

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS**

IN RE:	§	
	§	
EQUITY MEDIA HOLDINGS CORPORATION, <u>et al.</u>	§	CASE NO. 4:08-BK-17646
	§	JOINTLY ADMINISTERED
	§	
DEBTORS	§	CHAPTER 11

ORDER AUTHORIZING AND APPROVING (I) THAT CERTAIN ASSET PURCHASE AGREEMENT BETWEEN CERTAIN OF THE DEBTORS AND PINNACLE MEDIA, LLC AND (II) THE CONSUMMATION OF THE TRANSACTIONS THEREUNDER, INCLUDING (A) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS, AND (B) THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES

Upon the motion, dated August 20, 2009 (the “Motion”) [Docket #554], filed by Equity Media Holdings Corporation (“EMHC”) and its subsidiary debtors in the above jointly administered cases (the “Subsidiary Debtors”),¹ as debtors and debtors-in-possession, for entry of an order pursuant to sections 363(b), 363(f), 365(a) and 365(f) of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing and approving that certain Purchase Agreement, dated August 5, 2009 (the “Purchase Agreement”), between EMHC, TV 34, Inc., and Ft. Smith 46, Inc. (collectively, the “Sellers”) and Pinnacle Media, LLC (the “Buyer”), including (a) the assumption and assignment of certain unexpired leases and executory contracts, and (b) the sale

¹ The Subsidiary Debtors include Arkansas 49, Inc., EBC Detroit, Inc., EBC Harrison, Inc., Borger Broadcasting, Inc., EBC Jacksonville, Inc., C.A.S.H. Services, Inc., EBC Kansas City, Inc., Equity News Services, Inc., EBC Los Angeles, Inc., Denver Broadcasting, Inc., EBC Minneapolis, Inc., EBC Atlanta, Inc., EBC Nashville, Inc., EBC Panama City, Inc., EBC Buffalo, Inc., Fort Smith 46, Inc., Logan 12, Inc., Marquette Broadcasting, Inc., Nevada Channel 3, Inc., Nevada Channel 6, Inc., Newmont Broadcasting Corporation, EBC Provo, Inc., Price Broadcasting, Inc., Pullman Broadcasting, Inc., EBC Scottsbluff, Inc., Rep Plus, Inc., EBC Seattle, Inc., River City Broadcasting, Inc., EBC Southwest Florida, Inc., Roseburg Broadcasting, Inc., TV 34, Inc., EBC Syracuse, Inc., EBC Pocatello, Inc., EBC St. Louis, Inc., EBC Waterloo, Inc., La Grande Broadcasting, Inc., Montgomery 22, Inc., Shawnee Broadcasting, Inc., EBC Waco, Inc., Vernal Broadcasting, Inc., Wyoming Channel 2, Inc., H&H Properties Limited Partnership, Woodward Broadcasting, Inc., Montana Broadcasting Group, Inc., Central Arkansas Payroll Company, Montana License Sub, Inc., Equity Broadcasting Corporation, Equity Insurance Inc., KLRA, Inc., EBC Mt. Vernon, Inc., EBC Wichita Falls, Inc. and EBC Boise, Inc.

of certain assets free and clear of all liens, claims and encumbrances; and the Objection of Univision Communications, Inc. (“Univision”) to the Motion [Docket #582] (the “Univision Objection”); and a hearing having been held before the Court on September 10, 2009 to consider the Motion and the relief requested therein (the “Sale Hearing”); and the Sale Hearing having been adjourned at the request of the Debtors and Univision to attempt to resolve the Univision Objection; and the Court having been advised that the Univision Objection has been resolved as provided herein; and there being no other responses or objections to the Motion; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY FOUND AND DETERMINED:

A. The Court has jurisdiction to consider the Motion and the relief requested therein as it pertains to this Order pursuant to 28 U.S.C. §§ 157 and 1334.

B. As evidenced by the certificate of service filed with the Court, and based on the representations of counsel in the Motion and/or at the Sale Hearing, (A) proper, timely, adequate, and sufficient notice of the Motion and the relief requested therein, the Purchase Agreement and the transactions contemplated therein, and the Sale Hearing has been provided in accordance with sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9013 and 9014, and this Court’s Order Establishing Notice Procedures, dated April 1, 2009 [Docket # 338], by the Debtors having provided notice to the following: (i) the Office of the United States Trustee for the Eastern District of Arkansas (the “U.S. Trustee”); (ii) counsel for Silver Point Finance L.L.C., the administrative agent under the Debtors’ post-petition financing facility (in such capacity, the “DIP Agent”); (iii) the Debtors’ other secured creditors, including Citizen’s Bank; (iv) the creditors holding the 30 largest unsecured claims against the Debtors’ estates (on a consolidated basis); (v) those persons who have formally appeared and requested

service of these cases pursuant to Bankruptcy Rule 2002; (vi) the Securities and Exchange Commission, the Internal Revenue Service and the Federal Communications Commission; and (vii) counter-parties to the Contracts (as defined in the Motion); (B) the form of this Order (along with all attachments thereto) was served on all objecting parties and the Buyer; (C) such notice was good and sufficient and appropriate under the particular circumstances; and (D) no other or further notice of the Motion, this Order, the Purchase Agreement or the Sale Hearing is required.

C. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein and this Order has been afforded to all those parties listed in paragraph B above.

D. The Purchase Agreement was negotiated at arm's-length and proposed and entered into by and among the Sellers and the Buyer without collusion and in good faith. The Buyer is a good faith purchaser in accordance with section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded thereby. The good faith of the Sellers and the Buyer is evidenced by, among other things, the following facts: (1) the Sellers and the Buyer have engaged in substantial arms length negotiations in good faith, and the Purchase Agreement and related documents executed or to be executed thereunder are the product of such negotiations among the parties; (2) the Sellers conducted a competitive sales process during which other parties had an opportunity to submit competing bids for the Station Assets; and (3) the Sellers determined that the Buyer's bid as reflected in the Purchase Agreement was the highest and best offer for the Station Assets.

E. The relief sought in the Motion is in the best interests of the Sellers, their estates, their creditors, and all parties in interest.

F. The Purchase Agreement constitute the highest and best offer for the Station

Assets, and will provide a greater recovery for each of the respective Sellers' estates than would be provided by any other available alternative. Each Seller's determination that the Purchase Agreement constitutes the highest and best offer for the Station Assets constitutes a valid and sound exercise of such Seller's business judgment.

G. The Purchase Agreement represents a fair and reasonable offer to purchase the Station Assets under the circumstances of these chapter 11 cases. No other person or entity or group of entities has offered to purchase the Station Assets for greater economic value to the respective Seller's estate than the Buyer.

H. Approval of the Sale Motion and the Purchase Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Sellers, their stakeholders, their estates and other parties in interest.

I. The Sellers have demonstrated compelling circumstances, advanced sound and sufficient business justification, and it is a reasonable exercise of their business judgment, to: (i) enter into the Purchase Agreement; and (ii) consummate the transactions contemplated therein (the "Sale Transaction") prior to, and outside of, a chapter 11 plan.

J. The consummation of the Sale Transaction is properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 365(a), 365(b) and 365(f) of the Bankruptcy Code, and all of the applicable provisions of such sections have been complied with in respect of the Sale Transaction.

K. The executory contracts and leases that will be transferred, assigned and conveyed to the Buyer under the Purchase Agreement and were identified in the Motion (the "Assumed Contracts") are valid and enforceable and have not been terminated by operation of law or otherwise and are capable of being assumed and assigned under section 365 of the Bankruptcy

Code.

L. Other than as set forth in the Motion, neither the Sellers nor any of their Affiliates is in default under any of the Assumed Contracts. Except for the Cure Amounts set forth in the Motion, for purposes of sections 365(b) and (f) of the Bankruptcy Code, (i) there is no default under any of the Assumed Contracts which would require the applicable Seller to (x) cure, or provide adequate assurance that such Seller will promptly cure, such default, or (y) compensate, or provide adequate assurance that such Seller will compensate, any counterparty to the Assumed Contracts for any actual pecuniary loss to such party resulting from such default, and (ii) the Buyer has provided adequate assurance of future performance under each of the Assumed Contracts by demonstrating sufficient financial wherewithal to perform its obligations under such Assumed Contracts.

M. Except as explicitly stated in the Purchase Agreement, the Station Assets are being sold “as is, where is” with no representations or warranties by the Sellers.

N. The Sellers have the requisite power and authority to transfer the Station Assets to the Buyer as contemplated in the Purchase Agreement.

O. Each Seller and Buyer have entered into the Purchase Agreement wherein the parties agree that, *inter alia*, the purchase price to be paid by the Buyer to the Sellers is \$400,000 (the “Purchase Price”) plus the assumption of the Assumed Liabilities.

P. The consideration provided by the Buyer for the Station Assets shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable state law.

Q. The Sellers and Buyer have provided adequate assurance of cure of any default existing before the date on which any such Assumed Contract is assumed and assigned, within

the meaning of Bankruptcy Code section 365(b)(1)(A). The Sellers and Buyer have further demonstrated adequate assurance of compensation to any counterparty to such Assumed Contracts for any of their actual pecuniary losses resulting from any default arising prior to the date on which any such Assumed Contract is assumed and assigned, within the meaning of Bankruptcy Code section 365(b)(1)(B).

ACCORDINGLY, THE COURT HEREBY ORDERS THAT:

1. The findings of fact set forth above and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

2. The Motion is granted as it pertains to the Sale Transaction.

3. The Purchase Agreement and each of the agreements, documents and instruments executed in connection therewith (together with the Purchase Agreement, the "Transaction Documents") are approved in their entirety.

4. All parties in interest have had the opportunity to object to the relief requested in the Motion and to the extent that objections to the Motion or the relief requested therein have not been withdrawn, waived, or settled as set forth in paragraph 16 hereto, such objections and all reservations of rights included therein are overruled on the merits. All objecting parties and the Buyer were provided the opportunity to review, provide comments on, and/or object to, the form of this Order. Those parties who did not object, or who withdrew their

objections, to the Motion or this Order are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

5. The Sale Transaction is hereby approved pursuant to sections 105(a), 363(b), 363(f), 365(a), 365(b) and 365(f) of the Bankruptcy Code.

6. Each Seller is authorized, pursuant to sections 105(a), 363(b) and 365(a) of the Bankruptcy Code, to perform all of its obligations under the Transaction Documents and to execute such other documents and take such other actions as are necessary to effectuate the transactions contemplated by the Purchase Agreement.

7. Except as otherwise provided in this decretal paragraph, the sale of the Station Assets to the Buyer pursuant to the Purchase Agreement will vest the Buyer with good title to the Station Assets, to the broadest extent permissible pursuant to section 363(f) of the Bankruptcy Code free and clear of all Liens (as defined in section 101(37) of the Bankruptcy Code), claims, encumbrances and interests, and Debts (as defined in section 101(12) of the Bankruptcy Code) arising under, relating to, or in connection with any of the Debtors or the Excluded Liabilities, claims, any obligations, demands, guaranties, options, rights, contractual commitments, restrictions, set off or recoupment rights; or similar interests or rights of any kind and nature, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise and will be a legal, valid and effective transfer of the Station Assets; provided, however, that the Liens of the DIP Lenders (as defined in the Motion), shall be transferred and attached to the Proceeds (as defined in the Motion), with the same validity, enforceability, priority, force and effect that they now have as against the Station Assets; and provided, further, that the Liens of Citizen's Bank shall remain in effect with the same validity, enforceability, providing force and effect that they now have

against the Station Assets.

8. The Sellers' assumption of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code is approved effective as of the Closing under the Purchase Agreement. For the avoidance of doubt, unless and until assumption of any such Assumed Contract occurs as of the Closing of the Purchase Agreement or by separate Order of this Court, the Sellers may, upon the prior written agreement of the Buyer, reject any Assumed Contract pursuant to section 365 of the Bankruptcy Code and any such Assumed Contract shall not be assigned to the Buyer. Any counterparty to an Assumed Contract that did not object, or who withdrew their objections, to the assumption and or assignment of such Assumed Contract, is deemed to have consented to such assumption and or assignment for all purposes.

9. Each Seller is authorized to assign the Assumed Contracts to the Buyer pursuant to section 365(f) of the Bankruptcy Code and as contemplated by the Purchase Agreement and this Order.

10. Upon Closing, pursuant to the Purchase Agreement, the Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in the Assumed Contracts (including, without limitation, those described in sections 365(c), 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further obligation or liability for any breach of the Assumed Contracts occurring after such assumption and assignment.

11. Each counterparty to the Assumed Contracts is forever barred, estopped, and permanently enjoined from asserting against the respective Seller, its predecessors in

interest, the Buyer, its successors in interest, or the property of either of them, any default accruing prior to the Closing Date, save for defaults occurring between the date of this Order and the Closing. Subject to the payment by the Buyer of the Cure Amounts at the Closing (except as may be otherwise agreed to in writing by a counterparty to an Assumed Contract) and the Seller's receipt of the Purchase Price, subsequent to the Closing, no claims for cure or any other claims pursuant to section 365(b)(1) of the Bankruptcy Code may be asserted against the Sellers, the Buyer or their respective predecessors in interest or successors in interest with respect to the Assumed Contracts.

12. If for any reason the Closing does not occur and/or the Purchase Agreement is terminated pursuant to its terms, the Seller shall be deemed not to have assumed any of the Assumed Contracts under the Purchase Agreement.

13. Upon Closing, pursuant to the Purchase Agreement, to the extent identified in the Purchase Agreement, the Excluded Assets will remain in the respective Seller's estate.

14. Upon Closing, pursuant to the Purchase Agreement, to the extent identified in the Purchase Agreement, the Assumed Liabilities shall be transferred to the Buyer.

15. To the extent permitted in the Purchase Agreement, the Buyer is authorized to assign its rights and interests in the Purchase Agreement and/or the Station Assets (including the Assumed Contracts) in accordance with the terms of the Purchase Agreement.

16. Notwithstanding anything contained herein to the contrary, to resolve the Univision Objection and as adequate assurance of future performance by the Buyer of those certain Network Affiliation Agreements between certain of the Sellers and Univision that were identified as Assumed Contracts (the "Affiliation Agreements"), the Buyer has agreed to those

terms and conditions set forth in that certain Letter Agreement, dated October 2, 2009, between Univision and the Buyer (the "Letter Agreement"). Upon Closing, the Affiliation Agreements shall be assumed by the applicable Seller(s) and assigned to Buyer, subject to Buyer's obligations set forth in the Letter Agreement, which is incorporated herein by reference. In the event the Closing occurs and Buyer fails to comply with or otherwise satisfy the terms and conditions set forth in the Letter Agreement, Univision shall retain the right to terminate the Affiliation Agreements as provided in the Letter Agreement, in addition to any other rights and remedies Univision has against the Buyer under the Affiliation Agreements and/or the Letter Agreement.

17. Upon Closing, each Seller is authorized and directed to use the Proceeds to repay the obligations owed to the DIP Lenders in accordance with the terms of the DIP Loan Agreement, as applicable, without further application to or order of the Court, which amounts shall not be subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment or any other challenges under the Bankruptcy Code or any other applicable law or regulation by any person or entity.

18. The sale and transfer of the Station Assets are in anticipation, and are an important component, of any plan of reorganization or liquidation of the Sellers. As such, the sale and transfer of the Station Assets shall be free of any stamp tax or similar tax pursuant to section 1146(a) of the Bankruptcy Code to the extent that either (i) one or more plans are confirmed under section 1129 of the Bankruptcy Code that incorporate the transfers approved herein, or (ii) such relief is otherwise permitted by applicable law.

19. No broker or other party is entitled to a commission other than Patrick

Communications LLC.

20. No person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the Purchase Agreement or this Order.

21. The Transaction Documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court; provided, however, that, in connection therewith, the parties shall obtain the prior written consent of the DIP Lenders, which consent shall not be unreasonably withheld; and provided, further, that any such modification, amendment or supplement shall neither be material nor materially change the economic substance of the transactions contemplated hereby.

22. The failure to specifically include any particular provision of the Transaction Documents in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Transaction Documents and the Sellers' implementation of the transactions contemplated therein be approved in their entirety.

23. In the absence of a stay pending appeal, in the event that the Sellers and the Buyer elect to consummate transactions contemplated by the Purchase Agreement at any time after the entry of this Order, then with respect to the transactions approved and authorized herein, the Buyer, as a purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code, shall be entitled to the protections of 363(m) of the Bankruptcy Code in the event this Order or any authorization contained herein is reversed or modified on appeal.

24. The Court shall retain exclusive jurisdiction (a) over the construction, performance and enforcement of the terms and provisions of this Order, the Transaction Documents, all amendments thereto, and any waivers and consents thereunder, (b) to compel

delivery of the Purchase Price to the Sellers in accordance with the terms and conditions of the Purchase Agreement, (c) to compel delivery of the amounts owed to Univision by the Buyer under the Letter Agreement, and (d) to resolve any disputes, controversies or claims arising out of or relating to this Order or the Transaction Documents.

25. The terms of this Order shall be binding on and inure to the benefit of the Sellers, the Debtors, the Buyer, each non-debtor party to the Assumed Contracts and the Debtors' creditors and all other parties in interest, and any successors of the Sellers or the Debtors, the Buyer, each non debtor party to the Assumed Contracts, and the Debtors' creditors, including any trustee or examiner appointed in these cases or any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

26. This Order shall be effective and enforceable immediately upon entry of this Order and the stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is hereby waived.

27. Notwithstanding any other provision in this Order, no assignment of any rights and/or interests of the Debtors, including, without limitation, any rights in any federal license issued by the Federal Communications Commission (the "FCC"), shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent provided by law.

IT IS SO ORDERED

EOD 10/19/2009
by R Johnson



Dated: 10/19/2009

HONORABLE JAMES G. MIXON
UNITED STATES BANKRUPTCY JUDGE

DATE: _____