

clear of all interests, to South Texas Broadcasting, Inc. ("STB"). Investors object to the sale on the basis that the Assets are the primary assets of the Estate and they are capable of generating positive cash flow for the Estate with little oversight by the Receiver. Investors also object to the terms of the sale to STB on the basis that the total consideration for the sale is unreasonably low. STB had previously offered an additional \$1.6 million of free air time on the Salem Broadcasting nationwide network as additional consideration. That air time has a market value and can be re-sold by the Receiver.

2. Additionally, the Priority Secured Noteholders, a subset of the Investors asserting this Objection, hold security interests in the Assets that are senior to the security interest to be waived by STB as part of the proposed purchase. Because there are insufficient assets in the Estate to satisfy all of the priority security interests, STB's note is worthless and is no consideration for the sale.

3. The Priority Secured Noteholders object to the Receiver attempting to sell BizRadio's assets without regard for the noteholders' first priority security interest. The Priority Secured Noteholders assert their security interest in the BizRadio Assets and object to the sale of those assets.

4. Investors have provided the Receiver with a "Topping Bid," subject to due diligence, to purchase the Assets. Investors request that the Court postpone the June 16, 2011 hearing to confirm the sale by at least 60 days, to give the Priority Secured Noteholders time to conduct due diligence in support of their purchase of the Assets from the Estate.

ARGUMENT

5. The Priority Secured Noteholders' rights will be violated and a grave injustice will be done to BizRadio's unsecured creditors and equity holders if the sale of the Assets as proposed by the Receiver is allowed to proceed as planned.

History of the Investors' Interests in BizRadio

6. In 2007, Daniel Frishberg, the principal owner of BizRadio, decided he wanted to purchase KTEK radio station, located in Alvin, Texas. He ultimately purchased the station from STB for \$7,250,000.00. This is the same station the Receiver now proposes to sell back to SBT, the original seller, for less than \$2.5 million.

7. Industrial Info Resources, LLC, ("IIR") loaned \$4 million to BizRadio to accomplish the purchase of the radio station from STB. In order to induce IIR to make the loan, BizRadio and STB agreed that IIR's security interest would be a first priority interest, and that STB's would be subordinate. The Receiver admits that IIR loaned \$4 million, that a UCC-1 was filed perfecting the priority security interest (see **Exhibit 1**), and that STB agreed to subordinate its security interest to IIR.¹

8. The Receiver has not disclosed, however, that it was contemplated at the time of the original purchase by BizRadio that Wallace Bajjali would borrow money from new investors and use the proceeds to pay off the IIR indebtedness.² That plan was stated clearly in the Subordination Agreement, attached as **Exhibit 2**, and STB agreed that any lender who provided new funds to pay down the IIR indebtedness or the STB's indebtedness would stand in the shoes of IIR with a priority security interest. The investors who made those loans were the Priority Secured Noteholders, whose funds were used to pay IIR in full, and to pay \$1.75 million of BizRadio's total indebtedness to STB. The Priority Secured Noteholders thus stand in the shoes of IIR as senior secured parties, and the \$1.5 million note that STB proposes to forgive in the proposed sale by the Receiver is subordinate to the secured interests of the Priority Secured Noteholders.

¹ See Motion for Entry of Orders [Docket 62], at p.13; *See also*, UCC-1 Financing Statement, attached hereto as Exhibit 1.

² *See, e.g.*, Exhibit 2, Subordination Agreement, at Section 6, pp. 8-9 (discussing Replacement Financing and new lenders becoming "Senior Lenders" under the Agreement).

9. The Priority Secured Noteholders, are real parties in interest who made loans to BizRadio through Wallace Bajjali Fund II, LP (“WB Fund”) and through Wallace Bajjali Development Partners, LP (“WB Partners”). The Priority Secured Noteholders have promissory notes and security agreements documenting their security interests in all of the assets of BizRadio.

10. The following chart shows the names of the Priority Secured Noteholders and the amounts of their Secured Notes:

Name:	Total Security Interest:	Exhibit No.:
Kohur Subramanian	513,031.82	3
JE Gauntt	630,000.00	4
Richard Kadlick	400,000.00	5
TR Dunn Family Trust	300,000.00	6
Robert Ficks	300,000.00	7
Ronald Ellisor	260,000.00	8
Florence Reiley	235,000.00	9
James & Pat Stewart	100,000.00	10
Stephen Cook	200,000.00	11
Ed & Helena Gray	125,000.00	12
Paul & Simona Williams	119,744.14	13
Doug & Kay Shaffer	100,000.00	14
Kevin Deering	100,000.00	15
Larry Mullins	100,000.00	16
Martin Grosboll	50,000.00	17
Ramesh Konduri	45,000.00	18
Tim Koehl	30,000.00	19
Alisa K. Jones	9,675.00	20
TOTAL:	3,617,450.96	

11. The UCC-1 Financing Statement, **Exhibit 1**, refers to the secured party as “Wallace Bajjali Investment Fund II, LP, a Texas limited partnership, as Administrative Agent for Industrial Info Resources, Inc., and other senior lenders.” This filing is sufficient to perfect the Priority Secured Noteholders’ security interests in light of the Subordination Agreement attached as **Exhibit**

2 (the “Subordination Agreement”). Section 9.503(d) of the Uniform Commercial Code provides that the “Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.”³ The Subordination Agreement contemplated that new lenders would be brought in to repay STB and IIR, and that the new lenders (“other senior lenders”) would stand in the shoes of IIR and Southwest as having senior security interests in BizRadio’s property. It is important to note that the UCC-1 filing on behalf of Wallace Bajjali Investment Fund II, LP, *et al.*, has never been released.

The Proposed Sale is Not in the Best Interests of the Estate

12. The proposed sale involves STB tendering its remaining junior secured claim of \$1.5 million as a portion of the purchase price. However, STB’s interest is subordinated to that of the Priority Secured Noteholders, and does not stand to recover any amount from the Estate. Therefore, forgiving that indebtedness is no consideration to the Estate or its beneficiaries.

13. Further, the total consideration offered by STB is too low and is therefore unreasonable. Even with the \$1.5 million note taken into account, the total consideration is too low and the sale is not in the best interests of the Estate because more consideration is available. STB had offered an additional \$1.6 million of consideration in the form of free airtime on the Salem Communications national radio network prior to the institution of the Receivership. That free airtime has a market value that could be re-sold to one or more third parties, but the Receiver has disregarded that value with no explanation.

14. The Receiver stated in the Motion for Entry of Orders approving the sale that there is no benefit to the Estate from continuing to own and operate the station. Investors disagree. If the station is run properly, its monthly expenses should be approximately \$25,000 per month, and its revenues should be \$50,000 per month or more. There are third-party companies who operate

³ Tex. Bus. & Com. Code §9.503(d) (West 2011); *see also Id.* cmt.3.
OBJECTION TO SALE

business radio stations in other markets who would manage the KTEK station and bring their syndicated national shows to KTEK. Without Frishberg and Kaleta's extravagant spending, and with solid management, the station would generate positive cash flow on a regular basis. Investors contend that the Receiver should manage the station for the benefit of the Estate, or arrange for a third party to do so on a contract basis. The Receiver has neither investigated nor considered this option.

15. In the event that the Receiver chooses to operate the station in the above fashion, with advice and consent from the Priority Secured Noteholders, the Investors are willing to defer payments on the Priority Secured Notes until such time as the station generates consistent positive cash flow.

Priority Secured Noteholders Are Tendering a "Topping Bid"

16. If the Receiver is not interested in operating the station, and the Court disagrees with Investors that operating the station is in the best interests of the Estate, then the Priority Secured Noteholders propose to cancel Priority Secured Notes totaling \$2,750,000.00 in exchange for the purchase of the Assets from the Receivership. This amount is more than sufficient to constitute a "Topping Bid" pursuant to the Court-approved procedures. The Priority Noteholders will provide the Receiver with their Topping Bid in writing contemporaneously with the filing of this Objection. Investors' bid will be subject to the completion of due diligence regarding issues such as whether the radio equipment is in good repair, the status of the ground lease, and any impediments to FCC approval of the transfer. Because the Priority Secured Noteholders have priority in any distributions from the Estate, such a bid would provide more benefit to the Estate than the STB proposal.

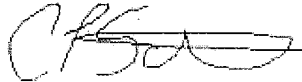
PRAYER

17. Therefore, Investors respectfully request that the Court sustain their objection to the

sale of the Assets as proposed, and reset the confirmation hearing to a date not earlier than August 16, 2011, to provide Investors time to conduct due diligence on the purchase of the Assets on terms more favorable to the Estate and its beneficiaries.

RESPECTFULLY SUBMITTED,

THE SCHMIDT LAW FIRM



C. THOMAS SCHMIDT
STATE BAR NO. 00797386
DAVID J. COATES
STATE BAR NO. 00783844
3730 KIRBY DRIVE, SUITE 1200
HOUSTON, TEXAS 77098

ATTORNEYS FOR INVESTORS

OF COUNSEL:

Charles L. Fridge, III
Texas State Bar No. 24004286
3000 Smith Street
Houston, Texas 77002

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing instrument was submitted to the clerk of the court using the electronic case filing system of the court. I hereby certify that I have served the parties below electronically, on this the 7th day of June 2011:

Thomas L. Taylor, III
The Taylor Law Offices, P.C.
4550 Post Oak Place Drive, Suite 241
Houston, Texas 77027

Electronically

Joseph G. Epstein
Winstead P.C.
1100 JPMorgan Chase Tower
600 Travis Street
Houston, Texas 77002

Electronically

Charles L. Fridge, III