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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Case No. 4:09-cv-3674**
	§	
ALBERT FASE KALETA and KALETA CAPITAL MANAGEMENT, INC.,	§	
	§	
and	§	
	§	
BUSINESSRADIO NETWORK, L.P., d/b/a BizRadio and DANIEL FRISHBERG FINANCIAL SERVICES, INC., d/b/a DFFS CAPITAL MANAGEMENT, INC.,	§	
	§	
Relief Defendants.	§	

BRIEF IN SUPPORT OF INVESTORS' OBJECTION TO SALE OF RADIO STATION ASSETS

Come now Ronald & Lavonne Ellisor, Richard Kadlick, Sailaja Uri Konduri, Robert Ficks, Larry Mullins, TR Dunn Family Trust, Diane & Paul Collings, Kohur Subramanian, Timothy Koehl, Martin Grosbol, Doug & Kay Shaffer, Alisa K. Jones, Kevin Deering, Ed & Helena Gray, Johnny & Betty Gauntt, Tony Huerta, Jacob Tsabar, Marcus Erickson, Kurt Everson, George & Marene Tompkins, Richard Burkhart, James Maas, James & Patricia Stewart, Bob & Kathy Horlander, Don Keil, Dr. Gerald Crouch, Paul & Simona Williams, Steve Cook, Florence Reiley (hereinafter collectively "Investors") and Carlos Barbieri, Ivan Curiel, Jack McElligot, Pamela McElligot, Raymond Warner, and John Willis (hereinafter collectively "New Investors") and file this Brief in Support of their previously filed Objections to the Sale of Radio Station Assets, and in support thereof, would respectfully show the Court as follows:

SUMMARY OF ARGUMENT

The Receiver seeks to sell the radio station assets of BizRadio (the "Assets"), free and clear

of all liens, claims, encumbrances and other interests, to South Texas Broadcasting, Inc. ("STB"). Investors have objected to the sale on the bases that the station and equipment are the primary assets of the Estate and the investors believe the value of these assets will be maximized by the Receiver operating the assets, and generating positive cash flow for the benefit of the creditors of the receivership Estate with little oversight by the Receiver. Once this is done, the assets can be sold for a much higher value and return to the receivership estate and its creditors. If the Receiver is unwilling to operate the station, the investors are willing to purchase the station and operate it. Concomitant with this objection, the Investors additionally object to the sale to SBT because under the terms proposed the total consideration for the sale is unreasonably low.

Furthermore, the Priority Secured Noteholders, a subset of the Investors asserting this Objection, hold a senior and first lien and security interest in the Assets that are the subject of the sale, either through a consensual perfected security interest in the Assets or equitable subrogation to the lien of IIR. The proposed purchaser, STB, contractually subordinated its lien to that of the Investors/IIR. The Priority Secured Noteholders object to the Receiver attempting to sell BizRadio's assets without payment in full of the Priority Secured Noteholders' indebtedness. Moreover, due to the subordination of payment and debt to "Senior Lender(s)", which includes Investors pursuant to paragraph 6 of the Subordination Agreement, Salem cannot "credit bid" any of its secured debt as part of the purchase price of the assets and obtain the assets free and clear because any credit bid must pay the Priority Secured Noteholders Loans in full. Since it does not, the sale cannot be approved as proposed. Alternatively, in the event the Court approves the sale, all liens, claims, interests and encumbrances of the Investors must attach to the sales proceeds, in the same priority under applicable law as existed prior to the sale, and shall not be disbursed pending further order of the Court.

Finally, the Investors have numerous procedural and substantive objections to the sales

process utilized by the Receiver. First, Investors point out that the Receiver failed to provide proper Notice under the Court's April 4, 2011 Order, which precludes a sale at this time. Second, due to the severe qualifications placed on a party to be a "Qualified Bidder" the public at large cannot bid on the assets, which warrants a determination that the sale to STB is a private sale, requiring the appraisal of the assets prior to the sale in accordance with 28 USC section 2001. Third, the Investors also provided the Receiver with a "Topping Bid," to purchase the Assets, which the Receiver has refused to consider.

For these reasons, the sale should not be confirmed by the Court.

ARGUMENT

I. APPROVAL OF THE SALE WOULD VIOLATE THE DUE PROCESS RIGHTS OF INVESTORS BECAUSE NOTICE OF THE MOTION AND SALE WAS NOT GIVEN AS ORDERED.

The Court's Order of April 4, 2011 provided the Receiver specific instructions regarding notice to Interested Parties. The Court's Order states:

> **Finally, the Receiver is directed to serve the Notice of this Sale and this Procedure Order on all parties, if any, who assert a lien, claim, encumbrance or other interest in the Station to afford such parties the opportunity to present any objection to the sale of the Station free and clear of any liens, claims, encumbrances and other interests and allow such parties to protect any such interests.**

The Receiver was aware of numerous parties who have interests in the assets, including Investors and New Investors, entitled to notice as the Court directed. In his Motion for Entry of Orders, Document 62, the Receiver states as the basis for the action underlying the receivership: "The SEC alleges that Defendants perpetrated a multimillion dollar fraud, soliciting money from investors in exchange for promissory-note securities, which was then used by Defendants in ways and for purposes in conflict with representations made to investors, including improvident loans to the relief defendants." The Investors are among the investors described by the Receiver. The promissory-note securities referenced in the Receiver's motion include the secured interests held by these

Investors. The Receiver was thus aware of the existence of secured note holders who provided loans to BizRadio, but he did not provide notice to them. The Receiver was also aware of equity investors in BizRadio, but did not provide notice to them either. Not one of the Investors received notice from the Receiver regarding the sale of the Assets of the Radio Station in which they held an interest.

In the Motion, the Receiver states that "BusinessRadio caused all of the obligations under the Wallace Bajjali Loan Documents to be paid in full. . .The Receiver is unaware of any other liens claims encumbrances or other interests in the Station by other parties." But in the following sentence he says: "The Receiver *disputes* any further claims of Wallace Bajjali *or its investors* to a security interest in, or a lien on, the Station, or any further rights to have a lien on proceeds to from the sale of the Station."[1] If there were no claims or security interests, there would be nothing for the Receiver to dispute. Obviously, the Receiver was aware of the claims of the Investors and their security interests, yet the Receiver failed to notify any one of them of the proposed sale. All parties who assert a lien, claim, encumbrance or other interest in the Station had a right to notice and to be afforded an opportunity to present any objection to the proposed sale. They further have the right to a determination of the validity of their claims by this Court, not by the Receiver.

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), the Supreme Court set the standard for notice under the due process clause by stating that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314, 70 S.Ct. at 657. Bankruptcy law divides creditors into two groups when determining the proper notice to be given of bar dates: known and unknown creditors. The due process standard set forth in *Mullane* requires that Debtors' known creditors be given actual notice of the bankruptcy

proceedings and relevant bar dates. *City of New York v. New York, N.H. & H.R. Co*., 344 U.S. 293, 296, 73 S.Ct. 299, 300, 97 L.Ed. 333 (1953); *Wright v. Placid Oil Co*., 107 B.R. 104, 106 (N.D.Tex.1989). The Court's Order of April 4, 2011 is in keeping with this long-standing precedent, but the Receiver failed to comply with the Court's Order. "(T)he Supreme Court has further explained . . . "known creditors" include both those claimants actually known to the debtor, as well as those whose identities are "reasonably ascertainable." *Matter of Crystal Oil Co*., 158 F. 3d 291 (5th Cir. 1998) citing *Tulsa Professional Collection Serv., Inc. v. Pope*, 485 U.S. 478, 490, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988). A creditor is "reasonably ascertainable" if it can be discovered through "reasonably diligent efforts." *Id*. Given the statements in the Receiver's own motion, it is not even arguable that Investors were "unknown creditors." The Receiver has in his possession the records of KCM and BizRadio, and therefore has the names and contact information for each owner and lender of the Receivership entities. The Receiver was obligated under this Court's Order and long-standing precedent to give them actual notice. In his Request for Entry of Confirmation Order, Document 72 filed June 8, 2011, the Receiver states "Pursuant to the sale procedures set forth in the Modified Order, Notice of Sale was published as set forth in the attached Affidavit of Publication." There is no mention of any attempt to provide actual notice in compliance with the Court's Order. Notice by publication is not legally effective to discharge claims of known creditors. *City of New York*, 344 U.S. at 296.

Lack of notice is a fatal flaw which precludes the Sale of Assets from going forward at this time. The Receiver must postpone the sale, and provide Notice of the rescheduled sale to all known creditors in order to afford them the opportunity to conduct discovery and assert objections.

II. THE PROPOSED SALE IS NOT IN THE BEST INTERESTS OF THE ESTATE

A. Paying $150,000.00 to Asia Vision is Unreasonable

[1] Motion at pp. 14-15 (emphasis added).

Under the Receiver's proposed terms of sale, $150,000.00 of the sale proceeds is to be set aside for the settlement of the Asia Vision lawsuit. This sum represents 15% of the cash consideration South Texas Broadcasting ("STB") is proposing to pay for the assets of the Estate. Asia Vision filed a lawsuit against the Estate for breach of a contract to lease air time to Asia Vision. Asia Vision subsequently added claims against STB alleging tortious interference. Asia Vision does not have a judgment; it merely has a claim. Fifteen percent of the total cash consideration is unreasonable under those circumstances. There is no reason why Asia Vision should receive anything from the Estate. Absent a judgment, Asia Vision's claim has no greater priority than any other claim against the estate, and its unliquidated claim stands behind most of the other claims.

Further, there is no legitimate basis for the Receiver to use Estate assets to settle a claim on behalf of STB. Asia Vision's claim against STB has nothing to do with the Receiver's action against BusinessRadio Network, LP, as a Relief Defendant in this suit. If STB wishes to settle its litigation with Asia Vision, that matter should be handled separately from the Receivership's sale of the Radio Station Assets, and should have no impact on the sums recovered by the Receiver in favor of the Estate.

B. The Consideration for the Sale is Insufficient

1. There have been no appraisals or determination of market value.

The Receiver has not obtained any appraisals of the Station or its assets, and there is no evidence in the record to suggest that the proposed sale price of the assets is reasonable in light of the market value of the assets. Section 2001 of Title 28 requires that a Court review three appraisals prior to confirming a private sale of assets.[2] The reason for that requirement is to give Courts a clear indication from credible evidence that the value received for the assets approximates their true value. Here, there is no similar assurance, and, in fact, the evidence suggests the contrary. There

appears to be a rush to close this deal without a proper determination of the value of the Assets. Given that the intent of the Receivership is to perform all acts necessary to conserve, hold, manage and preserve the value of the Receivership Estate the Receiver is obligated to maximize the value obtained by the Estate through the sale of the Assets.

2. STB sold this same Station for $7.25 million a mere three years ago.

In 2008, STB sold this very station to BizRadio for $7.25 million, of which it received at nearly $6 million in cash. It is now attempting to repurchase the station for $1 million cash, plus contributing $1.5 million of its windfall from the prior transaction. Aside from demonstrating the lack of arms-length bargaining and the unreasonableness of this transaction, this fact is one piece of evidence before the Court that points to a market value for the assets far in excess of $2.5 million.

3. The proposed sale to Asia Vision was better for the Estate.

The proposed sale to Asia Vision called for a purchase price, "as is" of $3,500,000.00. Such sale would have provided greater value to the estate, and obviated the need to pay off Asia Vision for its lawsuit. The fact that a party offered 40% more for the same assets is strong evidence that Salem's offer is too low. Section 2001(b) of Title 28 provides that no private sale can be approved unless it exceeds two-thirds of the appraised value of an asset. If the market value of the assets is $3.5 million, the proposed offer does not represent more than two-thirds of that value.

3. Salem's prior offer was higher.

The Asset Purchase Agreement signed on March 5, 2010, referred to as "the Original Sale Agreement," provided far greater value than the current "Modified Sale Agreement." The original agreement included a $1,640,000 credit for program airtime for BizRadio to purchase airtime from STB and/or its parent company Salem. This credit had value in that it could have been sold or otherwise transferred to interested parties. In the current modified agreement, that value is simply

[2] 18 U.S.C. §2001(b) (West 2011).

omitted. In his Motion seeking Court approval of the sale, the Receiver states that the air time credit would be of no benefit to the Receivership Estate. There is no evidence the Receiver even considered the potential value of such a credit on the open market, and there was no substituted consideration provided by Salem. The value of the original offer was $3,700,000.00. The purchase price under the Modified Sale Agreement is listed as $2,488,337.48 as of January 31, 2011. This proposal is not for more than two-thirds of the value of the assets and it clearly does not conserve and preserve the assets of the Estate.

4. The Station generates positive cash flow.

The Station is currently operating under a lease agreement to Salem. Salem is paying the lease now and the Station is generating positive cash flow for Salem. That cash flow could be flowing to the Estate.

To maximize the assets of the Estate, the Receiver must operate the Station (using a third-party management service) and collect cash flow from the operation. If the Receiver and the Court conclude that the positive cash flow maximizes the value to the Estate, the operation can continue. If not, the Receiver will be able to sell the Assets for a much higher price if they have a history of generating positive cash flow.

Attempting to sell the Station when it has not had positive cash-flow in recent years is nearly impossible and certainly does nothing to maximize the value to the Estate. Investors have spoken with third-parties who have agreed to manage the Station for the Estate and asserted that with the programming they can bring to the Station, the Station will operate with a positive cash flow. If the Station can be operated at a positive cash flow for a period of 8-10 months the fair market value of the Assets will be substantially higher, and could be sold at that time with a much better return to the Estate. There is no evidence the Receiver investigated this option in fulfilling his duties to the Estate.

III. PRIORITY SECURED NOTEHOLDERS HAVE A PRIORITY INTEREST THAT IS SENIOR TO STB'S, AND OBJECT TO THE SALE

In 2007, the Radio Station was sold by SBT to BizRadio for $7,250,000.00. SBT provided seller financing for $3,500,000.00 of the purchase price. Industrial Info Resources, LLC, ("IIR") loaned $4,000,000.00 to BizRadio to accomplish the purchase of the radio station from STB. In order to induce IIR to make the loan, BusinessRadio Houston, LLC, and STB agreed that IIR's security interest would be a first priority interest, and that STB's would be subordinate. A Subordination Agreement was executed by the parties to that transaction. The Receiver acknowledges that IIR loaned $4,000,000.00, that a UCC-1 was filed perfecting the priority security interest (see **Exhibit A**), and that STB agreed to subordinate its security interest to IIR.[3]

The UCC-1 indicates there are other secured lenders in addition to IRR. 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.[4] That plan was stated clearly in the Subordination Agreement, attached as **Exhibit B**, and in the Security Agreement signed by BusinessRadio Houston, LLC, in favor of Wallace Bajjali Development Fund II, LP, as agent for IIR and other Senior Lenders, attached as **Exhibit C**. Moreover, 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, thus their funds were "Replacement Financing." The Priority Secured Noteholders made loans to BizRadio through Wallace Bajjali Fund II, LP ("WB Fund") and through Wallace Bajjali

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

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

Development Partners, LP ("WB Partners"), and have promissory notes and security agreements documenting their security interests in all of the assets of BizRadio. The Priority Secured Noteholders thus stand in the shoes of IIR as senior secured parties with a priority lien over STB.

IV. PRIORITY SECURED NOTEHOLDERS ARE EQUITABLY SUBROGATED TO IIR'S PRIORITY SECURITY INTEREST.

The Investors hold a first and senior lien on the assets to be sold to the extent their funds were utilized by BusinessRadio Houston, LLC ("BRLLC") to pay the first and senior lien indebtedness owing by BRLLC to Industrial Info Resources, Inc. ("IIR"), pursuant to the doctrine of equitable subrogation under Texas law.

The funds that the Investors loaned were expressly invested for the purpose of paying off the indebtedness of IIR. It is uncontested that IIR had a first and senior lien on the assets of BRLLC. In fact, South Texas Broadcasting, Inc. ("STB") expressly subordinated its lien and security interest to the lien and security interest of IIR and any Replacement Investors whose funds were utilized to payoff the IIR indebtedness in that certain Subordination and Intercreditor Agreement by and among IIR, as Initial Senior Lender, Wallace Bajjali Investment Fund II, L.P., as Administrative Agent, "on behalf of the Senior Lenders (as hereinafter defined)" (the "Agent") and South Texas Broadcasting, Inc., as Subordinate Lender, dated as of March 28, 2008 (the "Subordination Agreement"). Senior Lender is defined as "the Initial Lender and any lender that makes a Replacement Loan as provided in Section 6. "Senior Loan" is defined as "the Initial Senior Loan and any Replacement Loan made to Borrower by any Senior Lender, provided the aggregate principal outstanding at any time under the Senior Notes shall not exceed $5,750,000, as provided in section 6." The Initial Senior Lender is defined as IIR. Section 6 provides as follows:

> "6. Replacement Financing. The parties hereto acknowledge that Borrower intends to obtain additional financing secured by the Shared Collateral and use the proceeds of such financing to, among other things, satisfy Borrower's obligations under the Subordinate Loan and under the Initial Senior Loan (the

> "Replacement Financing", which term shall include any subsequent financing borrowed by Borrower and used to pay any Replacement Financing). Upon payment of any portion of the Subordinate Loan or the Initial Senior Loan with the proceeds of any Replacement Financing, or upon payment of any such Replacement Financing with loan proceeds from additional financing (which then shall become Replacement Financing), Subordinate Lender shall agree to subordinate the remaining Subordinate Loan and the remaining Subordinate Loan Documents to the lien of such Replacement Financing, but only to the extent a portion of the Subordinate Loan or the Initial Senior Loan, or other Replacement Financing, is actually satisfied with the proceeds of such Replacement Financing; provided that the aggregate principal amount of the Senior Loans shall not exceed $5,750,000. at any time."[5]

"Shared Collateral is defined in Exhibit A to the Subordination Agreement as the assets of BRLLC that the Receiver seeks to sell to Salem, an affiliate of STB, the Subordinate Lender. "Initial Senior Loan" is defined as the Loan made by IIR to BRLLC in the amount of $4,000,000.00 and Subordinate Loan is defined as the Loans made to BRLLC by STB in the amount of $1,750,000.00 and $1,500,000.00, respectively. It is uncontested that the Senior Loans never exceeded the $5,750,000 amount.

The Texas Supreme Court has recognized the doctrine of equitable subrogation as the law of the State of Texas stating, that the case law on equitable subrogation "'recognize the doctrine …to the fullest extent.'" *Frymire Engineering Co., Inc. v Jomar Int'l, Ltd.*, 259 SW3d 140, 141 (Tex. 2008) *quoting Faires v Cockerell*, 88 Tex. 428 (Tex. 1895). As recently stated by the Dallas Court of Appeals in the case of *Bank of America v. Babu*, 2011 Tex App. LEXIS 3325, *18-*21 (Tex. App.—Dallas, May 3, 2011) (citations omitted):

> "Equitable subrogation 'is a legal fiction' whereby 'an obligation, extinguished by a payment made by a third person, is treated as still subsisting for the benefit of this third person, so that by means of it one creditor is substituted to the rights, remedies and securities of another.'…The general purpose of equitable subrogation is to prevent unjust enrichment of the debtor….Texas courts are particularly hospitable to the doctrine of equitable subrogation. Texas courts have also given the doctrine 'a liberal application…broad enough to include every instance in which one person, not

[5] *See* Exhibit B.

> acting voluntarily, has paid a debt for which another was primarily liable and which in equity and good conscience should have been discharged by the latter.'…
> There are two key elements to equitable subrogation: (1) the person whose debt was paid was primarily liable on the debt, and (2) the claimant paid the debt involuntarily."

See also Starcraft Co., Div. of Bangor Punta Operations, Inc. v. C.J. Heck Co., 748 F.2d 982, 990 (5th Cir. 1984) quoting 53 TEX.JUR.2D *Subrogation* § 1 ("Equitable subrogation is 'the substitution of one person in the place of another . . . so that he who is substituted succeeds to the rights of the other in relation to the debt or claim..'"); *Smart v Tower Land and Investment Co.,* 597 SW2d 333, 337 (Tex. 1980) ("Equitable subrogation may be invoked to prevent unjust enrichment …A right to subrogation is often asserted by one who pays a debt owed by another.").

While each case turns on its own facts, "[f]actors a court may consider in conducting this balancing test are the negligence of the party claiming subrogation, whether that party had notice of the intervening lien, and whether the intervening lien holder will be prejudiced if equitable subrogation is allowed….The determination of whether subrogation prejudices intervening interests is made 'as of the time of the transaction supporting subrogation." *Babu,* at *20-*21 (citations omitted).

Applying the law to the facts of this case requires that the Investors be equitably subrogated to the IIR Senior Lien and be repaid all amounts which they loaned and which were utilized by BRLLC to pay the Senior Loan of IIR. The first element is satisfied as it is uncontested that BRLLC was primarily liable on the debt to IIR. The second element is satisfied as the Investors did not pay the debt to IIR voluntarily (*i.e.*, without a priority security interest). The only way the funds would have been loaned is if the Investors received a first and senior lien on the Assets and, as strong evidence of this fact, IIR and STB entered into the Security Agreement and Subordination Agreement with the Agent to protect the Investors' rights in the funds they invested and specifically

referred to the Senior Secured Notes and the Investors in both documents. The course of events that actually played out was exactly what STB and BRLLC contemplated at the time of the creation of STB's subordinate lien.

Moreover, all of the factors discussed in the ***Babu*** case favor equitable subrogation under Texas law. The major purpose of equitable subrogation is to prevent unjust enrichment. In this case, BRLLC would be unjustly enriched if it is allowed to borrow funds from the Investors for the express purpose of making payment to IIR, and satisfying the IIR Loan with the Investors Loans, and then not allow the Investors their lien and security interest on the assets that IIR held. More importantly, STB would be unjustly enriched if it is entitled to get a better deal than it bargained for by elevating its lien to first in line.

There is no negligence that would affect the application of equitable subrogation as the Investors invested money after STB recorded its lien which is why they required the Agent to obtain, and in fact did obtain the Subordination Agreement before investing their money. Finally, STB is not prejudiced because STB, as intervening lien holder, contractually agreed to subordinate its debt, liens and rights to payment to IIR and any party that paid the IIR debt and STB must be bound by that agreement.

For these reasons, the Investors must be equitably subrogated to the first and senior lien of IIR plus interest at the legal rate. The Investors' funds were used to retire the Senior Loan of IIR. The Receiver has conceded as much. At least a portion of the funds were sent directly from Wallace Bajjali (as agent) to IIR, without ever touching a BizRadio account.

As a separate and independent ground, pursuant to the terms of sections 8 and 9 of the Subordination Agreement, STB subordinated both its debt and the liens and security interests created thereby "to the Senior Loan(s)" (Subordination Agreement at para. 8(a)), as well as all rights to payment in paragraph 9(a) as follows: "Except as expressly provided in this Agreement, all of

Subordinate Lender's rights to payment of the Subordinate Loan and the obligations evidenced by the Subordinate Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by Borrower of the Senior Loan….". In addition, any payments received by STB are to be held in trust by STB for the benefit of the "Senior Lender(s)." Due to the subordination of payment and debt to "Senior Lender(s)", which includes Investors pursuant to section 6 of the Subordination Agreement, Salem cannot "credit bid" $1.477 million of its secured debt as part of the purchase price of the assets and obtain the assets free and clear because any credit bid must pay the Senior Loans in full, which includes all Replacement Financing provided by the Investors which paid off IIR. The Investors do not consent to this treatment.

In the event the Court approves the sale free and clear, to which the Investors vehemently object for the reasons set forth herein, the sale order must contain a provision that all liens, claims, interests and encumbrances of the Investors, at law or in equity, must attach to the sales proceeds, in the same priority under applicable law as existed prior to the sale, and shall not be disbursed pending further order of the Court.

CONCLUSION

In light of the foregoing, Investors request that the Court refuse to approve the sale of the Assets to STB, confirm Priority Secured Noteholders' security interest in the assets, and order the Receiver to operate the station or sell it to Investors on terms agreeable to the parties.

RESPECTFULLY SUBMITTED,

THE SCHMIDT LAW FIRM

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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 the parties below have been served electronically, on this the 24th day of June 2011:

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