

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**SECURITIES AND EXCHANGE §  
COMMISSION, §  
Plaintiff, §  
v. §  
ALBERT FASE KALETA and KALETA §  
CAPITAL MANAGEMENT, INC., §  
Defendants, §  
and §  
BUSINESSRADIO NETWORK, L.P., §  
d/b/a BizRadio and DANIEL FRISHBERG §  
FINANCIAL SERVICES, INC., d/b/a §  
DFFS CAPITAL MANAGEMENT, INC., §  
Relief Defendants, §  
Solely for the purposes §  
of Equitable Relief. §**

**Case No. 4:09-cv-3674**

**ORDER CONFIRMING SALE OF RADIO STATION ASSETS  
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES  
AND OTHER INTERESTS AND RELATED RELIEF**

**[This order relates to docket nos. 62, 66 and 120]**

CAME ON THIS DAY to be considered, the Receiver’s Motion for Entry of Orders

- (i) Approving Bidding Procedures and Notice for the Sale of Radio Station Assets,
- (ii) Confirming Sale of Radio Station Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests, and (iii) Approving Compromise of Controversies and Partial Distribution of Sale Proceeds (“Sale Motion”) (Docket No. 62). In connection with the Sale Motion, the Court previously entered its April 4, 2011 Modified Order Approving Sale Procedures, Fixing Deadlines and Setting Hearing on Sale of Radio Station KTEK Free and Clear of all Liens,

Claims, Encumbrances and Other Interests, Approving Compromise and Related Relief (“Sale Procedures Order”) (Docket No. 66).<sup>1</sup>

The Court has considered the entire record in these proceedings to date, all objections responses to the Sale Motion, if any, all evidence presented to the Court and the arguments of counsel for the various parties reflected at the hearing held on June 28, 2011, September 15, 2011, October 3, 2011 and October 27, 2011 (the “Confirmation Hearing”) to confirm the sale (the “Sale”) of Radio Station 1110 AM, FCC Facility No. 10827, licensed and broadcasting from Alvin, Texas, and various other related equipment, licenses and assets (“Station”).

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the foregoing, and after due deliberation and good sufficient factual and legal cause appearing therefore, the Court finds and concludes as follows:

A. Findings of Fact. The findings of fact and conclusions of law set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

B. Jurisdiction and Venue. This Court has jurisdiction in this proceeding under 28 U.S.C. §1345. Venue is proper in this District under 28 U.S.C. §1391.

C. Statutory Predicates. The statutory predicates for the relief sought herein include 28 U.S.C. §§2001, 2002 and 2004, and Rule 66 of the Federal Rules of Civil Procedure.

D. Final Order. This Confirmation Order constitutes a final and appealable order within the meaning of 28 U.S.C. §1291.

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<sup>1</sup>Unless otherwise defined herein, capitalized terms in this order (the “Confirmation Order”) shall be given the same meaning accorded to such terms in the Sale Motion or Sale Procedures Order.

E. Investors' Objections. Certain Investors (who are listed in the pleadings setting forth the Objections) filed Objections (Docket Nos. 70, 80 and 111) to the Sale Motion, which included, among other objections, an objection to the adequacy of the notice of the Sale Motion and Sale Procedures Order. To address any issues concerning notice of the Sale Motion, on July 5, 2011, the Court entered its Order and Notice of Continued Hearing on Confirmation of Sale of Radio Station Assets (Docket No. 88), which, among other things, provided for additional notice of the Sale Motion to interested parties to afford such parties an opportunity to present objections, if any, to the Sale Motion, continued the Confirmation Hearing to September 15, 2011, and fixed certain deadlines for providing notice and for parties to present objections. The Receiver provided the additional notice required by the July 5, 2011 as set forth in the Certificates of Notice (Docket Nos. 97 and 98).

F. Second Sales Procedures Order. On September 15, 2011, the Court commenced the continued Confirmation Hearing and considered the Objections, and Responses (Docket Nos. 112 and 114) filed by South Texas Broadcasting, Inc. ("STB") and the Receiver. The Court, in the exercise of its discretion relating to the assets of the Receivership Estate and the disposition thereof, further continued the Confirmation Hearing, set an evidentiary hearing on October 3, 2011, to consider the priority of lien issues raised by the Investors' Objections, and entered a Second Modified Order Approving Sale Procedures, Fixing Deadlines and Setting Hearing on Sale of Radio Station KTEK Free and Clear of All Liens, Claims, Encumbrances and Other Interests, Approving Compromise and Related Relief (Docket No. 120) (the "Second Sale Procedures Order"), to allow additional parties an opportunity to submit timely conforming Topping Bids to the Receiver and an opportunity for an auction in the event any other parties became a Qualified Competing Bidder and for parties to further object to the Sale Motion.

G. Notice. Proper notice has been given to all necessary parties with respect to the Sale Motion, the Sale Procedures Order, and the Second Sale Procedures Order as evidenced by the Affidavit of Publication of the Notice of Sale of Radio Station filed in this proceeding (Docket No. 72-1), Certificates of Notice (Docket Nos. 97 and 98), and the Declaration of the Receiver (Docket No. 144).

H. Opportunity to Object. A reasonable opportunity to object and to be heard with respect to the Sale, the Sale Motion and the relief requested therein has been given to all parties claiming an interest in the Station or the Receivership Estate. At the hearing on October 3, 2011, the Objecting Investors announced on the record that they had withdrawn, with prejudice, all objections to the Sale Motion as it related to the free and clear sale of the Station to STB (or any other Winning Bidder), waived any challenge to the debt or priority of lien claim of STB owing by BusinessRadio Houston LLC which serves as partial consideration for the Purchase Price for the Station, or the right of STB, in the event another party became the Winning Bidder through an auction, to be paid its secured claim from sale proceeds to any such other Winning Bidder at the time of sale rather than at the time of any plan of distribution. No party served any further objection to the Sale Motion as provided by Second Sale Procedures Order. *See Notice Regarding Confirmation Hearing*, Docket No. 143.

I. Marketing Efforts. As demonstrated by evidence proffered or adduced at the Confirmation Hearing and the representations of counsel made on the record at the Confirmation Hearing, through marketing efforts and a competitive sale process conducted in accordance with the Sale Procedures Order and the Second Sale Procedures Order, the Receiver afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders,

participate in the sale process and submit higher or otherwise better offers to purchase the Station.

J. Compliance with Sale Procedures Orders. The Receiver and his professionals have complied in all material respects with the Sale Procedures Order and Second Sale Procedures Order and 28 U.S.C. §2001 and other applicable laws.

K. Winning Bidder. No party submitted a bid to become a Competing Qualified Bidder as provided by the terms of the Sale Procedures Order and the Second Sale Procedures Order, and the Receiver therefore did not conduct an Auction. South Texas Broadcasting, Inc. (“Buyer”), as the approved Stalking Horse Bidder, is the Winning Bidder under the terms of the Second Sale Procedures Order to purchase the Station under the terms and consideration set forth in the Modified Sale Agreement. On October 12, 2011, the Receiver filed his Second Request for Entry of Confirmation Order (Docket No. 135).

L. Sale is in the Best Interests of the Receivership Estate. Good and sufficient reasons for the confirmation of the Sale have been articulated, and the relief requested in the Sale Motion and granted herein is in the best interests of the Receivership Estate. The Receiver has demonstrated good, sufficient and sound business purposes and justifications for the Sale of the Station for the consideration set forth in the Modified Sale Agreement.

M. Sale Free and Clear. The Receivership Estate is the lawful owner of the equity interests in Business Radio Houston, LLC and BusinessRadio Houston Licensee, LLC (“Sellers”), who are the lawful owners of the Station. No party, other than STB holds a duly perfected and valid security interest in, or lien on the Station. Any liens, claims, encumbrances and/or interests of Wallace Bajjali Investment Fund II, L.P. as administrative agent for Industrial

Info. Resources, Inc., or other senior lenders, as set forth in UCC Financing Statement dated March 28, 2008 under file number 2008 1103686 with the Delaware Secretary of State U.C.C. Filing Section, in connection with the March 28, 2008 financial accommodations provided to BusinessRadio Houston LLC, as borrower, to secure the indebtedness has been paid or otherwise discharged. Any claims of security in the Station by the Objecting Investors pursuant to such financing statement, or under principles of equitable, contractual or statutory subrogation, shall be considered under separate order of the Court and the sale of the Station to STB is hereby free and clear of all liens, claims, encumbrances or other interests of all parties, including any claims arising by contract, tort, operation of law, equitable subrogation, contractual subrogation, statutory subrogation, contractual subordination or any other such interests of any such character. Subject to the filing with the Federal Communications Commission ("FCC") of a Notice of Consummation with respect to the assignment of the station license, the transfer of the Station to STB will be a legal, valid and effective transfer of the Station and will vest STB with all right, title and interest of the Sellers and the Receivership Estate, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever, whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or after the commencement of this receivership proceeding, and whether imposed by agreement, understanding, law, equity or otherwise, accruing, arising or relating thereto any time prior to the closing date. Without limiting the foregoing, this Confirmation Order approving sale of the Station free and clear specifically includes any claims resolved by the AsiaVision litigation and the compromise of all such claims approved by the Second Sale Procedures Order, as well as all claims of all Objecting Investors, or claims of any other person that did not object to the Sale Motion.

N. Good Faith. The Receiver, Sellers and STB, including their respective agents and representatives, participated in the sale process and purchase of the Station in good faith, without collusion and at arms' length and are entitled to the protections of a good faith purchaser for value.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT**

1. Sale Motion is Granted. The relief requested in the Sale Motion is **GRANTED** as set forth herein.

2. Objections Overruled. Any and all objections to the Sale Motion are overruled on the merits and denied with prejudice. To the extent that any objection was not withdrawn, waived or settled, such objection, and all reservation of rights or relief requested, is hereby overruled on the merits and denied with prejudice.

3. Sale of Station and Clear of all Liens, Claims, Encumbrances and Interests. The terms of the Modified Sale Agreement, and the transactions contemplated therein, including without limitation, the sale of the Station to Buyer, as provided in the Modified Sale Agreement, are confirmed and authorized in all respects, and the Receiver, as representative of the Receivership Estate and the Sellers, is authorized to perform all obligations under the Modified Sale Agreement, and take such action as is necessary to effectuate the terms of such agreement without further authorization. The sale of the Station under the Modified Sale Agreement shall be and hereby is free and clear of all liens, claims, encumbrances and/or interests that may exist as of the date of the Closing as provided by this Confirmation Order, subject to the filing of a Notice of Consummation with the FCC with respect to the assignment of the broadcast license.

4. Title to Station sold under the Modified Sale Agreement. As of the date of this Confirmation Order, taking into account the evidence presented at the Confirmation Hearing and the record in this proceeding, the Sellers have good and indefeasible title to the Station. The transfer of the Station by the Sellers to the Buyer is a legal, valid and effective transfer of the Station and shall vest the Buyer with good and indefeasible title to the Station free and clear of all liens, claims and encumbrances including, without limitation, liens, claims and encumbrances (i) that purport to give to any entity a right or option to effect any forfeiture, modification, right of approval, right of first refusal, repurchase or termination of the Sellers' or the Buyer's interest in the Station or any similar rights, (ii) any rights through claims of equitable, contractual, or statutory subrogation or contractual or equitable subordination, or (iii) in respect of taxes, any such liens or claims which existed prior to the Closing shall attach to the Purchase Price paid to Sellers; provided, however, the Buyer shall pay the outstanding ad valorem real estate taxes as a component of the Purchase Price.

5. Release of Liens and Claims. Upon the Closing of the Sale, all persons holding any liens, claims, encumbrances, and interests against Station or the Sellers in respect of the Station shall be forever barred and estopped from pursuing, asserting, or otherwise prosecuting such liens, claims, encumbrances, and interests against the Station or the Buyer. This Confirmation Order may be filed of record or otherwise registered and shall constitute conclusive evidence of the release of such liens, claims, encumbrances, and interests against the Station and the Buyer. Holders of liens, claims, encumbrances, and/or interests shall sign and deliver releases to the Sellers/Receiver/Buyer upon written request. Should any party fail to deliver any such release, then the Receiver or Buyer, as may be the case, is hereby authorized to

execute and deliver such releases on behalf of any such holder of a lien, claim, encumbrance and/or interest.

6. Permanent Injunction. Except as otherwise expressly provided by this Confirmation Order, all persons who have held, hold, or may hold liens, claims, encumbrances and interests against the Station are permanently enjoined from (a) commencing or continuing in any manner any action or other proceeding of any kind against the Station or STB, with respect to any such lien, claim, encumbrance and interest, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any such lien, claim, encumbrance and interest against the Station or STB, (c) creating, perfecting, or enforcing any encumbrance of any kind against the Station or STB with respect to such lien, claim, encumbrance and interest, and (d) asserting any right of subrogation of any kind against any obligation on account of any such lien, claim, encumbrance and interest.

7. Fair Consideration and No Obligations Assumed. The transfer of the Station is in exchange for consideration being paid by Buyer that constitutes reasonably equivalent consideration under applicable law. The transfer of the Station does not and will not subject Buyer to any liability by reason of such transfer under the laws of the United States, any state, territory or possession thereof based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of successor or transferee liability.

8. Reconfirmation of Asia Vision Compromise. The compromise with Asia Vision is hereby reconfirmed. The Receiver is authorized and directed to perform all obligations under the settlement agreement and pay \$150,000 to the Asia Vision Plaintiffs.

9. Retention of Jurisdiction. The United States District Court for the Southern District of Texas retains jurisdiction to enforce the provisions of the Modified Sale Agreement and this Confirmation Order in all respects, including, without limitation, retaining jurisdiction to protect Buyer against any liability not assumed or any claim, lien, encumbrance and/or interest asserted against the Station.

10. Sale Proceeds. The Receiver shall hold the proceeds of the sale of the Station in the general accounts of the Receivership Estate with such funds to be distributed following further order of the Court.

11. Confirmation Order Nonseverable. The provisions of this Confirmation Order and the Modified Sale Agreement are nonseverable and mutually dependent.

Signed this \_\_\_\_\_ day of October, 2011.

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Nancy F. Atlas  
United States District Judge