

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

Case No. 1:10-CV-457
(GLS/DRH)

McGINN, SMITH & CO., INC., :
McGINN, SMITH ADVISORS, LLC :
McGINN, SMITH CAPITAL HOLDINGS CORP., :
FIRST ADVISORY INCOME NOTES, LLC, :
FIRST EXCELSIOR INCOME NOTES, LLC, :
FIRST INDEPENDENT INCOME NOTES, LLC, :
THIRD ALBANY INCOME NOTES, LLC, :
TIMOTHY M. MCGINN, AND :
DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY MCGINN, :

Defendants, :

LYNN A. SMITH and :
NANCY MCGINN, :

Relief Defendants. and :

GEOFFREY R. SMITH, Trustee of the :
David L. and Lynn A. Smith Irrevocable :
Trust U/A 8/04/04, :

Intervenor. :

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**MOTION OF WILLIAM J. BROWN, AS RECEIVER, FOR AN ORDER
APPROVING PURCHASE AGREEMENT WITH HUNT TELECOMMUNICATIONS,
LLC WITH RESPECT TO THE PURCHASE OF ALL LLC INTERESTS OF
BENCHMARK COMMUNICATIONS, LLC FREE AND CLEAR OF LIENS,
CLAIMS AND ENCUMBRANCES**

William J. Brown, as Receiver (the “Receiver”) for certain of the Defendants and other entities in this action, by his counsel, Phillips Lytle LLP, moves (the “Motion”) for an order approving an Agreement with Hunt Telecommunications, LLC (“Hunt”) with respect to the

purchase of all of the outstanding equity interests of Benchmark Communications, LLC (“Benchmark”), free and clear of all liens, claims and encumbrances, if any, which shall attach to the proceeds of the sale, and in support thereof, represents as follows:

SUMMARY OF MOTION

The Motion seeks approval of an Agreement with Hunt (“Agreement”). The Agreement provides for the purchase by Hunt all of the outstanding equity interests of Benchmark (the “LLC Interests”), an entity for which TDMM Cable Funding LLC (“TDMM”) is the sole member, in exchange for cash payments totaling \$350,000 (“Purchase Price”). In addition, the estate retains the cash on hand estimated at closing to be approximately \$120,000, except for any cash for customer deposits which shall remain the property of Benchmark (which deposits shall include any prepayments for service the month following closing), a \$60,000 termination fee claim, and discontinued assets which are of a de minimus value. Both Benchmark and TDMM are MS Entities (as defined below). Benchmark provides so-called “triple play” (telephone, cable and Internet) services at a number of apartment complexes in the Southeast Gulf region of the United States. The SEC does not object to the Motion.

BACKGROUND

A. General Background

1. On April 20, 2010, the Securities and Exchange Commission (the “SEC”) filed a Complaint initiating the above-captioned action (the “Complaint”) (Docket No. 1). Also, on April 20, 2010, this Court granted a Temporary Restraining Order (Docket No. 5), which, among other things, froze certain assets of the Defendants and Relief Defendants, and appointed the Receiver as temporary receiver with respect to numerous entities controlled or owned by Defendants Timothy M. McGinn and David L. Smith (collectively, the “MS Entities”). Among the MS Entities is TDMM.

2. On July 22, 2010, the Court entered the Preliminary Injunction Order (Docket No. 96) appointing the Receiver as permanent receiver over the MS Entities. The Preliminary Injunction Order authorizes the Receiver to, among other things, “use, lease, sell, and convert into money all assets of the MS Entities, either in public or private sales or other transactions on terms the Receiver reasonably believes based on his own experience and input from his advisors to be most beneficial to the MS Entities and those entitled to the proceeds ... “ (Preliminary Injunction Order, Paragraph VIII(m), Docket No. 96).

B. Sale Transaction

3. TDMM is the sole member of Benchmark and holder of the LLC Interests. The Receiver has attempted to sell the LLC Interests for several years including previously through a broker. None of those efforts proved to be successful until now.

4. On September 17, 2013, Hunt contacted the Receiver via electronic mail to express its interest in purchasing the LLC Interests.

5. On October 7, 2013, counsel to Hunt sent a proposed purchase agreement for the purchase of the LLC Interests by Hunt.

6. Following a period of negotiations between the Receiver and counsel to Hunt, the parties agreed upon the terms of the Agreement. A copy of the Agreement is attached as

Exhibit A.

7. The essential terms of the Agreement are as follows:¹

a) Subject to Court approval, TDMM shall sell to Hunt, and Hunt shall purchase from TDMM, the LLC Interests held by TDMM as of the Closing Date free and clear of all liens, claims and encumbrances, if any;

¹ Reference should be made to the Agreement for its complete terms. Capitalized terms used but not defined in this Motion shall have the meanings ascribed to them in the Agreement.

b) In consideration for the purchase of the LLC Interests, Hunt shall:

(i) deliver a deposit in the amount of \$50,000 to the Receiver by wire transfer upon the signing of the Agreement by Hunt; and (ii) on the Closing Date, transmit payment in the aggregate sum of \$300,000 in cash to the Receiver via wire transfer to an account designated by the Receiver, to which any liens, claims and encumbrances shall attach;

c) On the Closing Date, the Receiver shall deliver to Hunt (i) a Bill of Sale for the LLC Interests; (ii) an order from this Court approving the sale of the LLC Interests to Hunt free and clear of all liens and encumbrances; (iii) any membership interest certificates available reflecting the ownership of the LLC Interests, duly endorsed in blank; (iv) any and all books and records of Benchmark or copies thereof as may be reasonably requested by Hunt; (v) a payoff letter in form and substance reasonably satisfactory to Hunt from certain secured creditors of Benchmark providing for the release of all security interests relating to such indebtedness; and (vi) signed counterparts of any and all documentation and certificates as the parties may reasonably require in connection with the transactions contemplated by the Agreement;

d) On the Closing Date, Hunt shall deliver to the Receiver (i) the balance of the Purchase Price by wire transfer and application of the Deposit; and (ii) signed counterparts of any and all documentation and certificates as the parties may reasonably require in connection with the transactions contemplated by the Agreement;

e) After the Closing Date, TDMM and Benchmark shall no longer have any responsibility to provide any services related to their business, provided that TDMM and the Receiver shall cooperate with Hunt to receive FCC approval for the transaction, if such approval has not already been obtained;

f) Hunt shall maintain all records relating to the transaction and interests and assets sold thereunder for a minimum of four years and shall provide the Receiver and his designees with reasonable access to such information following the Closing Date.

g) The Agreement is subject to the approval of its terms by this Court subject to higher and better offers; and

h) The Agreement is subject to the approval of the United States Federal Communications Commission of the transfer of all FCC licenses, which condition can be waived by Hunt.

8. The Receiver's analysis indicates that the Receivership estates are benefitted by entering into the Agreement for at least the following reasons:

a) The sale of the LLC Interests will result in the aggregate cash payment of \$350,000, which will be deposited into a Receivership account. The estate will also retain approximately \$120,000 of cash on hand, except for any cash for customer deposits which shall remain the property of Benchmark (which deposits shall include any prepayments for service for the month following closing), the \$60,000 termination fee claim, and the discontinued assets or the proceeds thereof. Between the signing of the Agreement and the approval of the Motion by the Court, Benchmark shall pay all payables in the ordinary course of business when due.

b) The Agreement constitutes the cost-effective, efficient liquidation of a significant asset (in terms of amount) of TDMM.

c) The cash payments will provide additional value to the benefit of the Receivership estates.

C. Secured Claim Against Benchmark Assets

9. The MS Entities acquired Benchmark in 2009. The sellers of Benchmark at that time (Mark Guidry, Jason Veasey, Warren Gottsegen and Benjamin Bronston) took back a seller

Note in the principal amount of \$525,000 secured by all the assets of Benchmark. During the Receivership, the Receiver has paid interest on the Note. While the MS Entities may have overpaid for Benchmark, the sellers appear to be arms length bona fide sellers.

10. In order to be able to satisfactorily pursue a sale of the Benchmark LLC interests or assets, the Receiver entered into an agreement with the sellers pursuant to the letter agreement attached as **Exhibit B**. In essence, the sellers will release all of their claims, liens and encumbrances on the Benchmark assets upon the closing of the Agreement. After the MS Entities receive the first \$300,000 of the closing proceeds, the next \$178,000 will be paid to the sellers as principal on the loan. The sellers will receive 60%, and the MS Entities will receive 40% of any recovery of the \$60,000 Legacy Tower termination fee collected by the Receiver. At the present time, there is a principal balance on the seller note of \$250,000 plus interest.

11. The Receiver has analyzed that the recovery to creditors of these estates is improved by the execution of the Agreement. The Agreement will allow a significant infusion of cash for the benefit of investors. After carefully analyzing the terms of the proposed transaction, the Receiver has determined that the offer proposed by Hunt constitutes reasonable value for the LLC Interests and that the terms of the Agreement are fair and reasonable under the circumstances.

SALE PROCEDURES

12. To ensure the maximization of proceeds for TDMM which benefit the MS Entities and those entitled to the proceeds, the Receiver sought the approval of the Court by letter dated November 12, 2013 to market and, if necessary, auction the LLC Interests for the highest and best consideration. The following are the procedures (“Procedures”) by which the Receiver shall market and, if necessary, auction the LLC Interests:

a) Upon entry of the letter Order filed in conjunction with this Motion, the Receiver shall transmit copies of the Motion to parties who have expressed interest in acquiring the LLC Interests and shall conspicuously post on the Receiver's website relating to this case (<http://mcginnsmithreceiver.com>) general details of the proposed sale of the LLC Interests along with the deadline for submissions of competing bids for the LLC Interests;

b) Any competing offers for the purchase of the LLC Interests must be on the same terms as set forth in the Agreement;

c) To the extent that the Receiver receives one or more bona fide offers to purchase the LLC Interests in accordance with the Procedures, an auction will be held at the offices of Phillips Lytle LLP, HSBC Center, Buffalo, New York 14203, at least two (2) business days prior to the date and time set by the Court for this Motion;

d) There is no break-up fee if Hunt is not the highest and best bidder at the auction. There will be a minimum overbid at the auction of \$20,000.

e) The sale of the LLC Interests to Hunt or, alternatively, the winning bidder at the auction, will be approved by this Court;

f) The Receiver, in his reasonable discretion, may take such other actions as necessary to ensure that the marketing, auction and sale procedures are in accordance with his duty to maximize the value of the LLC Interests for the benefit of the MS Entities and those entitled to the proceeds.

13. Timing is of the essence in completing the sale of the LLC Interests. Hunt's offer, which is contingent upon this Court's approval of its terms, contemplates an expected closing date for the sale transaction of no later than December 2, 2013 effective as of November 30, 2013, time being of the essence.

BASIS FOR RELIEF

14. The relief requested herein is authorized by the Preliminary Injunction Order and applicable law, and additionally is appropriate because it preserves and enhances the value of TDMM for the benefit of the MS Entities and those entitled to the proceeds.

15. This court clearly has the authority to freeze assets and to permit sales of such assets. That authority authorizes a court in cases such as this to exercise “broad equitable discretion.” S.E.C. v. Fischbach Corp., 133 F.3d 170, 175 (2d Cir. 1997); see also SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1103 (2d Cir. 1972) (explaining the equitable powers granted to the district court and holding that when there is “a showing of a securities law violation, the court possesses the necessary power to fashion an appropriate remedy.”).

16. The Preliminary Injunction Order mandates that the assets be maintained without dissipation of their value. (Preliminary Injunction Order, Paragraph VIII). Therefore, if the value of an asset is at risk of dissipation so that funds available to investors could be diminished in the event the SEC ultimately obtains a judgment, the Court may act to prevent such dissipation. S.E.C. v. Am. Bd. of Trade, Inc., 830 F.2d 431, 436 (2d Cir. 1987). In addition, the Court also has the power to enter an order approving the Agreement under § 21(d)(5) of the Securities Exchange Act of 1934, which provides that in SEC actions, “the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.” See also S.E.C. v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980) (“federal courts have inherent equitable authority to issue a variety of ‘ancillary relief’ measures in actions brought by the SEC to enforce the federal securities laws”) (citations omitted).

17. In this case, the sale of the LLC Interests as contemplated by the Agreement will maximize the value of the MS Entities, and, additionally will mitigate the legal and financial risk to the MS Entities and those entitled to the proceeds.

MEMORANDUM OF LAW

18. Since the basis for the relief requested herein under the Permanent Injunction Order and applicable law is set forth herein, the Receiver requests that any requirement for a separate memorandum of law be waived.

NOTICE OF HEARING

19. The Receiver will give notice of this Motion by posting the Motion on the Receiver's website (www.mcginnsmithreceiver.com) as well as posting at the top of the Receiver's website an explanation of the Motion with the hearing date established by the Court. Notice will also be given by ECF to (a) counsel of record including counsel to Messrs. McGinn and Smith, (b) all parties who have filed notices of appearance, and (c) parties who have expressed to the Receiver an interest in acquiring the LLC Interests.

HEARING DATE

20. By separate letter to the Court, the Receiver is requesting that a hearing to consider approval of the Motion be held on November 22, 2013.

CONCLUSION

21. As such, for the reasons set forth herein, the Receiver requests entry of an Order (i) setting a hearing date to approve the Agreement; (ii) approving the Agreement, and (iii) provide such other relief as is necessary and proper.

Dated: November 12, 2013

PHILLIPS LYTTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
Omni Plaza
30 South Pearl Street
Albany, New York 12207
Telephone No. (518) 472-1224

and

3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

Attorneys for Receiver

05-441251.4

Exhibit A

**AGREEMENT FOR
PURCHASE OF LLC INTEREST**

This AGREEMENT FOR PURCHASE OF LLC INTEREST (the "Agreement") is entered into this 12 day of November, 2013, by and between Hunt Telecommunications, LLC, a Louisiana limited liability company ("Purchaser") and TDMM Cable Funding LLC ("TDMM"), a New York limited liability company.

WITNESSETH:

WHEREAS, on April 20, 2010, William J. Brown, Esq. was appointed temporary receiver ("Receiver") by the United States District Court for the Northern District of New York in the action entitled *Securities and Exchange Commission vs. McGinn, Smith & Co. Inc., et al* (Case No. 1:10-cv-00457-GLS-CFH) for TDMM and Benchmark Communications, LLC ("Benchmark"), for which TDMM is the sole member. The Receiver was also appointed for other entities on Exhibit A to the Order to Show Cause, Temporary Restraining Order and Order Freezing Assets and Granting Other Relief (Docket No. 5). The Receivership was made permanent by a Preliminary Injunction Order dated July 22, 2010 (Docket No. 96) ("Preliminary Injunction Order"); and

WHEREAS, Purchaser desires to purchase all of the outstanding equity interests of Benchmark from TDMM, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements and warranties herein contained, the parties hereto agree as follows:

**ARTICLE I
PURCHASE AND SALE**

Upon the fulfillment of the conditions precedent contained herein and subject to the terms and conditions contained herein, Purchaser shall purchase one hundred percent (100%) of the membership interests of Benchmark (the "Purchased Interest") from TDMM for the price of \$350,000 cash (the "Purchase Price"), free and clear of all liens and encumbrances.

- 1.1 **Deposit.** Purchaser shall deliver a \$50,000 deposit ("Deposit") to the Receiver by wire transfer upon signing this Agreement. The Deposit is non-refundable unless the Sale Order (as defined below) is not obtained by December 13, 2013.
- 1.2 **Closing.** Upon fulfillment of the conditions precedent contained herein, the closing shall take place at the offices of Phillips Lytle LLP, 3400 HSBC Center, Buffalo, New York 14203 on the third (3rd) business day after the conditions set forth in Article III have been satisfied or waived or such other date, time and place as may be designated by the parties hereto in order to facilitate the closing or any other related transaction; provided, however that the closing date shall be no later than November 30, 2013. The date on which the closing occurs in accordance with the preceding sentence is referred to in this Agreement as the "Closing Date".

1.3 Sale of the Purchased Interest/Distribution of Cash.

- (a) At the closing, Purchaser shall purchase the Purchased Interest from TDMM free and clear of all liens and encumbrances, and neither TDMM nor its owners and affiliates shall have any interest in Benchmark or its assets after the Closing Date.
- (b) Simultaneously with the closing, Benchmark shall distribute all of its remaining cash to the Receiver, in his capacity as Receiver of TDMM, except for any cash relating to, or for, customer deposits which shall remain the property of Benchmark. The assets listed on Schedule 1.3 attached hereto are excluded from the transactions contemplated by this Agreement.

1.4 Closing Logistics.

- (a) At the closing, the Receiver shall deliver or cause to be delivered to Purchaser the following:
 - (i) A Bill of Sale for the Purchased Interest in the form attached;
 - (ii) An order from the United States District Court for the Northern District of New York approving the sale of the Purchased Interest to the Purchaser for the Purchase Price free and clear of all liens and encumbrances ("Sale Order");
 - (iii) Any membership interest certificates available reflecting the ownership of the Purchased Interests, duly endorsed in blank;
 - (iv) Any and all books and records of the Company or copies thereof as may be reasonably requested by the Purchaser;
 - (v) A payoff letter in form and substance reasonably satisfactory to Purchaser from Mark Guidry, Jason Veasey, Warren Gottsegen, Benjamin Bronston and any other secured debtholders providing for the release of all security interests relating to such indebtedness upon the satisfaction of the terms contained in such payoff letters, with Uniform Commercial Code or other appropriate termination statements and documents to evidence the foregoing; and
 - (vi) Signed counterparts of any and all documentation and certificates as the parties shall reasonably require in connection with the transactions contemplated by this Agreement.
- (b) At the closing and simultaneously with the deliveries in Section 1.3(a) above, Purchaser shall deliver or cause to be delivered the following:

- (i) The balance of the Purchase Price by wire transfer and application of the Deposit with the wire transfer being sent to:

McGinn Smith Alarm Trading LLC

Payee: William J. Brown, Receiver for McGinn Smith Alarm Trading LLC

Account number: 15004231600146

ABA: 022000046

M&T Bank
80 State Street
Albany, NY 12207; and

- (ii) Signed counterparts of any and all documentation and certificates as the parties shall reasonably require in connection with the transactions contemplated by this Agreement.

1.5 Allocation of Purchase Price. At or within sixty (60) days following the closing of the transactions contemplated herein, the Purchaser and TDMM shall agree upon an allocation of the Purchase Price paid by the Purchaser to TDMM among the assets of Benchmark in a manner consistent with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended.

1.6 Post-Closing Services. After the Closing Date, TDMM and Benchmark shall no longer have any responsibility to provide any services related to their business. Purchaser shall be solely responsible for performing or arranging for the performance of all services. The assets as owned by Benchmark are transferred "as is, where is" without recourse, representation or warranty.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF TDMM AND RECEIVER, AS RECEIVER OF TDMM

The Receiver, as Receiver of TDMM, represents and warrants to Purchaser, as of the date hereof and as of the Closing Date, that:

2.1 Ownership. Upon entry of the Sale Order and the Closing, TDMM will have clear title to the Purchased Interest subject only to the conditions set forth in Article III and the right to deliver the Purchased Interest in accordance with this Agreement and the Bill of Sale to the Purchaser, free and clear of any and all claims, liens and encumbrances. Benchmark owns the assets on its balance sheet dated September 30, 2013 free and clear of all liens and encumbrances of any kind whatsoever, except those to be satisfied by the Receiver at the closing.

- 2.2 Authorization. The Receiver does not need any other approval or authorization to sell the Purchased Interest to the Purchaser other than as provided in this Agreement.
- 2.3 No Violation of Contractual Restrictions. To the best of the Receiver's knowledge, the execution, delivery and performance of this Agreement does not conflict with or violate any agreement or instrument to which TDMM is a party or is bound.
- 2.4 Undisclosed Liabilities. Other than the liabilities set forth on the financial statements of Benchmark dated September 30, 2013, there are no, liabilities, charges or potential or contingent claims of any kind owed or potentially owed by Benchmark. TDMM and Benchmark have paid all taxes when due and have accurately filed all tax returns when due. Since the financial statements of Benchmark dated September 30, 2013, the Receiver has operated the business in its normal course, including paying all payables when due and there have been no liabilities incurred other than trade payables in the ordinary course of business.
- 2.5 No Brokers. Neither TDMM, the Receiver nor the Purchaser have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE III CONDITION PRECEDENT TO OBLIGATION OF PURCHASER

The obligation of Purchaser under this Agreement to acquire the Purchased Interest is subject to the following conditions precedent, unless waived in writing by the Purchaser:

- (a) Approval by the United States District Court for the Northern District of New York subject to higher and better offers; and
- (b) Approval by the United States Federal Communications Commission ("FCC") of the transfer of all FCC licenses.

Between the signing of this Agreement and the Closing Date, Purchaser may conduct additional due diligence, in its sole discretion, including without limitation, contacting customers of Benchmark. Between the date hereof and the Closing Date, the Receiver shall deliver to the Purchaser copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers that the Receiver files as Receiver of TDMM with respect to this Agreement within two (2) business days after filing. However, if the Purchaser is named in any such filings, the Receiver shall send a copy for review to Purchaser, who shall provide any comments to such filings within two (2) business days thereof.

From the date of the signing of this Agreement until the Closing Date, the Purchaser, Receiver and TDMM shall take all commercially reasonable steps necessary to apply for FCC approval for the transactions described herein. If Purchaser, Receiver and TDMM do not obtain FCC approval prior to the Closing Date, Purchaser shall waive the condition described above for obtaining the FCC approval prior to closing since Purchaser is purchasing the Purchased Interest

in receivership; however, Receiver and TDMM shall cooperate with Purchaser after Closing and shall execute any and all documents necessary to obtain approval from the FCC for the transactions described herein.

ARTICLE IV SURVIVAL

- 4.1 Survival. The representations and warranties of TDMM, the Receiver and Purchaser, set forth in this Agreement, and in any instrument or certificate delivered at closing, shall survive the execution and delivery of this Agreement and the closing and continue in full force and effect indefinitely.
- 4.2 Purchaser shall maintain all records relating to this transaction and interests and assets sold hereunder for a minimum of four (4) years and shall provide the Receiver and his designees with reasonable access to such information following the Closing Date. This provision shall survive the closing of the transactions contemplated by this Agreement.

ARTICLE V MISCELLANEOUS

- 5.1 Expenses. Each Party hereto shall bear its own expenses (including legal fees and expenses) with respect to this Agreement and the transactions contemplated hereby.
- 5.2 Amendment. This Agreement may be amended, modified or supplemented but only in writing signed by all parties.
- 5.3 Applicable Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF.
- 5.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 5.5 Entire Understanding. This Agreement and the related agreements referenced herein set forth the entire agreement and understanding of the parties and supersede any and all prior agreements, arrangements and understandings among the parties.
- 5.6 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if (a) served personally on the party to whom notice is to be given; (b) telecopied to the party to whom notice is to be given, provided that the confirming receipt is maintained and a confirming mailing is made as described in (c) hereafter; or (c) on the third day after mailing if mailing to the party to whom notice is to be given, by first class mail,

registered or certified, postage prepaid, and properly addressed. Notices shall be given as follows:

To the Receiver: William J. Brown, Receiver
Phillips Lytle LLP
3400 HSBC Center
Buffalo, NY 14203
Tel: 716.847.7089
Fax: 716.852.6100
Email: wbrown@phillipslytle.com

To the Purchaser: Hunt Telecommunications, LLC
Attn: Robert Leithman
106 Metairie Lawn Drive, Suite 200
Metairie, LA 70001
Tel: 504.355.0606
Fax: 504.832.1877

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Purchase of LLC Interest to be executed and delivered as of the date first above written.

HUNT TELECOMMUNICATIONS, LLC

By: 

Name: Robert Leithman

Title: Manager

TDMM Cable Funding LLC

William J. Brown, Receiver

Schedule 1.3

Benchmark Storage Locker Inventory

Item	Qty
Mid Atlantic 84" Double Deep Headend Racks	3
3 Post 84" Headend Racks (salvage)	4
3 Post 72" Headend Racks (salvage)	4
1 RU Headend Power Strip	4
3 Bay Fans Rack Mount	2
Rip Panel	4
8 Pack Receiver Chassis	1
12 Pack Micro Modulator Chassis	17
Micro Modulator Power Supply	18
MFT870 Amplifier	1
MFT750 Amplifier	11
Headend Flat Shelves	23
Web Power Switches wallmount	7
Web Power Switch rackmount	1
AdTrans Backplanes	14
AdTrans Rectifiers	6
Salvage Residential Satellite Dishes	15
ZeeVee HD Modulator	1
Q-Box (Used)	2
Outdoor Cat5e Cable	1
Miscellaneous Salvage Modulators	130
Directv Headend Receivers (Salvage)	100

BILL OF SALE

The undersigned Seller ("Seller"), for and in consideration of the purchase price set forth in the Agreement for Purchase of LLC Interest dated as of November 12, 2013 between the Seller and Hunt Telecommunications, LLC ("Hunt") hereunder ("Agreement") and other good and valuable consideration paid to it by Hunt, the receipt of which is hereby acknowledged by Seller, hereby grants, bargains, sells, conveys, transfers and sets over unto Hunt, its successors and assigns, all of Seller's rights, title and interests in and to the Purchased Interest (as defined in the Agreement) pursuant to the terms and conditions of the Agreement. This sale is made with only those representations and warranties contained in the Agreement.

All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their legal representatives, successors and assigns, respectively.

In all references herein to any parties, persons, entities or corporation, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

This Bill of Sale may be executed and accepted in any number of counterparts and each such executed counterpart shall be deemed to be an original instrument, and all such counterparts together shall constitute one and the same instrument. Facsimile and portable document format (.pdf) signatures shall be treated in all manner and respects, as a binding and original document, and the signature of any party shall be considered for these purposes as an original signature. This Bill of Sale is delivered in accordance with the Sale Order and shall be construed consistently therewith. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of laws thereof.

IN WITNESS WHEREOF, Seller has caused the Bill of Sale to be duly executed the day and year set forth below.

Dated: As of November __, 2013

Seller:

TDMM Cable Funding LLC

By _____
William J. Brown, Receiver

Purchaser's Acceptance:

Hunt Telecommunications, LLC

By _____
Title

Doc #01-2729166.1

Exhibit B

William J. Brown, as Receiver
of McGinn, Smith & Co., Inc., et al.

Tel: 716.847.7089
www.mcginnsmithreceiver.com

3400 HSBC Center
Buffalo, NY 14203

October 14, 2013

Mark Guidry
Jason Veasey
Warren Gottsegen
Benjamin Bronston
Bronston Legal PLLC, Attn: Benjamin Bronston, Esq.

Re: Securities and Exchange Commission vs. McGinn, Smith & Co., Inc., et al. ("McGinn Smith")
Case No. 1:10-cv-00457-GLS-CFH

Gentlemen:

This letter confirms our settlement agreement initially discussed on September 20, 2013 and in subsequent e-mails. It provides for the repayment of the original \$525,000 purchase money loan ("Loan") made by Mark Guidry, Jason Veasey, Warren Gottsegen and Benjamin Bronston (collectively, "Payees") upon the acquisition of Benchmark Communications, LLC ("Benchmark") by TDMM Cable Funding, LLC ("TDMM"). The background of the settlement agreement is as follows:

1. The Payees have been repaid \$255,291.05 on the Loan consisting of \$105,291.05 in interest and \$150,000 in principal.
2. There is a present \$350,000 oral purchase offer, not including cash, for the purchase of Benchmark ("Sale"). Benchmark's month-end cash in any given month should not be less than \$200,000. There should also be a termination fee collection from Legacy Towers of up to \$60,000, and some proceeds from equipment sales.

Accordingly, the Payees and the Receiver of Benchmark agree as follows:

- (a) The McGinn Smith estate will receive the first \$300,000 from any Benchmark Sale proceeds and cash on hand.
- (b) The next \$178,000 will be paid to the Payees as principal on the Loan immediately following the closing of the Sale.
- (c) Upon the execution and delivery of this letter agreement by the parties hereto, the Receiver shall cause a \$100,000 principal payment to be made on the Loan subject to a reservation of rights by the Receiver.
- (d) The estates' and the Receiver's reservations of rights as to all payments being made and heretofore made to the Payees or their nominees or affiliates shall be automatically withdrawn as of the irrevocable closing and funding of the Sale into the Receiver's account for no less than \$350,000 plus cash. The Payees shall cause any lien or security interest they hold directly or indirectly in Benchmark's assets to be released at the closing of the Sale.
- (e) The Payees will receive 60% of any Legacy Tower termination fee collected by the Receiver with the balance paid to the Receiver for the benefit of the McGinn Smith estates. The Receiver will pursue in good faith the recovery of the Legacy Tower termination fee with the cooperation of Mark Guidry and Benchmark.

(f) To the extent that the Benchmark cash and Sale proceeds exceed \$478,000 at closing of the sale, they will be split 50/50 between the Payees and the Receiver for the benefit of the McGinn Smith estates

(g) The foregoing payments to the Payees shall constitute satisfaction in full of the Note.

(h) Benjamin Bronston, Esq. will provide legal services in order to achieve a successful closing of the sale, and any conflict of interest arising from Bronston's previous representation of the prospective purchaser is hereby waived by Benchmark. Mark Guidry will continue to operate the Benchmark business as before and cooperate with the Receiver in connection with the collection of the Legacy termination fee and wind up of the business.

(i) Mark Guidry will use reasonable efforts to locate buyers for the surplus equipment or arrange to have the current proposed buyer purchase the equipment for a price reasonably acceptable to the Receiver.

This letter agreement may be executed in counterparts and shall be governed by New York law without consideration of its internal conflicts of law. If the Sale does not close for whatever reason, all parties' rights and remedies remain reserved and preserved. This letter agreement represents the entire agreement with respect to the subject matter hereof and may not be changed except in a writing signed by all parties.

Please indicate your agreement to the foregoing by signing this letter agreement where indicated below and returning a signed copy to me.

Very truly yours,

Benchmark Communications, LLC

By William J. Brown, Receiver

Accepted and agreed to:

Benchmark Communications, LLC

By William J. Brown, Receiver

Bronston Legal PLLC

By Benjamin W. Bronston, Esq.

Mark Guidry

Warren Gottsegen

Jason Veasey

Benjamin W. Bronston

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff,

vs.

Case No. 1:10-CV-457
(GLS/DRH)

McGINN, SMITH & CO., INC., :
McGINN, SMITH ADVISORS, LLC :
McGINN, SMITH CAPITAL HOLDINGS CORP., :
FIRST ADVISORY INCOME NOTES, LLC, :
FIRST EXCELSIOR INCOME NOTES, LLC, :
FIRST INDEPENDENT INCOME NOTES, LLC, :
THIRD ALBANY INCOME NOTES, LLC, :
TIMOTHY M. McGINN, AND :
DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY McGINN, :

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants. and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.

-----X

**ORDER APPROVING MOTION OF WILLIAM J. BROWN, AS RECEIVER,
FOR AN ORDER APPROVING PURCHASE AGREEMENT WITH HUNT
TELECOMMUNICATIONS, LLC WITH RESPECT TO THE PURCHASE OF
ALL LLC INTERESTS OF BENCHMARK COMMUNICATIONS, LLC FREE
AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

Upon the Motion of William J. Brown, as Receiver, for an Order Approving Purchase Agreement with Hunt Telecommunications, LLC with Respect to the Purchase of all LLC Interests of Benchmark Communications, LLC Free and Clear of Liens, Claims and Encumbrances (Docket No. ____) (“Motion”),¹ and a hearing having been held in connection

¹ Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

therewith, and no objections having been filed or sustained by the Court, and sufficient notice of the Motion having been given, upon due deliberation and for good cause shown, it is hereby

ORDERED, that the Motion is approved; and it is further

ORDERED, that the Agreement (as defined in the Motion) and all the terms set forth therein, are hereby approved in their entirety and all liens, claims and encumbrances, if any, shall attach to the proceeds of the sale of the LLC Interests.

Dated: December __, 2013

HON. CHRISTIAN F. HUMMEL
UNITED STATES MAGISTRATE JUDGE

Doc #05-441256.1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff,

vs.

Case No. 1:10-CV-457
(GLS/CFH)

McGINN, SMITH & CO., INC.,
McGINN, SMITH ADVISORS, LLC
McGINN, SMITH CAPITAL HOLDINGS CORP.,
FIRST ADVISORY INCOME NOTES, LLC,
FIRST EXCELSIOR INCOME NOTES, LLC,
FIRST INDEPENDENT INCOME NOTES, LLC,
THIRD ALBANY INCOME NOTES, LLC,
TIMOTHY M. McGINN, AND
DAVID L. SMITH, GEOFFREY R. SMITH,
Individually and as Trustee of the David L. and
Lynn A. Smith Irrevocable Trust U/A 8/04/04,
LAUREN T. SMITH, and NANCY McGINN,

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants. and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.

-----X

CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on November 12, 2013, a true and correct copy of the Motion of William J. Brown, as Receiver, for an Order Approving Purchase Agreement with Hunt Telecommunications, LLC with Respect to the Purchase of All LLC Interests of Benchmark Communications, LLC Free and Clear of Liens, Claims and Encumbrances was caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court's ECF filing system, and by First Class Mail on the parties indicated below:

Nancy McGinn
7 Crowsnest Court
Waterford, NY 12188

Thomas J Urbelis
Urbelis & Fieldsteel, LLP
155 Federal Street
Boston, MA 02110-1727

Michael L. Koenig, Esq.
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Albany, NY 12207

Michael Kornstein, Esq.
Cooper, Erving & Savage, LLP
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Albany, NY 12207

Hunt Telecommunications, LLC
Attn: Robert Leithman
106 Metairie Lawn Drive, Suite 200
Metairie, LA 70001

Matt Miller, Esq.
Baldwin Haspel Burke & Mayer, LLC
1100 Poydras Street, Suite 3600
New Orleans, LA 70163

Dated: November 12, 2013

/s/ Karen M. Ludlow
Karen M. Ludlow

Doc #01-2729354.1