AND DETERMINED THAT:

- 24 A. The Court has jurisdiction to consider the sale pursuant to 28 U.S.C. §§ 157 and 1334.
25 B. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
26 C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
27 D. This Order constitutes a final appealable order within the meaning of 28 U.S.C. §
28 158(a). Notwithstanding Bankruptcy Rule 6004(h), and to any extent necessary under

1 Bankruptcy Rule 9014 and under Rule 54(b) of the Federal Rules of Civil Procedure, as
2 made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no
3 reason for delay in the implementation of this Order, and expressly directs entry of
4 judgment as set forth herein.

5 E. Notice of the Sale Hearing was given to all parties or entities entitled thereto in
6 accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the
7 Local Rules of this Court, and orders of this Court, and the form, manner, and
8 sufficiency of such notice was good and proper under the circumstances and no other or
9 further notice shall be required.

10 F. The Debtor made significant and satisfactory efforts to realize the highest and best
11 value for the Property, and the sale of the Property was subject to overbids. The sale of
12 the Property to the Buyer is the result of arm's length negotiations between the Debtor
13 and the Buyer.

14 G. The Debtor has properly exercised its reasonable business judgment in sale of the
15 Property pursuant to the terms and conditions set forth herein. The Debtor has shown
16 good and sufficient business justification for the sale of the Property to the Buyer.

17 H. The Property is property of the Estate and title thereto is vested therein.

18 I. The consideration to be paid by the Buyer for the Property (i) is fair and reasonable, (ii)
19 will provide for a greater recovery for the Estate's creditors than would be provided by
20 any other practical, available alternative, and (iii) constitutes reasonably equivalent
21 value and fair consideration under the Bankruptcy Code and under applicable
22 nonbankruptcy law.

23 J. Consummation of the sale of the Property to the Buyer pursuant to the terms set forth in
24 the Sale Order, the Sale Motion, and this Order will result in maximization of the value
25 of the Debtor's Estate and is in the best interests of the Estate, its creditors, and other
26 parties-in-interest.

27 K. The Buyer is purchasing the Property in good faith and is a good faith buyer within the
28 meaning of Section 363(m) of the Bankruptcy Code, and therefore is entitled to the full

JOHNSON & GUBLER, P.C.
LAKES BUSINESS PARK
8831 WEST SAHARA
LAS VEGAS, NEVADA 89117
(702) 471-0065
(702) 471-0075

1 protection of that provision, and otherwise has proceeded in good faith in all respects in
2 connection with the sale transaction in that, inter alia, (i) it is an identifiable Buyer that
3 has provided fair consideration to the estate, (ii) the negotiation and execution of the
4 asset purchase agreement between the Debtor and the Buyer was conducted at arm's
5 length and in good faith, and (iii) no fraud, collusion, or attempt to take advantage of
6 other bidders occurred.

7 L. The Buyer shall take the Property free and clear of all liens, claims, and encumbrances
8 because one or more of the standards set forth in Section 363(f)(1)-(5) of the
9 Bankruptcy Code has been satisfied. Holders of such liens, claims, and encumbrances,
10 if any, fall within one or more of the subsections of Section 363(f) and are adequately
11 protected by having their liens, claims, and encumbrances, if any, against the Debtor, its
12 Estate, and the Property attach to the cash proceeds of the sale of the Property with the
13 same validity, force, and effect that such creditor had prior to the sale, subject to any
14 claims and defenses the Debtor and the estates may possess with respect thereto.

15 M. The Debtor is authorized to take all actions necessary to effectuate the sale of the
16 Property, including entering into an asset purchase agreement (the "APA"), if
17 necessary, and a time brokerage agreement (the "TBA") if agreed to by the Debtor, in
18 connection with the Sale and any documents necessary for transfer of the pertinent
19 broadcast licenses as described in the Sale Order. No further consents or approvals are
20 required for the Debtor to consummate such transactions except approval by the FCC of
21 the transfer of the broadcasting licenses.

22 N. There is cause to lift the stay contemplated by Bankruptcy Rule 6004 to effectuate the
23 sale of the Property.

24 O. Good and sufficient justification has been shown for the relief granted herein.

25 P. The Court concludes that entry of this Order is in the best interests of the Estates,
26 creditors, and other parties-in-interest.

27 Q. Findings of fact shall be construed as conclusions of law and conclusions of law shall
28 be construed as findings of fact when appropriate.

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LAKES BUSINESS PARK
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1 R. Based on the foregoing findings and conclusions, and upon the record made before this
2 Court at the hearings on the Sale Motion, and good and sufficient cause appearing
3 therefor;

4 IT IS HEREBY ORDERED THAT:

5 1. The sale of the Property to the Buyer is GRANTED.

6 2. Pursuant to Section 363 of the Bankruptcy Code, the Debtor is authorized to sell,
7 convey, and assign the Property to the Buyer without further order of the Court, pursuant to the
8 terms and conditions of the Sale Order.

9 3. Pursuant to Section 363(b) of the Bankruptcy Code, the Debtors are authorized and
10 empowered to take any and all actions necessary or appropriate to (i) consummate the sale of
11 the Property to the Buyer pursuant to and in accordance with the terms and conditions of the
12 Plan and this Order, (ii) close the sale of the Property as contemplated in the Plan and this
13 Order, and (iii) execute and deliver, perform under, consummate, and implement fully any
14 additional instruments and documents that may be reasonably necessary or desirable to
15 implement the sale of the Property, including any other ancillary documents, as may be
16 reasonably necessary or appropriate to the performance of the obligations as contemplated by
17 the Plan, this Order, and such other ancillary documents.

18 4. The Debtors are further authorized and empowered to cause to be filed with any
19 applicable governmental units any and all certificates, agreements, or amendments necessary or
20 appropriate to effectuate the transactions contemplated by the Plan, any related agreements or
21 ancillary documents, and this Order, and undertake all such other actions, filings, or recordings
22 as may be required under appropriate provisions of the applicable laws of all applicable
23 governmental units or as the Debtor may determine are necessary or appropriate. The
24 execution of any such document or the taking of any such action shall be, and hereby is,
25 deemed conclusive evidence of the authority of such person to so act. Without limiting the
26 generality of the foregoing, this Order shall constitute all approvals and consents, if any,
27 required by the corporation laws of the State of Nevada and all other applicable business
28 corporation, trust, and other laws of the applicable governmental units with respect to the

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LAKES BUSINESS PARK
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LAS VEGAS, NEVADA 89117
(702) 471-0065
(702) 471-0075

1 implementation and consummation of the transaction contemplated by the Plan, any related
2 agreements and this Order, and the transactions contemplated thereby and hereby.

3 5. The transfer of the Property to the Buyer constitutes a legal, valid, and effective transfer
4 of the Property, and shall vest the Buyer with all right, title, and interest of the Debtors in and
5 to the Property free and clear of all liens, claims, and encumbrances, including all leases. Such
6 liens, claims, and encumbrances shall attach to the proceeds of the sale of the Property with the
7 same validity, force, and effect as prior to such sale.

8 6. The sale shall close no later than August 31, 2017, unless otherwise extended in writing
9 by the Debtor and the Buyer.

10 7. Buyer will be assigned all rights and liabilities associated with the Balboa Agreement, a
11 copy of which is attached as Exhibit "1" to Exhibit "2" to the Sale Motion. Under the assumed
12 Balboa Agreement, Buyer accepts responsibility to either (1) pay Balboa Capital the amount
13 remaining under the Balboa Agreement, (2) continue using Balboa Capital's equipment and
14 make the required monthly payments, or (3) return Balboa Capital's equipment.

15 8. On or before the closing date of the sale, all persons holding or asserting liens, claims,
16 or encumbrances of any kind against the Property are authorized and directed to execute such
17 documents and take all other actions as may be necessary to release such liens, claims, and
18 encumbrances, as may have been recorded or may otherwise exist. If any person or entity that
19 has filed documents evidencing any lien, claim, or encumbrance in or against the Property shall
20 not have delivered to the Debtors prior to the closing after request therefor, in proper form for
21 filing and executed by the appropriate parties, instruments of satisfaction or releases of all such
22 liens, claims, and encumbrances that the person or entity has with respect to the Property, the
23 Debtors hereby are authorized to execute and file such instruments, releases, and other
24 documents on behalf of the person or entity with respect to such Property prior to the closing,
25 and the Buyer is authorized to file such documents after closing.

26 9. In the event Buyer defaults under the terms of the APA or Sale Order, Debtor may,
27 without further order of the Court, accept EMF's bid of \$525,000.00 and deem EMF to be
28 Buyer and Successful Bidder, and proceed with sale of radio stations KHYZ and KRXXV to

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LAS VEGAS, NEVADA 89117
(702) 471-0065
(702) 471-0075

1 EMF free and clear of liens in accordance with this Order and in accordance with the Sale
2 Order.

3 10. The Buyer shall be entitled to the protections afforded by Section 363(m) of the
4 Bankruptcy Code in the event of a reversal or modification on appeal of this Order.

5 11. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the
6 terms and provisions of this Order in all respects, including without limitation, to decide any
7 dispute arising between the Debtor and the Buyer with respect thereto. This retention of
8 jurisdiction shall not be deemed to extend to any dispute that does not involve the
9 interpretation, construction, enforcement, and/or effect of this Order.

10 12. This Order may be specifically enforced against and is binding upon, and not subject to
11 rejection or avoidance by, the Debtor or its estate, including any trustee appointed under
12 chapter 7 or chapter 11 of the Bankruptcy Code or other fiduciary appointed for the Debtor's
13 estate, whether in the present Bankruptcy Cases, a subsequent bankruptcy case, or upon
14 dismissal of these Bankruptcy Cases or subsequent bankruptcy case.

15 13. The stay of an order authorizing the use, sale, or lease of property as provided for in
16 Bankruptcy Rule 6004(h) shall not apply to this Order and this Order shall be effective and
17 enforceable upon entry.

18 IT IS SO ORDERED.

19 Submitted by:

20 **JOHNSON & GUBLER, P.C.**

21 /s/ Matthew L. Johnson
22 Matthew L. Johnson (6004)
23 Russell G Gubler (10889)
24 Lakes Business Park
25 8831 West Sahara Avenue
26 Las Vegas, Nevada 89117
27 Phone: (702) 471-0065
28 *Counsel for the Debtor*

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JOHNSON & GUBLER, P.C.
LAKES BUSINESS PARK
8831 WEST SAHARA
LAS VEGAS, NEVADA 89117
(702) 471-0065
(702) 471-0075

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LR 9021 CERTIFICATION

IN ACCORDANCE WITH LR 9021, COUNSEL SUBMITTING THIS DOCUMENT CERTIFIES THAT THE ORDER ACCURATELY REFLECTS THE COURT’S RULING AND THAT (CHECK ONE):

THE COURT WAIVED THE REQUIREMENT OF APPROVAL UNDER LR 9021(B)(1).

NO PARTY APPEARED AT THE HEARING OR FILED AN OBJECTION TO THE MOTION.

I HAVE DELIVERED A COPY OF THIS PROPOSED ORDER TO ALL COUNSEL WHO APPEARED AT THE HEARING, AND ANY UNREPRESENTED PARTIES WHO APPEARED AT THE HEARING, AND EACH HAS APPROVED OR DISAPPROVED THE ORDER, OR FAILED TO RESPOND, AS INDICATED BELOW:

**JACK BRANNELLY, ESQ.
BRANNELLY LAW, PLLC
PO Box 1832
DRAPER, UT 84020
(801) 871-5225
JACK@BRANNELLYLAW.COM
COUNSEL FOR BUYER**

X APPROVED DISAPPROVED FAILED TO RESPOND

I CERTIFY THAT THIS IS A CASE UNDER CHAPTER 7 OR 13, THAT I HAVE SERVED A COPY OF THIS ORDER WITH THE MOTION PURSUANT TO LR 9014(G), AND THAT NO PARTY HAS OBJECTION TO THE FORM OR CONTENT OF THE ORDER.

/s/ Matthew L. Johnson
Matthew L. Johnson (6004)

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LAKES BUSINESS PARK
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LAS VEGAS, NEVADA 89117
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