

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/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. :

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**NOTICE TO POTENTIAL BIDDERS FOR BENCHMARK
COMMUNICATIONS, LLC INTERESTS
REGARDING AUCTION DETAILS**

PLEASE TAKE NOTICE that pursuant to 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 (“Motion”) (Docket No. 628) and the Court’s Order dated November 13, 2013 (Docket No. 629), the following shall apply respecting the November 20, 2013 auction approved by the Court Order:

1. The auction shall commence on November 20, 2013 at 11:00 AM Eastern Time at the Buffalo, New York offices of Phillips Lytle LLP, 3400 HSBC Center, Buffalo, New York 14203, Tel: (716) 847-8400, and continue until completion as determined by the Receiver. The first competing bid shall be a minimum of \$20,000 (“Overbid”) in excess of \$350,000. Thereafter, incremental bids shall be \$20,000 each until the completion of the auction.

2. By 4:00 p.m. Eastern Time on November 19, 2013 (“Document Deadline”), all potential bidders shall deliver to the Receiver by fax (delivery confirmed), or overnight courier, or e-mail (delivery confirmed) addressed to the Receiver at his Buffalo and Albany, New York offices whose addresses are given below, a track changes copy of the Purchase Agreement and marked forms of its exhibits which clearly show all proposed additions and deletions. A Word version of the Purchase Agreement will be provided upon written request to permit any bidder to provide their (a) proposed track changes version of their Purchase Agreement, and (b) marked documents to the Receiver by the Document Deadline.

3. If a bidder other than the Hunt Telecommunications, LLC (“Hunt”) is the successful bidder at the auction, the bidder must, before the conclusion of the auction, sign the Purchase Agreement in form acceptable to the Receiver, and deliver to the Receiver or his counsel a \$50,000 non-refundable deposit in the form of a certified check payable to William J. Brown, as Receiver. The successful bidder must also commit to close the transaction no later than December 2, 2013 (as of November 30, 2013), time being of the essence. Both the next bidder (after the winning bidder of the auction) and Hunt (should it not be the winning bidder) shall each remain as backup bidders and the next highest bidder in order shall close the transaction by December 2, 2013 should any successful competing bidder default.

4. The Receiver, in his reasonable discretion, may take such other actions as necessary to ensure that the marketing, auction and sales procedure are in accordance with his

duty to maximize the value of the LLC Interests (as defined in the Motion) for the benefit of the MS Entities (as defined in the Motion) and those entitled to the proceeds.

Questions concerning the process or any other matters should be directed to:

William J. Brown, Esq.
Phillips Lytle LLP
3400 HSBC Center
Buffalo, New York 14203
Tel: (716) 847-7089
E-mail: wbrown@phillipslytle.com

Dated: November 13, 2013

PHILLIPS LYTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
Nickolas Karavolas
Attorneys for Receiver
Omni Plaza
30 South Pearl Street
Albany, New York 12207
Telephone No.: (518) 472-1224
Facsimile No.: (518) 472-1227

and

3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400
Facsimile No.: (716) 852-6100
E-mail: wbrown@phillipslytle.com

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TIMOTHY M. McGINN, AND
DAVID L. SMITH, GEOFFREY R. SMITH,
Individually and as Trustee of the David L. and
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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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CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on November 13, 2013, a true and correct copy of the Notice to Potential Bidders for Benchmark Communications, LLC Interests Regarding Auction Details 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, by e-mail on the following parties:

Richard A. Foreman
E-mail: raf@rafamedia.com

Jerry M. Markowitz, Esq.
E-mail: jmarkowitz@mrthlaw.com

Mario Bustamante
E-mail: Mario@HControl.com

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.
Greenberg Traurig, LLP
54 State Street, 6th Floor
Albany, NY 12207

Martin H. Kaplan, Esq.
Gusrae, Kaplan, Bruno & Nusbaum PLLC
120 Wall Street
New York, NY 10005

Jill A. Dunn, Esq.
The Dunn Law Firm PLLC
99 Pine Street, Suite 210
Albany, NY 12207

Michael Kornstein, Esq.
Cooper, Erving & Savage, LLP
39 North Pearl Street, 4th Floor
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 13, 2013

/s/ Karen M. Ludlow
Karen M. Ludlow